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# **Republicanism and Religion**

Is Republicanism compatible with the Shi'a Political Theology?

A study of the republican principles of liberty and their compatibility with the Shi'a political doctrine with special reference to Iran's Islamic Republic

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A Thesis Submitted for the Degree of Doctor of Philosophy

**2013**

## **Abstract**

This aim of this research project is to provide a comprehensive analysis of the republican credentials of the political structure of the Islamic Republic of Iran. To this end I have launched an extensive enquiry into the main ancient and modern theories of the republican ideology including detailed surveys of the most prominent literature of the relevant field accompanied by individual enquiries into the conceptual line of argument of the main theoreticians of this school of the political philosophy in order to come up with a basic framework of analysis for any system claiming to be steeped in any levels of the republican credentials.

I have then moved on to evaluate the main theological doctrines of state and sovereignty within Islam with specific reference to the dominant Shi'a school of the political authority in Iran trying to identify their point of convergence and divergence with the basic republican political discourse.

I have also provided a detailed institutional analysis of the Islamic Republic trying to highlight their implications and interactions with regard to the previously identified republican criteria.

The final chapter of this project scrutinizes the role of the republican citizens and the institutional and constitutional provisions to empower and protect such fundamental building blocks of the republican doctrine of state.

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## **Declaration**

I hereby declare that no portion of the work that appears in this study has been used in support of an application for another degree in qualification to this or any other university or institution of learning.



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# Acknowledgments

The idea of performing a comprehensive academic study arose from the simple observation that surprisingly very little academic research has been carried out in this specific field. Indeed the systematic study of the basic principles of the republican ideology that could provide a coherent diachronic image proves to be a very recent phenomenon. During my master degree studies in London I came across inspiring projects by Philip Pettit who had been asked by the Spanish government to evaluate the republican credentials of the monarchic Spain. Further exchanges and close correspondences with Pettit who most generously provided access even to his unpublished articles, proved to be fundamental in inspiring me to undertake such a momentous piece of work aimed at scrutinising the republican foundations of an existentially different political context. Later exchange of opinion with Quentin Skinner and John Maynor further elucidated my appreciation of various aspects of the republican ideology and their pertinence to the modern political contexts. These undisputed pillars of the modern political philosophy gave me the privilege of having firsthand access into their intellectual line of thought regarding various principles of the republican ideology to whom goes my deepest respect and gratitude.

I have also been extremely lucky in having access to one of the major theoreticians of the Islamic Republic and the first president of Iran Mr. Abolhasan Banisadr, who has been one of the most prominent architects of the Islamic Revolution. His generous acceptance to meet and patiently discuss numerous questions that I had in this respect has been truly exemplary and I owe him a debt of gratitude.

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## Introduction

The history of the socio-political state administration in a framework of the republican doctrines is more than two millennia old. The core building blocks of this ideology could be traced back to the works of Cicero (106-43BC) and other scholastic philosophers who strived to lay the foundations of their *res publica* on two core concepts of *jus* (justice) and *libertas* (liberty) endorsed and protected by overarching state institutions and actively involved citizens. Notwithstanding, as many scholars have noticed: “the concept of the republican government is indeed a spacious one and many particular ideas can comfortably nestle under its big tent”<sup>1</sup>. In spite of these valid observations, from the outset, one notices the centrality of two main concepts of the rule of law and the importance of republican freedom as conceived by the main ideologues of this doctrine in particular the so-called civic humanists. This was upheld as a system which would be based on a basic notion of mixed constitution whose main function would be to promote and protect the commonwealth values of liberty and citizenship. Most of these fundamental classical cornerstones of republican thought have survived to our day having undergone various stages of mutation and adaptation ranging from the Lactantius religious interpretations to more modern Leonardo Bruni treatises and Machiavellian school and other so-called neo-Roman or the revisionist variants found in the works of contemporary authors like Quentin Skinner, Philip Pettit, Maurizio Viroli, John Maynor and John Pocock.

To this neo-republican school of political philosophy, I have to add other significant strands of this doctrine notably the one identified with the French Revolution whose basic convictions are driven by a significant revolutionary rupture with the previous order of the *Ancien Régime* towards a more egalitarian system of popular sovereignty<sup>2</sup>. As I will demonstrate throughout this research project, these regicide trends and ensuing egalitarian claims and implications would later play an important part in the conception of the Islamic Republic’s initial ideology whose main ideologues were trained and inspired by this very school of republicanism.

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<sup>1</sup> See for instance Reed Amar, A. (1994), *The Central Meaning of Republican Government: Popular Sovereignty, Majority Rule, and the Problem of the Denominator*, University of Colorado Law Review vol 65.749

<sup>2</sup> See for instance Grange, J. (2008) *L’Idée de République*, Paris Agora pub. pp.56-57

In spite of all these variant interpretations, the core idea of freedom “by” a representative government rather than freedom “from” government has made up what one could identify as a deep-seated non-domination component of the republican freedom based on the rule of just laws to guarantee the citizen’s basic “positive” liberties and safeguard the “negative” ones to cast off possible arbitrary interferences leading to domination<sup>3</sup>. Hence the *vincula iuris* or legal framework that protects and promotes citizens’ rights and requires them to place their allegiance in the sovereign laws, could be conceived as the basic building block of all modern republican systems. This, together with the republican elected accountable institutions which represent and embody the public will could be regarded as the core principles of all narratives within the republican schools of thought. Thus liberty in the form of non-domination, rule of law and republican institutions that could guarantee these basic individual freedoms and promote public virtue and common good, could all be considered to be the fundamental contributions and most importantly the distinctive features of the republican thought throughout history.

Furthermore in particular from the Italian Renaissance onward, the central role of “contestatory citizenry”, as Pettit puts it, is persistently endorsed as the basic criteria to qualify any political system to advance any degrees of republican claims<sup>4</sup>. This notion is also well-grounded in the French republican narratives with the previously mentioned emphasis on the inalienable right to revolt against the oppressive institutions<sup>5</sup>. Thus regardless of various historical mutations and adaptations in different, mainly western, schools of the political philosophy, One could identify a constant stream of thought based on the core elements of the republican ideology grounded in such distinctively republican ideas of rule of law, mixed constitution and republican freedom. As it could be seen in Chapter 1 this fundamental concept of liberty has multiple implications at various levels of socio-political administration of the power both at individual and at public levels of the exercise of authority.

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<sup>3</sup> For a comprehensive discussion of these types of liberty see Berlin, I. (1969) Two concepts of Liberty, in *Four Essays On Liberty*. Oxford University Press. pp.122;129-130.

<sup>4</sup> Pettit, P. (1997) *Republicanism: A Theory of Freedom and Government* Oxford: Oxford University Press

<sup>5</sup> Grange p.68

The other end of my paradigm of study will concern the dominant Shi‘a doctrine of the political theology. From the outset I need to clarify that by “political theology” I do not wish to mean the Carl Schmitt’s original denotations of this term in the sense that “all concepts of the modern theory of state are secularized theological concepts”<sup>6</sup>. Whereas the doctrines that attempt to bring the sacred back to the political are intended in my specific context of study<sup>7</sup>. These types of ideologies by demanding a total loyalty of the community of the faithful to a divine law-giver, and placing sovereignty in the hands of unelected ecclesiastical institutions, have historically been inclined towards refuting the contingency of power based on non-metaphysical nature of the political reality. These ontological and epistemological assumptions have unsurprisingly been the prevailing trends in the Shi‘a doctrine of state and, dare I say, in the entire Islamic political discourse, although in certain cases due to strong secularizing processes and pragmatic necessities a considerable level of ideological coexistence has been achieved<sup>8</sup>. These metaphysical or divine interpretations of sovereignty lie at the heart of all narratives on the God given or inherited exclusive privileges such as the monarchic ones that leaves little place for what Jean Bodin (1530-1596) calls *souveraineté temporelle*<sup>9</sup>. The humanist republican consciousness based on the practical and pragmatic political liberties by appealing to the will of the people seems to be at open discord with the religiously grounded theories of power administration. These observations would well account for the ideological struggles and inconsistencies that one could seamlessly observe in one particular context, that of the Islamic Republic of Iran. In this context it is not difficult to highlight various attempts on the part of numerous religious institutions to transfer the source of right and authority from the republican constitutional repositories to the ecclesiastical divine entities that enforce total allegiance to their ultimate divine source of legitimacy<sup>10</sup>.

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<sup>6</sup> Schmit, K. (1922) *Political Theology*, Chicago, Chicago University Press p.36

<sup>7</sup> See for instance Laborde, C. *The Return of Political Theology, The Scarf Affair in Comparative Constitutional Perspective* at: <http://vimeo.com/63324716>

<sup>8</sup> See Chapter 2 for more details

<sup>9</sup> Bodin, J (1993), *Les Six Livres de la République*, Paris, LGF Pub. p.1-9

<sup>10</sup> The history of the western political thought is full of such instances. We could mention the Vatican’s numerous attempts to usurp the temporal power as mentioned in most classical works of the renaissance or the contemporary conflicts in modern states such as the USA and obviously the Middle East between the religiously grounded ideologies and the secular notions of sovereignty.

In contrast, the essential republican belief in the centrality of the consent of the governed, *voluntas* (free will), inexorably institutes the foundations of the authority and the state's coercive power in the hands of the citizenry. Liberty, rule of law and popular sovereignty, in a sentence, law being more powerful than any individual or institutions<sup>11</sup>, all seem to be at least secondary concerns, if not existentially incompatible, with a noteworthy part of the religious teachings.

Based on these fundamental republican assumptions, my chosen case study - Iran, presents one with a very interesting instance in which the constitutional republican doctrines seem to be doomed to be in an eternal quest for legitimacy with the influential conservative religious power sources who through their universalist claims of authority undermine the very existence of the state's elected political apparatus. This at times seems to be going as far as an utter repudiation of a certain manmade basis for legal legitimacy which would in turn effectively challenge the parliamentary basis of the republic. Hence the "Islamic Republic" of Iran appears to embody numerous conceptual inconsistencies in its definition of the popular sovereignty claims and its basic assumptions of the alleged divine sources of right, acclaimed by the father of the Islamic Revolution<sup>12</sup>. A quick overview of the Ayatollah Khomeini's speech under the title *velāyat-e faqih* (the rule of the jurispudent) would readily reveal a total exclusion of the *res publica* as a source of sovereignty and authority<sup>13</sup>. The introduction of this concept was aimed at legitimizing an exclusive dominance on both legislative and executive powers of the state in the hands of divinely appointed restricted circle of ecclesiastical representatives of the religious doctrine<sup>14</sup>. This could be regarded as the most blatant repudiation of the *raison d'être* of any republican concepts rooted in the basic notion of popular sovereignty, non-domination of individuals or groups and the rule of collectively endorsed constitutional laws. In line with these inherent contradictions, which could be seen both in the Iranian constitution and in the declarations of its ruling elites<sup>15</sup>, in recent years there have been various debates and at times persistent calls to

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<sup>11</sup> Skinner, Q. (1998) *Liberty Before Liberalism* Cambridge: Cambridge University Press p.84

<sup>12</sup> See Ch.2 for instance

<sup>13</sup> Khomeini, R. *Velāyat-e Faqih va Jahād-e Akbar, Collections of Najaf Speeches* Tehran, Markaze Našre āsāre Emam Khomeini pp.45-46

<sup>14</sup> See Ch.2 below

<sup>15</sup> See Ch.2 & 3

abandon the few republican elements of the ruling system including radical modifications to the judiciary system, total dominance on the electoral procedures, various arbitrary exercises of power and dominance over the parliamentary proceedings and even proposals to change the official name of the state from: “Islamic Republic of Iran” to *Hokumat-e Adl-e Eslāmi* (Islamic Justice Rule); which all clearly underscore the discomfort that the republican suffix generates in the minds of the ruling class in Iran. Ayatollāh Khomeini himself consistently compared his understanding of the ideal Islamic state with the early Islamic political systems in which the ruler was the embodiment of the divine will, monopolizing control over judiciary and all coercive forces of the Islamic *ommat*. As I will expound later, this might well account for certain political symptoms such as the constant struggle for power between the Office of the Supreme Jurist and the seat of Presidency as the most prominent embodiment of the republican institutions.

All this would amount to a doctrine that “in theory” leaves no space for the aforementioned concepts of constitutional liberty and freedom based on the republican principles. Whereas in practice one could easily identify various surviving republican elements, which paradoxically seem to have been deliberately maintained and at certain junctures, even prioritized over the religious doctrine of the political not just due to practical and pragmatic necessities but also to provide and sustain claims of legitimacy of the whole system both internally and before the inquisitive eyes of the international community.

As discussed above from the outset it is possible to identify two major currents of thought regarding the republican doctrine, namely the French school as recognizable in the works of the contemporary scholars such as Claude Nicolet and Juliette Grange, and the so-called “civic republicanism” school as labelled by Philip Pettit<sup>16</sup>. Although I will make significant reference to the French school of republicanism due its paramount influence on the ideological underpinnings of the Islamic Republic, the neo-republican strand as elucidated in chapter 1 would constitute the core platform for the current research. The choice of this school of republicanism has been due to its theoretical

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<sup>16</sup> See Ch.1 below

coherence and conceptual comprehensiveness together with its systematic efforts to uncover the resilient republican ideological foundations and show their relevance to the modern world's civil societies.

## Literature Review

There are numerous works carried out on the history and the principles of the republican ideas both classical and modern variants. These include such historically influential treatises as the Cicero's *De Republica* and Machiavelli's "*Discourses on the First Ten Books of Titus Livy*" to more modern interpretations of the Republican ideologies. These range from the renaissance persuasions to the trends initiated by the Enlightenment and revolutionary concepts to other liberal or communitarian readings. In particular, as the current predominantly Anglo-Saxon liberal version of the political philosophy seems to be increasingly proving incapable of providing adequate solutions to the modern polities' problems; the republican ideas demonstrate a perpetual relevance to the new world's multi-cultural and diversified communities<sup>17</sup>. The secret seems to be lying in the republican strive to actively cultivate elements of civic virtue, common good, and public institutions that could nourish and uphold principles of *libertas*. Accordingly one could notice a significant return on the part of the scholars to endorse and appreciate the ancient republican notions, which up until some decades ago were deemed outdated with regard to the modern era's political necessities<sup>18</sup>.

Unsurprisingly this body of academic research has been at the centre of debates in various schools of the political science and has generated significant enthusiasm and sometimes hot debates amongst the modern political theoreticians<sup>19</sup>. In spite of all this significant body of research and articles on the main conceptual fundamentals of the republican political philosophy, as far as I am aware, very little work has been carried out to study the mutual interaction of the republican systems of the political sovereignty with regard to their implications and interactions with the religious dogma. These trends

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<sup>17</sup> By liberal ideology the main current of thought in this school, such as those in the works of Rawls is intended. Some more recent versions in the form of the perfectionist liberalisms indeed do contain significant conceptual overlap as far the principles of individual liberties and their scopes are concerned

<sup>18</sup> See for instance Grange, J. *ibid* pp.11-13

<sup>19</sup> Indeed the main treatise of Juliette Grange is actually a response and a refutation of the ideas put forward by the ideologues of the "civic republicanism" and the major works of Pettit and Skinner in particular follow this trend.



in the political theology include both historical and contemporary socio-political alignments of the Islamic world in which the whole ideological confrontation and debate appears to have a very brief and unchallenging history on theoretical and academic levels.

Furthermore a great part of the modern western schools of the political philosophy, notably the French one, have proven to be more categorical through the outright refutation of any legitimacies grounded in the metaphysical sources of authority deemed conceptually incompatible with most manmade sources of right and legitimacy. Nevertheless in the recent years more challenging theories have been put forward which go against these traditions of existential refutation of the possibility of coexistence to a certain level of collaboration between religion, in this case Islam, and the republican principles of the political. *L'Islam Republicain* by J F Bayart is a good attempt to favourably define the Islamic doctrines' interactions with the republican concepts in a comparative framework. Nevertheless all such studies fail short of providing a systematic academic basis of analysis with a clear criteria of research and evaluation. In other words: what are the exact elements of comparison? What are the scales of such measurements? And most importantly what are the republican principles against which they are comparing the consistency of the theological foundations of the state and sovereignty?

This indeed constitutes the major setback of most literature treating similar arguments. Important works carried out by the likes of Enayat, Arjomand, Abrahamian, Ha'eri, Katouzian and many others have scrutinised and addressed various aspects of the political theology<sup>20</sup>. These have all produced significant contributions towards enhancing our understanding of the complex interactions of the religious ideologies with the secular sources of the political authority. Nevertheless, it appears that, there have been few direct academic treatments of the "republican" credentials of a system claiming to be upholding religious values in particular with regard to this specific dominant Shi'a version of Islam<sup>21</sup>. Hence in a time span that extends to at least a couple

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<sup>20</sup> See Ch.2

<sup>21</sup> One of these rare attempts to study the other side of the dichotomy that is to evaluate the treatment of certain aspects of religion in a republican state could be found in the works of Cécile Laborde (2008)

of centuries, one does not seem to be able to identify many systematic and analytic studies of the major republican principles of the socio-political organization of a society and their relation to the religious sources of the political governance. Hence most existing scholarships in this field of the social sciences provide very little insight regarding the actual interaction of the founding principles of these “western ideologies”, in particular the republican ones, with the local centres of legitimacy.

Certain narratives such as those cantered around the notions of “oriental despotism” or “pick-ax society” by shifting the emphasis upon the social peculiarities of each context and placing them at the centre of debate, have even engendered significant potentials of misunderstanding with regard to the overall political processes involved; some of which could have universal validity with closely matched global historical experiences<sup>22</sup>. Nevertheless some authors such as Abrahamian have gone the route of providing general overviews of the socio-political processes by trying to identify common driving engines behind numerous global political phenomena which otherwise appear to be fundamentally distinct. In spite of this even in such cases very little attention seems to have been paid to providing an academic framework of study and a clear structured definition of those processes to frame a political system with such significant claims of having republican credentials<sup>23</sup>.

One interesting work recently accomplished is the one by Ran Hirschl which is aimed at studying the constitutional foundations of theocratic regimes. Although very marginally treating the Iranian context, and in spite of focusing primarily on the juridical and constitutional aspects, it is still a very precious addition to the otherwise poor literature of the studies on the state-religion relationship. Other similar studies such as those by Cecile Laborde, Simon Cabulea May and Andrew March are mainly centred around the western manifestations of the religious ideologies, scrutinizing their *modus operandi* within the context of the mainly European and American societies.

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notably in her book entitled: *Critical Republicanism, The Hijab Controversy and Political Philosophy*, Oxford, Oxford University Press

<sup>22</sup> One such arguments is the notion of resilience of the social structure in the form of the alleged short-term versus long-term societies, See for instance Chapter 2 & 3 of Katouzian, H. (2003) *Iranian History and Politics*, London, Routledge Bips Persian Studies Series

<sup>23</sup> See for instance Abrahamian, E. (1993) *Khomeinism* Berkeley and Los Angeles: University of California Press

More relevant to my study case, other existing studies are mostly either entirely dedicated to a historical analysis of the democratic movements in Iran or are merely providing a chronological account of the events with a very poor scientific methodology employed in the study of the political systems and in support of the hypothesis and conclusions drawn<sup>24</sup>. Moreover due to the ever present state sponsored or even self-inflicted censorship, the partial studies completed inside Iran have been unable to both carry out scientific firsthand researches that could incorporate an acceptable amount of the historical resources on the one side, and the views and convictions of the current ideologues of the republican doctrine on the other. All these inadequacies, besides providing a great amount of observational and sampling errors, lack unbiased verifiable conclusions that could be backed up by scientific empirical data collection and analytic procedures.

Most importantly numerous, and sometimes opposing, definitions of the basic republican elements, and a distorted image of all aspects of any “western” related systems of governance and civil society organization in the east, have all resulted in a *quasi* total predisposition towards repudiation or at least ignorance of the core values of these ideologies deemed alien and irrelevant, if not utterly hostile and antagonistic to the perceived “local” values. At the same time the existence of an immense amount of unprocessed and at times contradictory sources of data in the form of discourses and written materials within the religious camp and the intelligentsia, have markedly contributed to this significant misunderstanding and confusion. This ideological bewilderment could even be perceived in the policies put forward by various competing sources of public power, and the aspirations advanced by the population based on unrealistic or even erroneous interpretations and expectations. This might explain the reason for which the Iranian contemporary history is bursting with episodes of profound disillusionment or at times popular uprisings and violent raptures with the past and the hitherto accepted social norms. In various critical historical junctures these have determined the fate of the prevailing repositories of power which were all in a way or

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<sup>24</sup> The example of the former would be Milani’s (1988) *The Making of Iran Islamic Revolution* Westview Press 1988, and the example of the latter would be Coughlin’s (2009) *Khomeini’s Ghost*, London Pan Publications,

another affected by this all-embracing conceptual uncertainty over the very basic components of right and sovereignty.

Thus departing with the basic conviction that “the data does not speak for itself” I hope to provide an innovative research framework which might even be defined as an unprecedented attempt with two major objectives in mind: initially to survey the prominent republican schools of thought by closely collaborating with the main theoreticians of this school of the political philosophy to precisely identify the defining criteria of such a political doctrine. Once the foundations are identified I will proceed with an analytical study of the pertinence of such principles in my chosen context. It is apparent that every study of forms of the political ideology would draw upon a significant amount of linguistic and discourse analysis combined with the knowledge of other social sciences, psychology, speech-act theory and obviously the study of political philosophies underpinning such ideologies<sup>25</sup>. Thus every effort has been undertaken to provide numerous elements of such a thorough conceptual and theoretical analysis on various grounds. This would prove mandatory in order to identify the main distinctive features of the republican principles of government and come up with the minimum requirements for “any” political order to be able to advance republican claims. I will then proceed with a quick overview of the prevailing Shi‘a religious doctrine scrutinizing its recipes for the administration of public power and perceptions of the temporal authority. These would provide a working platform to scientifically evaluate the republican credentials of the Islamic Republic and examine their success in promoting and protecting the basic republican principles that I will outline in the coming chapters.

Finally in the face of international crusades of exporting the democracy and principles of individual rights by the west, and a universalist mission of human salvation by the advocates of the religious dogma, it appears ever more compelling to carry out a comparative analysis of such apparently opposing systems of values at the heart of these doctrinal divergences. Additionally in the light of the 2009 major unrest due to the electoral controversies over the most emblematic symbol of popular sovereignty, namely

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<sup>25</sup> March, A. (2009) , *What is Comparative Political Theory*, University of Notre Dame, the Review of Politics pp.71, 531-565

the institution of presidency in Iran, which brought to the fore major ideological inconsistencies within the religiously inspired political system, the need for a critical study of such ideologies becomes even more pressing. Comparatively in an era marked by a universalist comeback in religion and belief in God<sup>26</sup>, this could bring certain elements of national and international conflicts into a new light of appreciation which could make an interesting contribution to a better appreciation of the processes involved in such global events as the so-called Arab Spring and the rise of various fundamentalist fronts with their outright repudiation of some of the principal elements of the republican doctrine<sup>27</sup>.

Thus the current study would not only add a significant deontological value to the field grounded in the collective responsibilities of the academia, but could also be of a certain utilitarian value in the promotion of social well-being and minimizing conflicts and sufferings<sup>28</sup>. Furthermore I hope that this would provide another important contribution against the so-called prospectivism or “anything goes” in the field of politics which in my view has resulted in taking for granted a significant body of the achievements of the political philosophy through the claims of the socio-cultural relativism and idiosyncratic peculiarities of each context.

## **Methodology and Research Structure**

My current research project is intended to set out a major study of the republican ideology and analyse its impacts and implications on the Iranian civil society. This would entail a basic qualitative research framework that could lay the groundwork for further quantitative analysis of comparable contexts<sup>29</sup>. In order to embark on such a daunting task I will initially be looking into the major republican schools of thought trying to identify the core fundamental distinctive features of the republican discourse. Thus Chapter 1 could be regarded as the cornerstone of this project in which I will

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<sup>26</sup> See Hirschl, R. (2010), *Constitutional Theocracy*, Cambridge Massachusetts, Harvard University Press, p.1

<sup>27</sup> March, A. (2012), *Genealogies of Sovereignty in Islamic Political Theology*, Yale University, retrieved from: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2166953](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2166953)

<sup>28</sup> Kent, G. (2000), *Informed Consent*, London, Sage, p.62

<sup>29</sup> In the recent years some interesting studies have been conducted particularly following the so-called Arab Spring which promise to lay the groundwork for the study of the Islamic political theology and its relation with the notions of popular sovereignty in particular in the Sunni world. The above mentioned study by Anthony March is one such example.

attempt to develop further notions of the political authority and popular sovereignty in the republican doctrine of state. In order to set a reliable baseline for these studies I will embark on a diachronic and synchronic journey to pinpoint the building blocks of the republican thought both through a closer look at the classical works of the republican schools and the modern day adaptations of such notions. This would be primarily an analytic documentary study of a major republican current of thought which in my view provides the highest level of theoretical consistency and conceptual adaptability of the core republican concepts. The ideas of the major proponents of this so-called new-Roman school of republicanism will be reflected both through a systematic evaluation of their utterances by closely examining all relevant existing literature and firsthand personal enquiries into the main thrust of their doctrinal convictions. Wherever possible I will also draw upon my examinations of other prominent sources of this school of political philosophy most notably the French school of republicanism with its fundamental impacts on such notions as the public education and participatory citizenry. This would provide further comparative grounds for the appreciation of various republican principles from constitutional and institutional viewpoints.

Hence it becomes evident from the outset that the guiding principle of this research is reposed within the domain of the normative political philosophy based on a pursuit of discovering justifiable norms of political theory. I will then proceed with a critical study of the religious, in this case Shi'a, doctrines of sovereignty as manifested in the major current of thought which came to dominate the Iranian political arena.

Chapter 2 therefore, will shift the attention to the religious ideologies and try to identify the centralities of the ecclesiastic dogma, in these cases Shi'a Islam, and their interactions or overlaps with the secular sources of authority and political sovereignty. This will again be an analytic survey of the principal ideas behind the state management of authority as conceived by the main scholars of the Islamic Shari'a. There will be an extensive analysis of the constructivist religious ideologies based on an oral and written documentary study of the most relevant theories of the state within the Shi'a doctrine in an attempt to evaluate various implications of such notions on the fundamental republican concepts of individual liberty and popular sovereignty.

It is important to note here that I have decided to ignore the important distinction between the actual Shi‘a ideology and the religious hierarchy in my specific case study. The important separation of the actual religious ideology and the clerical power structure has shown to be significant towards providing a thorough appreciation of the role of the religion in the modern day political systems<sup>30</sup>. Nevertheless I have come to the conclusion that I could safely ignore distinguishing between “religion and the Church” as found in such studies as the one by Marcel Gauchet. The main reason behind this conscientious choice has been the fact that my principal interest here has been to analyse the prevailing religiously inspired structure of power and its implications for the basic principles of the republican ideology, rather than opening an unmanageable field of enquiry into the conceptual and theoretical validity of such doctrinal claims on religious grounds. Hence any attempt to distinguish the two would inevitably prove to be extremely challenging and distracting for my current study whose objective is to scrutinise the interactions between the republican and the religious forces of sovereignty in their entirety as materialised within this specific domain of enquiry. Thus the arguments in Chapter 2 regarding the religious readings of the principles of sovereignty will go as far as their political implications are concerned regarding the structure of state authority and their repercussions on the basic republican principles of liberty.

Moreover my main focus in Chapter 2 will be on the dominant Shi‘a philosophy and its hegemonic political discourse, as institutionalized in Iran. I have chosen to provide only a brief overview of other concurrent traditionalist and modernist currents of political Shi‘ism for illustration purposes only. The reason being is that all, as I will demonstrate, these seem to have predominantly fallen short of providing a coherent and unambiguous political discourse to impart a comprehensive set of principles for their advocated political theology. This holds true not only in the Iranian constitutional and institutional political structures, but also in the wider Shi‘a political contexts such as in Lebanon and Iraq. Therefore the first two chapters would be dedicated to a documentary study of the doctrines underpinning the constitutionalist republican and religious foundations of the Islamic Republic including a constructivist analysis of the major pronouncements of the theoreticians of these fields.

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<sup>30</sup> Gauchet, M. (1998), *La Religion dans la Démocratie*, Paris, Gallimard Pub. p.83

Subsequently from Chapter 3 onwards I will be focusing on the actual political system in Iran through an empirical in-depth analysis of its republican manmade elements of popular sovereignty and their performance with regards to the conservative and religious inspired doctrines of the political power. An inevitable point of departure to study any political system would be to perform an analytic study of its national constitution. This would make up the principal theme of my third chapter. Therein in order to arrive at a deeper appreciation of the concepts under examination, I will attempt to adopt a comparative approach to illustrate the argument with an analogy to other global contexts. This I hope would serve the purpose of enriching my observations on the Iranian Constitution with more quantitative credentials.

The rest of the chapters follow the same conviction that a comparative method would be the most efficient way to draw inferences regarding the hypothesis on a particular case study that could be tested and maybe falsified<sup>31</sup>.

In Chapter 4 I will take a closer look at the fundamental republican concept of sovereignty within the political structure of the Islamic Republic. There I essentially agree with such authors as Jonathan Fox sustaining that when coming to measuring motivations versus measuring actions, it is much easier and more accurate to evaluate the latter. This would be due to the fact that the latter provides empirical criteria which are not obfuscated by unknown complicated personal factors<sup>32</sup>. In spite of this, being also aware of the basic republican conviction that “motivation matters”<sup>33</sup>, I will try to illustrate the fundamental notions of sovereignty in the Iranian political system both based on a process of critical discourse analysis and on the practical execution of such ideologies in the actual formulation of the state structure of public sovereignty.

It is a well established concept within the political theory field that a closer analysis of a country’s institutional layout would prove to be extremely valuable towards obtaining a better understanding of the viability and the degree of success of the

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<sup>31</sup> Brunham, P. Gilland Lutz, K. Grant, W. & Layton-Henry, Z. (2008), *Research Methods in Politics*. London, Palgrave macmillan, 2008, pp.66, 69, 89.

<sup>32</sup> Fox, J. (2008) *A World Survey of Religion and the State*, Cambridge University Press, p.2

<sup>33</sup> Maynor, J. (2003). *Republicanism in the Modern World*. London: Polity Press p.133



underlying philosophical groundings. This is the essence of the so-called institutionalism which makes up the fundamental defining feature of the political science as compared to the study of the public law for instance<sup>34</sup>. Thus I have dedicated Chapter 5 to a systematic analysis of the Iranian political institutions and organizations and a closer evaluation of their republican credentials and functions. This is also firmly grounded in the republican recipes for the political institutions, which underline the very core conviction that the institutions do matter in the formation of individual choices and towards the preservation and promotion of certain basic republican values. I will strive to provide a comprehensive image of the Iranian political institutions which, as one could notice, provides important insight into the doctrinal convictions underlying the entire political apparatus. All three powers of the state together with the overarching Office of the Leader would be critically analysed in order to provide a thorough evaluation of their republican credentials. Various notions of the prevailing political ideology would be analysed to study the essential republican guarantees against the encroachment and concentration of public authority. These include such ideas as the effectiveness of the separation of powers and the openness of those institutions to public accessibility and accountability together with other tools of monitoring and political checks and balances.

I have chosen to reserve the final section of my research project to the most central element of the republican thought i.e. the people themselves. At this stage of analysis I will focus on the state processes concerning the endorsement and promotion of public participation in the political affairs of the society. This would entail a closer examination of the actual channels of empowerment of the individuals in the Iranian political system and the existence of active contestatory citizenry. Chapter 6 therefore is aimed at providing a critical analysis of the socio-political provisions of the Islamic Republic with regard to this essential republican principle.

As it could be seen I have strived to include extensive elements of discourse analysis in various chapters both based on textual examination of printed and audio-visual material and direct interviews with the main theoreticians of the field. I have been lucky

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<sup>34</sup> Ibid p.11

to be able to draw upon my personal academic training as a linguist and a professional journalist which at times proved essential towards a better appreciation of the dominant narrative as indeed “the politics proves to be the struggle to dominate the current political language”<sup>35</sup>.

It is evident that what I am concerned here with is not a dry and sanitized attempt at falsification or otherwise proving certain credentials of my case study, whereas as Karl Popper rightly wrote I am concerned with the “degrees of testability”<sup>36</sup>. It is banal to reiterate that this arises from the obvious deficit in the empirical validity of the analysis in the social sciences in general. Nonetheless in an attempt to overcome potential pitfalls in sampling, analysing and interpreting various observations, I have opted for the so-called triangulation method which denotes the simultaneous employment of various tools and methods available to the academic study of the social sciences. These include amongst others a sustained study of both documents and the literatures together with certain elements of field work observations, elite interviews and discourse analysis which would make up the foundations of a qualitative case study that will hopefully provide interesting insights towards subsequent quantitative projects.

As far as the stylistics considerations are concerned, for the bibliography I have adopted the sixth edition of the APA system. With regard to the transliteration of the Persian and Arabic words a specific adaptation of the International Phonetic Alphabet similar to those used by the Encyclopaedia Iranica and other modern Latinized transcriptions of the Persian language, has been utilized. This is nonetheless an improved version of the transcription system which has been modified and extended based on my personal experience as a linguist and direct involvement in principal linguistic and literary circles of the Persian language. An appendix to this end has been devised to report the complete table of the letters which include such novelties as /x/ representing /kh/ (palatal fricative sound خ), /q/ for /gh/ (palatal stop ق غ), /ʃ/ for /sh/ (voiceless fricative ش) and others<sup>37</sup>. Well-established names, places and other nouns have been kept as known in the West such as Khomeini and Shari‘a. Also the Persian

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<sup>35</sup> Ibid p.253

<sup>36</sup> Popper, K. as cited in Brunham, P. Gilland Lutz, K. Grant, W. & Layton-Henry, Z. ibid

<sup>37</sup> See Appendix I

pronunciations of the Arabic terms have been preferred as currently used within the Iranian socio-political contexts, for instance *jahād*, *elm*, *mojtahed*, *maslahat* and *ommat* have been utilized instead of the Arabic pronunciations *jihad*, *ilm*, *mujtahid*, *masleha* and *umma*.

Finally I have to acknowledge that a specific attention has been dedicated to both the epistemology of my research in the sense of the nature of the concepts under study and the social ontology of such ideas in a visibly different social reality. Nevertheless it remains my firm conviction that a significant body of the republican discourse as laid out here will remain transferable across different social contexts. This might in turn explain the reason for which various essentially different political systems insist on advancing comparable republican claims. Hence while being mindful of not endorsing perfectionist principles of the political theory, the underlying conviction at the heart of my entire project could be traced back to the so-called “behavioralist” school of the social sciences with the claim that “there are discoverable regularities in politics which can lead to theories with predictive value”<sup>38</sup>. Hence I hope to provide a significant contribution towards the appreciation and maybe even resolution of numerous ambiguities and ambivalences inherent to any comparative cross-cultural theoretical observations in the field of the political science.

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<sup>38</sup> Ricci, D.M, (1984) *The Tragedy of Political Science* p.137, as cited in Brunham, P. Gilland Lutz, K. Grant, W. & Layton-Henry, Z. p.20.

# Chapter 1 - Republican Freedom

## I. Introduction

Few ideological concepts in the history of political philosophy appear to have been as influential and ground-breaking as the republican political doctrines. The generation of such humanist principles of the political in the framework of the Florentine civic humanism is widely regarded to be the precursor to the entire modern western political philosophy<sup>39</sup>. Yet in spite of their fundamental role throughout the ancient and modern political philosophy one would struggle to identify a universal agreement on centrality or even the coherence of various notions put forward by the scholars of this field. It is interesting to note that this shortcoming has not stopped a significant portion of the political systems to endorse or even advance exclusive claims over the various principles of the republican school of thought. It is not difficult to identify analogous claims not only within the authoritarian political systems of the modern era but also within the democratic and liberal counterparts globally. This confusion seems to have been exacerbated by rival concepts put forward by other sources of the political patterns of social arrangements such as liberalism, socialism and other communitarian doctrines. Fortunately over the last few decades some interesting research has been carried out in this field laying down a systematic analysis of the core republican concepts that could be claimed to coherently make up the fundamental bases of the *res publica*. Although a significant portion of such notions are traced back to the Italian Renaissance of *quattrocento* and *cinquecento*, it is interesting to notice a certain presence of the scholastic political philosophy reaching as far back as early as the early Roman Republics<sup>40</sup>.

As I stated in the Introduction I will be drawing upon these modern theories of the contemporary republican thought via a text-based analysis of all relevant sources together with a critical study of the contemporary readings of such principles by the prominent contemporary political philosophers. This at times entails a direct engagement

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<sup>39</sup> See for instance Burckhardt, J. (1944) *The Civilization of the Renaissance in Italy*, transl. S. G. C. Middlemore, London: Phaidon Press

<sup>40</sup> A good review of these studies could be found in Yaron, H. (2007) *Florentine Civic Humanism and the emergence of modern ideology* in *History and Theory* 46 (October 2007), 326-344

with these scholars' line of argumentation which will be cited in due course. My objective would be to initially identify the main idiosyncratic features of the republican ideology and use those criteria to assess my chosen case study to evaluate its republican credentials. It is important to emphasize that I do not wish to enter the current debate between the so-called liberal and neo-liberal theoreticians; including John Rawls, Hillel Steiner, Mathew Kramer and Ian Carter on the one side or the neo-Roman ideologues, whose ideas would constitute the main ideological thread of the current research on the other<sup>41</sup>. There are numerous reasons to support this theoretical choice. First and foremost I consider debates on the "distinctiveness" of the republican principles of liberty that the liberals have labelled "pure negative freedom" to be a great distraction and an unnecessary challenge advanced by the so-called neo-Hobbesian scholars towards the republican school of thought. This is primarily due to the fact that undoubtedly certain principles of the republican ideology, as it will be shown below, could certainly trace their roots to a timeframe that would prove to be significantly anterior to the appearance of any modern liberal political philosophies. This would automatically render the need for including subsequent theories of freedom which would at best render a small part of the entire republican political edifice, redundant. Indeed most scholars agree that the republican doctrine proves to be much more parsimonious and capable of connecting various notions of socio-political interest such as the rule of law, the common good and popular sovereignty with its core principles of liberty<sup>42</sup>. More recent authors such as Anthony Langloise with their emphasise on the diversity of the liberal school of thought and advancing certain "perfectionist" liberal notions, do indeed overlap significantly with the comprehensive republican theories of liberty as non-domination. Nevertheless these theories appear to be still failing to capture significant republican constitutive provisions to uphold and promote such an individual status as *liber* (free) versus *servus* (slave). These republican principles provide necessary theoretical tools and criteria not only to safeguard the very notion of liberty at the heart of the republican political discourse, but also as I will demonstrate below, powerful means to evaluate any political systems claiming a degree of popular sovereignty and accountability.

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<sup>41</sup> See for instance Laborde, C. & Maynor, J. (2008). *Republicanism and Political Theory*. London, Blackwell Publishing 2008.

<sup>42</sup> Ibid pp.9

Besides these historical and theoretical considerations it is evident that my case of study namely the Islamic Republic of Iran, clearly advances specific republican constitutional claims which would provide interesting grounds for theoretical qualification and evaluation. Conversely, at least theoretically, one would struggle to find any traces of the liberal ideology as it is known in the field of the political philosophy in various political formulations of my reference political system of Iran. Indeed as it will be demonstrated later, a significant portion of the republican revolutionary discourse here was aimed at denouncing specific liberal and capitalist principles. Furthermore various efforts towards the institutionalization of these political principles in the Islamic Republic would definitely be reminiscent of the republican institution building endeavours as compared to the liberal decentralisation tendencies. Thus I assume that I could safely conclude that a framework of analysis based on the republican ideology would indeed prove to be more pertinent and productive in providing a solid framework of reference for the evaluation of various principles of liberty and the institutional provisions in place to protect and promote them in my context of reference.

In spite of these premises, I will have no alternative other than providing a brief comparative overview of other concurrent theories of liberty - particularly this same parallel liberal school, in order to better elucidate the core principles of the Republican non-domination philosophy of freedom. This would in turn prove useful towards a better understanding of various aspects of my political framework of reference. I hope to be able to empirically demonstrate that these principles of the political philosophy could provide sufficient means to critically study various republican aspects of “any” political system in a comparative framework of analysis of the constitutional and institutional provisions for protecting and promoting individual liberties.

## II. A Genealogy of the Republicanism

Based on the neo-Roman interpretations of the republican doctrine, the first dialectics of liberty and domination could be attributed to the writings of the early Roman philosophers and legislators such as Sallust, Livy and in particular the statesman and lawyer Marcus Tullius Cicero (106 BC-43 BC)<sup>43</sup>. In his seminal book *De Republica*, Cicero clearly equates the “*res publica*” with “*res populi*” (public business) in contrast to “*res private*”(private business), whose major concern is conceived to be to manage the affairs of sovereign citizens bound together in an agreement for justice and common good<sup>44</sup>. There is no doubt that these are rudimentary considerations whose clear beneficiaries were initially understood to be an elite class of male propertied citizens of the republic as consistent with the practice of time<sup>45</sup>. Nevertheless the emphasis placed upon the centrality of the laws and institutions and most importantly his legacy as a defender of the republican liberty, was inspirational to later generations of republican theoreticians in particular the so-called neo-Roman school of republicanism<sup>46</sup>. This is arguably the dawn of a political tradition rooted in the essential notion of *libertas* which underpins every Ciceronian judiciary and institutional concepts. In *De Republica* one is constantly presented with counter examples of different forms of government in which the basic liberties of the citizens are being waived either by the will of an individual or a group or by other communitarian tyrannies considered too unstable and indifferent to individual merits and virtues<sup>47</sup>. An example of the former is claimed to be the Persian king Cyrus, who throughout antiquity was interestingly regarded as a just and wise ruler. Nevertheless Cicero cites him to underline the fact that even under such a clement judicious king the populace was subject to the voluntary will of a single person<sup>48</sup>. He continues to proclaim what most neo-republicans consider as the core message of the Roman republican *libertas*: “the freedom is not being ruled by a just ruler, it is not having a ruler in the first place”<sup>49</sup>.

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<sup>43</sup> For an extensive survey of the Roman Republican authors see Viroli, M (1999) *Repubblicanesimo* Roma-Bari: Editori Laterza

<sup>44</sup> Cicero, *De Republica - De Legibus* Ch I-25, Ch III-32.

<sup>45</sup> Friedman, M. (2008), Pettit's Civic Republicanism and Male Domination as in Laborde, C. (Ed.) & Maynor, J. (Ed.) pp.249

<sup>46</sup> Laborde, C. & Maynor, J. *ibid* p.3

<sup>47</sup> Cicero *ibid*

<sup>48</sup> Cicero *ibid* Ch I-27

<sup>49</sup> Cicero, *De Republica - De Legibus* Ch I-23

As Pettit and Skinner have pointed out<sup>50</sup>, the clear emphasis here is on the “possibility” of being coerced arbitrarily with one’s will being waived, not the actual “interference” being exercised against this will. The recurrent example mentioned is a slave who avoids coercion by his master just because the master is benign or unwilling to impose his “*potestate domini*” or the arbitrary domination<sup>51</sup>. Here it is obvious that the slave cannot claim to be a free man since he remains under the “possibility” of an arbitrary intervention of his master<sup>52</sup>. Thus according to the ancient Roman writers and their Renaissance disciples, the lack of the republican liberty will materialize when the agents are subject to the *arbitrium* (arbitrary will) of another individual or group. Livy for instance has provided an exact definition of this condition of public servitude, namely “being dependant on the will of someone else rather than one’s own will”<sup>53</sup>.

One aspects of the republican political philosophy, which does not seems to have encountered adequate treatment in the works of the contemporary ideologues of the republican thought, is the philosophical implications of the Florentine civic humanism with fundamental impacts on all aspects of the modern political philosophy. This is more so as these Renaissance ideologies would manifest a clear departure from the ancient scholastic realism founded on the assumption of pre-existing onto-theological transcendental truth only to be uncovered by the human reason. Every aspects of the human life were regarded as a result of his worldly experience and innovative contributions, and not part of the hitherto assumed premises of the metaphysical arrangements<sup>54</sup>. Once the entire human experience was considered contingent and independent from cosmic or divine orders, every aspects of the political philosophy were open for negotiation and interpretation. This very philosophical mechanism rests at the heart of the entire republican doctrine of the political based on the principles of active participation of human in all aspect of his social life.

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<sup>50</sup> See Pettit, P. (1997) *ibid*, and Skinner, Q. (1998) *ibid*

<sup>51</sup> This is a recurrent example in Republican literature taken from the comedies of Plautus. See for instance Wastaway, K. M. (Ed.). (1924), *Selections from Plautus* Cambridge, Cambridge University Press p.296.

<sup>52</sup> Pettit, P. (1997) *ibid* pp. 32 & 35.

<sup>53</sup> Skinner, Q. (1998) *ibid* pp.41 - 46.

<sup>54</sup> Yaron, *ibid*



Clear manifestations of such convictions could be identified in the works of numerous Renaissance thinkers such as Leonardo Bruni, Marsilius of Padua and Coluccio Salutati. Nonetheless it is Nicolò Machiavelli who is credited for being the first author to provide a comprehensive and coherent treatment of the modern republican ideology<sup>55</sup>. Throughout his scholarship one could encounter clear references to such concepts as *cittadi liberi* (free republics) from *servitù* (slavery) which are only those *governate per loro arbitrio* (governed by their own will)<sup>56</sup>. Thus in line with Bruni before him, it was Machiavelli's firm conviction that people can preserve their liberty only through a system of self-government<sup>57</sup>. Hence *vivere libero* for him is "to be able to enjoy one's property without any suspicion" and when "each person is free to pursue his own ends and not others' " with a regard for all the social diversity and pluralism that such principles could entail<sup>58</sup>. As Viroli wrote:

To be a free person means for Machiavelli not to depend on the will of others and to be able to live under the laws to which citizens have freely given their consent. Accordingly, an individual is free when he is not dependant on the will of another individual but is dependent on the laws only. Hence, to be at liberty means to be in full agreement with the Roman republican tradition, the opposite of being enslaved or in servitude<sup>59</sup>.

Interestingly this notion of liberty could well be traced in all subsequent schools of republicanism. The French school for instance, by subscribing to the republican fundamental right to revolt against the oppression and also its egalitarian perceptions of the social justice, endorses and promotes numerous republican political principles. The highest manifestations of such ideologies could be seen in the Declaration of the Rights of Man and of the Citizen of 1789. Voltaire (1694-1778) one of the main philosophers of the Enlightenment, reportedly declared: "to learn who rules over you, simply learn who you are not allowed to criticize", which is again in line with the previously mentioned republican concepts of freedom from arbitrary domination. The American school of Republicanism on the other hand, seems to have gone even further than this by

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<sup>55</sup> Viroli, M. (1999), Ch XIII.

<sup>56</sup> Machiavelli, N. (2000) *Discorsi sopra la prima deca di Tito Livio* Milano, Einaudi pub p129.

<sup>57</sup> Viroli, M (1999) p.16.

<sup>58</sup> Viroli, M. (1998). *Il sorriso di Niccolò*, Roma-Bari, Laterza.

<sup>59</sup> Viroli, M. 1998, Machiavelli. Oxford University Press. p.5.

considering any domination, even those by a democratically elected government as a potential source of corruption and loss of liberty<sup>60</sup>.

Moreover this French variant of the republican political philosophy seems to strongly associate the notion of the republican state with the projects of creating “we the people” which hitherto did not exist as there were merely masses of oblivious individuals at the mercy of the arbitrary interference of the monarchs. Thus this newly founded notion of the citizens sharing a *moi commun* is claimed to be an unprecedented concept which could not be traced back even in the Renaissance Italian republics let alone the ancient Roman ones<sup>61</sup>. Nonetheless here again, the main achievement of the Revolution, these scholars claim, has been to refute the source of the legitimacy or even the auto-legitimacy of the monarchs based on a divine predilection and to substitute it with a system deriving its legitimacy from the voluntary choices of its citizens. Furthermore an interesting distinction here is made between a democratic system in the sense of the direct democracy and a system based on the republican doctrine of state which are even considered to be totally incompatible, as the direct democracy is claimed to entail the lack of the separation of power which would be the antithesis to the republican principles. It is not difficult to trace back parts of these ideas to the philosophers such as Kant who is even being labelled as an anti-democrat republican<sup>62</sup>.

Hence the major objective of the French Revolution is regarded as being this strive to locate the source of the authority in the citizens. As I mentioned above by citizens they meant the sufficiently educated individuals who have departed from the ranks of the *vulgus* (ignorant masses) to become “the people” who would most importantly never completely alienate their powers to any political entities external to themselves<sup>63</sup>. Thus unsurprisingly the fundamental cornerstone of this ideology appear to be its strong aversion to any centres of power and privilege in particular the religious one which would result in the refutation of any systems based on the eschatological legitimacies<sup>64</sup>. An eloquent manifestation of this conviction could be seen in the famous declaration of

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<sup>60</sup> Grange, J. *ibid* p.9

<sup>61</sup> *Ibid* p.35 footnotes

<sup>62</sup> *Ibid* pp.47-48

<sup>63</sup> See Ch1

<sup>64</sup> Grange, J. pp.17-19

Leon Gambetta one of main theoreticians of the French revolution who famously declared: “Le cléricalisme, voilà l'ennemi”!<sup>65</sup> Most interestingly some contemporary scholars like Juliette Grange have gone as far as identifying two types of French republican doctrines, namely maximal and minimal republics. Maximal republics are those based on the fundamental notion of the revolution and the break with the past, a fundamental anti-religious component and a strong aversion to the powerful individuals, together with the republican institutions and laws; whereas the minimal republic requires only the sovereignty of the laws<sup>66</sup>. Thus this strand of the republican ideology would obviously provide substantial predispositions towards incorporating stronger egalitarian elements of power sharing to guarantee a certain level of distributive fairness of the resources, without which the personal freedom and independence could not be conceived<sup>67</sup>. The very idea of the revolution and the destruction of the structures of the oppressive power would inevitably result in more egalitarian systems which by definition result from the act of the revolt against the despots. It is even claimed that a republic is nothing more than institutionalizing the violence of the revolutions and its achievements<sup>68</sup>. In any case as argued above, the direct democracy is categorically excluded from this definition as it could well result in a despotic system in the absence of the basic republican institutionalist principles of separation of power and representation. The main thrust of this ideology could be identified in the firm conviction that no levels of the alienation of power by the citizens could be supported under any system of political values. In particular based on Rousseau’s teachings the role of the republican constitution would be to prevent people from a total transfer of rights to external entities as this would result in the loss of freedom and slavery<sup>69</sup>.

From the above considerations on the republican political heritage, interesting inferences could be made concerning the relation of these doctrines with other sources of authority rooted in alternative repositories of legitimacy. This fundamental rebuttal of

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<sup>65</sup> See the famous quote by Leon Gambetta: “Le cléricalisme, voilà l'ennemi” (Clericalism, this is the enemy) as elaborated by Nicolet, C. (1982) *l’idée républicaine en France 1789-1924*, Paris, Gallimard pub. pp.59-81.

<sup>66</sup> Grange, J. pp.56-57 & pp.151-152

<sup>67</sup> Marti, J. L. & Pettit, P. (2010) *A political Philosophy in Public Life*. Princeton NJ, Princeton University Press, Ch.1

<sup>68</sup> Grange, J. pp.38-39;pp.56-57

<sup>69</sup> Grange, J. p.65

any sources of public power falling beyond and above the republican prescriptions for *vivere civile*, would in theory exclude the centrality of universal notions of truth and submission to an ultimate law-giver. Hence in line with the Florentine civic republicanism, The French school of this ideology seems to have clearly identified this existential incompatibility as noted in the above cited anti-ecclesiastic and anti-monarchic trends. Here the clerical class was perceived as pertaining to the same privileged groups of the *ancien régime*, hence forcefully targeted by the overwhelming processes of laicization and dechristianization which eventually ended in a total separation of state and church in 1905. Thus clear vertical processes could be identified in this context aimed at subordinating the church to the state which ended up in such state sponsored variants of the faith as *Catholicism Social* or *Démocratie Chrétienne!*<sup>70</sup>

In any case I am under no illusion that there have been divergent interpretations of the republican doctrine as well. For instance within the same French school of republicanism one encounters the so-called “liberalist republicanism” endorsed by the likes of Jules Ferry (1832-1893) with the emphasis on the importance of the protection of the private space and a minimal level of state intervention<sup>71</sup>. On the other hand there is also a strong strand of the so-called “radical republicanism” by the likes of Ledru-Rollin (1807-1874) within the same tradition of the French republicanism which proposes a more interventionist role for the republican state to safeguard and promote an equalitarian society<sup>72</sup>. Nevertheless one could still clearly distinguish the republican doctrine as a two-layered socio-political project whose main objective is to free people from the domination of the powerful, be it private or organized ideological groups<sup>73</sup>.

As I will be expounding in the upcoming chapters, significant traces of this variant of the republican ideology could be found in the political agenda of the forerunners of the Islamic Republic. These stemmed not only from a strong anti-monarchic agenda, but also the very idea of revolution and the ensuing egalitarian claims and attempts at

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<sup>70</sup> See for instance Boudon, J. O. (2004) *Religion et politique en France depuis 1789*, Paris, Armand Colin

<sup>71</sup> Berstein, S. & Rudelle, O. (1992) *Le Modèle Républicain*, Paris, Press Universitaire de France, pp.189-190

<sup>72</sup> Ibid

<sup>73</sup> Ibid pp.167

massive projects of social mobility which impacted numerous social domains in particular the sectors of economy and education for years that followed. These considerations coupled with the main republican guiding theme of freedom as non-domination would constitute the main thrust of analysis for this study of various republican credentials of the Islamic Republic.

### **III. Freedom as non-domination**

This deep-seated republican notion of *libertas* has been extensively addressed by the so-called neo-Roman authors, in particular Pettit and Skinner. In his most prominent contribution to this field, Pettit introduces the concept of “non-domination” to endorse this fundamental condition of being free from arbitrary interference of an alien or an alienating power<sup>74</sup>. Skinner’s idea of “independence” also seems to be providing a similar definition for this distinctively republican theory of citizenship. I will take a closer look at these concepts to reflect the centrality of these ideas to the republican cause.

Pettit examines the non-domination principle by identifying two types of domination in the Roman intellectual tradition. This first type of dominatory relation is called *dominium* which denotes the mastery of the private power of individuals or a certain group within society. The second type of domination is labelled by Roman philosophers as *imperium* which was the exercise of domination on the part of the state<sup>75</sup>. If true liberty was going to materialize in a state, both these types of domination had to be avoided. Therefore it was claimed that one needs to guard against both private domination within the society caused by ethnic, religious, financial, educational and other social disadvantages among the citizenry, and also the possibility of the state itself to become a dominating power.

It is importance to underline here what Pettit sees as the major difference between his non-domination principle and the liberal’s “non-interference” concept. The fundamental distinction here is that an agent might not be subject to the actual interference of a

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<sup>74</sup> Friedman Ibid pp: 246 & 250

<sup>75</sup> Marti, J. L. & Pettit, P. ibid pp.60.

dominating alien power and no real physical limitation might be imposed on his actions; nevertheless the mere possibility of others being in a position to be able to interfere arbitrarily with his choice would make one an unfree individual<sup>76</sup>. In this case no actual coercion might take place against his *arbitrium*, but the *licenza* (available possibilities) to choose or behave in a certain way might be influenced by the existence of a potential power that could remove or influence the existing options before the dominated person. One of the potential outcomes of such a relation of power could be self-censorship in the hope of obtaining a reward of the dominating power or to avoid a potential retribution. Thus even in the absence of an actual physical interference the goal might be achieved by efficient threats or by the so-called “anticipated sanctions”. This might well take the form of the subject refraining from exercising a certain power they have, even for the fear of being watched or subjected to invigilation<sup>77</sup>.

On the contrary, not every interferences could be regarded as detrimental to liberty. In a republican system similar concepts are endorsed in the form of positive versus negative sanctions - to use Pettit’s terminology<sup>78</sup>. These include the sanctions of a just law or when a subject actually participates in the process of decision making and his interests are being accounted for. Some everyday life examples of such processes could be identified in cases whereby someone asks a caregiver to keep him away from certain unhealthy food or cigarettes at his will. These are all instances in which the agent’s *arbitrium* has been accounted for and the overall pattern of domination does not reduce the agent’s freedom, i.e. interference without domination<sup>79</sup>. Thus to summarize these points: one could notice that it is possible to lose freedom in the absence of any actual interference as well. These are typical situations in which one’s choice is being made in the absence of the dominating power’s actual exercise of his coercive force. It is said here that one acts *cum permissu* or “chooses by their leave”<sup>80</sup>. A parallel could be drawn here with various manifestations of auto-censorship, for instance in the case of the public media which might sometimes impose restrictions on the expression of their opinions even without any actual interference by the authoritarian governments.

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<sup>76</sup> Ibid

<sup>77</sup> For a detailed discussion and further examples see Marti, J. L. & Pettit, P. *ibid* Ch.2.

<sup>78</sup> Pettit, P. (1997) *ibid* p. 212.

<sup>79</sup> Ibid

<sup>80</sup> Ibid

Considering the centrality of the notion of liberty to my research, it would be important to further illustrate the parallel concepts of “positive” versus “negative” liberty put forward by Isaiah Berlin following more classic authors like Tocqueville and Benjamin Constant within the liberal tradition. Positive liberty is described as the principle of “self-mastery”, that is “the wish on the part of the individual to be his own master... and a wish that his life and decisions to depend on himself”<sup>81</sup>. Negative liberty on the other hand is being defined by Berlin as below where the coercion is also described as the “deliberate interference of other human beings”<sup>82</sup>:

I am normally said to be free to the degree to which no man or body of men interferes with my activity. Political liberty in this sense is simply the area within which a man can act unobstructed by others. If I am prevented by others from doing what I could otherwise do, I am to that degree unfree<sup>83</sup>.

Although one notice a significant conceptual overlap between Berlin’s definition of the negative liberty with the concept of non-domination, in particular the new formulations of such concepts in the framework of “pure negative liberty”<sup>84</sup>; it is clear that the republican non-domination concept provides a significant extension and improvement to the principal of non-interference underpinning the negative liberty<sup>85</sup>. One could claim that the Republican liberty is more “demanding” than the liberal counterpart in the sense that it does not stop at the mere absence of interference<sup>86</sup>. To be sure, the non-domination freedom *a fortiori* requires the removal of even the “possibility” of interference caused by the very existence of arbitrary powers that could interfere with the citizen’s liberty when they wish to do so; even though they might not actually decide to do so. As stated above, this could materialize not only by removing or hindering one or more of the options but also through:

..burdening the choice of the option with a penalty or wrapping my capacity for reasoned choice or giving me misleading information....I may be subject to the alien

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<sup>81</sup> Berlin, I. (1969) Two concepts of Liberty, in *Four Essays On Liberty*. Oxford University Press. pp.122, 129-130.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid. pp.122 & 129.

<sup>84</sup> See for instance Kramer, M. 2008, Liberty and Domination as in Laborde, C. (Ed.) & Maynor, J. (Ed.) pp.31

<sup>85</sup> Skinner, Q. (1998) *ibid* pp.113 & 115.

<sup>86</sup> Friedman *ibid*

control of others without their actually interfering with me; if I think that the absence of interference in such a case means the presence of freedom, then I am deluded<sup>87</sup>.

These observations would undoubtedly give rise to numerous socio-political implications with fundamental impacts on all aspects of modern polities such as the domains of public information and education that I intend to scrutinize in my specific context.

For republicans therefore, this condition of “dependence” would effectively reduce agents to a state of slavery and *servitù* living in *potestate domini* - that is under the power of a master and not one’s own jurisdiction. Another good example mentioned by Pettit is the state’s welfare system which could easily be reduced to this state of dependence. Here the required financial needs are being collected through the coercive collection of taxes but this could not be regarded as an arbitrary interference as the greater good they pursue will override the domination they ensue. On the receiving end of these services however, the potential inadequacies suffered by the recipients could lead to the previously mentioned condition of dependence and hence domination in the absence of any actual interference by the state<sup>88</sup>.

In line with these principles one of the most intriguing republican benchmarks that Pettit has endorsed is the so-called “eyeball test”. Based on this criteria one is free in relation to other individuals, groups or state elements if she can look them in the eye without fear in a shared consciousness of being in an equal status with everyone else commanding their respect and the dignity of an equal amongst equals<sup>89</sup>; *pares inter pares* as opposed to the unequal situation of *primus inter pares* (first amongst equals) to use the republican terminology. Thus for Pettit “freedom requires the sort of immunity to interference that would enable one to stand tall on an equal pedestal with others and look them straight in the eye<sup>90</sup>. Therefore one cannot live under constant threat of possible interferences and still be regarded as a free person. Hence as long as there is the potential of another more powerful subject to coerce him at will or to cause him to

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<sup>87</sup> Marti, J. L. & Pettit, P. *ibid* pp 60-61

<sup>88</sup> *Ibid* p. 75

<sup>89</sup> Philip Pettit 1997 p.166 as cited in Marti, J. L. & Pettit, P. *Ibid* p. 8

<sup>90</sup> See the previous quote by Voltaire denoting a similar concept



adopt a servile attitude for fear of possible arbitrary intervention, one could not claim to enjoy any levels of the republican freedom<sup>91</sup>. To summarize this point in Skinner's words:

If you wish to maintain your liberty, you must ensure that you live under a political system in which there is no element of discretionary power, and hence no possibility that your civil rights will be dependent on the good will of a ruler, a ruling group or any other agents of the state.<sup>92</sup>

Interestingly one could identify similar pronouncements in the Montesquieu's *Spirit of Laws* which yet again underlines the importance of this fundamental republican principle. There it is declared:

The political liberty of a citizen consists in the tranquillity caused by the conviction that each person has towards his own security, and in order to have this liberty the government needs to organize in a way that it removes the possibility that a citizen might be afraid of another one<sup>93</sup>.

And finally as John Maynor emphasizes, the important rule of thumb to determine whether an interference has been arbitrary or not, is not to see if that intervention has been harmful to the subjects undergoing such interference, whereas it should be judged in the light of whether in the formulation of that interference, "the interfering agent has consulted and tracked the opinions or the interests of the agent subjected to the interference"<sup>94</sup>.

These non-domination principles could be achieved through two separate means, what Pettit labels as the "reciprocal form" and the "constitutional form" of non-domination power<sup>95</sup>. The former type of non-domination is when every agent can in turn interfere with other interfering agents which in practice places them on equal footing to defend themselves against the arbitrary interference of each other. There is no doubt that this form of protection could efficiently help to reduce the possibility of dominating interference by parties through the appreciation of the fact that they themselves could be subject to arbitrary interference and domination<sup>96</sup>. It is evident that here one is required

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<sup>91</sup> Marti, J. L. & Pettit, P. *ibid* pp 65

<sup>92</sup> Skinner, Q. (1998) pp.41 & 74

<sup>93</sup> Montesquieu. *Spirit of the laws*, Ch XI p 6

<sup>94</sup> Maynor, J. (2003) p.38

<sup>95</sup> Pettit, P. (1997) *ibid* p. 67

<sup>96</sup> Pettit, P. as cited in Maynor, J. (2003) pp.41 & 43.

to constantly be watchful and ready to retaliate against every dominating act of interference which could inevitably cause many direct conflicts and a constant anxiety of possible interventions. Nevertheless one could readily perceive that throughout the history of the republican thought the preference has persistently been given to the second method of control towards the non-domination of power, i.e. to institutionalize and encode the ideals of liberty into the republican laws and provisions to protect subjects effectively, impartially and verifiably against the threat of arbitrary interference<sup>97</sup>. Furthermore these would help to reduce inter-subject apprehension and uncertainty and the degree to which the agents have to always be prepared to defend themselves against arbitrary interference<sup>98</sup>. Thus a closer examination of the republican institutions and laws would be of prime importance here as they prove to be playing a central role throughout the classic and neo-Roman republican literature.

#### **IV. Republican Institutions and the Rule of Law**

There should be no doubt that the classical definition of various republican concepts with their specific interpretations of certain political concepts would not be entirely compatible or even desirable in a modern day political system. Nevertheless as it was argued before, numerous pioneering principles could be singled out that have made up the core convictions of the republican school of thought which could still have a significant degree of pertinence. The powerful idea of the republican liberty would undoubtedly constitute the core of all republican discourse for which various elements of protection and promotion seem to have been devised by the theoreticians of the republican doctrine of state. Principles of mixed constitution, or a mixed form of government together with the prescriptions on the absolute centrality of the sovereignty of laws would undoubtedly play a central role in this regard<sup>99</sup>. As it was argued above Cicero seems to have been amongst the first political philosophers to unambiguously endorse many of these principles in the context of a complex political system that went

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<sup>97</sup> Miller, D. 2008, Republicanism, National Identity and Europe, as in Laborde, C. (Ed.) & Maynor, J. (Ed.) *ibid* pp.139-141

<sup>98</sup> For a detailed analysis of these aspects see Pettit, P. (1997) *ibid* pp.85-90 and Maynor, J. (2003) pp.43-48.

<sup>99</sup> Laborde & Maynor *ibid* pp.9-10

beyond classic city-state politics<sup>100</sup>. In his recommended form of political sovereignty, an ideal government was based on the shared rule of a monarch combined with the authority of a group of oligarchs and most importantly strong participation by the people who enjoyed a certain form of equality and would take important decisions and judgments<sup>101</sup>. In *On The Republic* after mentioning various possible political forms of government we read:

only in that form of the state where people hold the reins of power there is the true liberty, which is the most precious good, and this liberty would not be worthy of its name if it does not entail an absolute equality of rights for all<sup>102</sup>

Here again one could easily identify principles with significant resemblance in nearly all modern republican systems. In the Roman example the monarchs were two *consuls* chosen by the people for a period of two years, the aristocrats were the city councils called *Senates* composed of the leading citizens. There were then the famous Roman people's assemblies, the so-called *plebeian tribunes* in which people had the power to adopt or reject laws proposed by the Senate or the Consuls<sup>103</sup>.

Aside from the classical republican ideologues, as the so-called revisionist republicans sustain, it should not be difficult to identify a coherent republican line of thought from the Italian Renaissance to the present day<sup>104</sup>. In this pursuit the originality of certain concepts put forward by the likes of Bruni and Machiavelli needs to be highlighted again. One could even claim that some of these ideas could be regarded as the true precursors of the modern day societal pluralism by acknowledging that individuals are always thought to be driven by their own *umori* (desires) and *ambizioni* (ambitions)<sup>105</sup>. Also within the neo-Roman school of republicanism it is claimed that this Machiavellian endorsement of the individual diversities and in particular the imperatives of striving to prevent the so-called "tyranny of majority" would make this civic concept of republicanism more adept to the modern day multi-cultural and

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<sup>100</sup> The city-state politics is a reference to the previous political ideas in particular the Athenian democratic principles as discussed by the likes of Plato and Aristotle.

<sup>101</sup> Radford, R. *Cicero, A Study in the Origins of Republican Philosophy*. Rodopi pub. Amsterdam, pp.34

<sup>102</sup> Cicero, *Dello Stato*, Mondadori Publications, 1992 pp.45

<sup>103</sup> Radford, R. pp.35

<sup>104</sup> See for instance Laborde, C. and Maynor J. (2008) pp.1-22

<sup>105</sup> These could be translated respectively as the "individual state of mind" and "personal objectives".

diversified societies and proves *a fortiori* capable of securing individual liberties and independence<sup>106</sup>.

Unsurprisingly within the same republican tradition, it is argued that to be able to preserve this community of diversified people, there should be a control over this unlimited *licenza* to ensure that the individual interests do not jeopardize the common good of the overall society<sup>107</sup>. This would bear a clear resemblance to the original Ciceronian concept of *concordia ordinum* denoting that the common good should take precedence over factional or private interests<sup>108</sup>. Thus in order to accomplish this civic republican concept of *vivere civile*, which basically means putting the common good above the individual interests, as compared to *vivere libero* based on the previously discussed principles of the republican freedom, one needs to ensure that the community lives under the strict rule of law and that no one can claim to be superior to the law based on political, social or other ethnic or religious advantages<sup>109</sup>. This, seen in the context of Machiavelli's era in which the "*materia umana*" or the quality of the human material of the society seemed to have undergone a process of "deterioration" in the sense that private and factional interests were prevailing over any common concerns, made the need of an overarching system of safeguarding liberties ever more pressing<sup>110</sup>. According to Machiavelli the formula to address such concerns, were good laws and institutions, citizenship values and virtuous principles. Hence, as Viroli observes, Machiavelli's *vivere civile* concept combined with *vivere politico* are alternatively served to ensure that no exceptions to the laws and privileges are to be tolerated in a republican open and inclusive system and that everyone is treated under the same civil equality applicable to every individual in the society<sup>111</sup>.

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<sup>106</sup> For a comprehensive analysis of this point see Viroli, M (1999).

<sup>107</sup> Maynor, J. (2003) p.21

<sup>108</sup> Skinner, Q. And Viroli, M. 1990. *The Republican Ideal of political liberty*. Cambridge, Cambridge University Press p.130

<sup>109</sup> See for instance Machiavelli, N. (2000) *Discorsi sopra la prima deca di Tito Livio* Milano, Einaudi pub. Book 1 Ch 60. Machiavelli regularly uses the word "sanguine" (blood) to refer to family, group or tribe privileges that could accord an advantage in the social spheres

<sup>110</sup> This is one of the main subjects treated in John Pocock's treatise entitled "Machiavellian Moment" which is presented as a time of socio-political instability and insecurity.

<sup>111</sup> Viroli, M. (1990) Machiavelli and the Republican Idea of Politics, in Bock, G. Skinner, Q. Viroli, M. (1990) *Machiavelli and Republicanism Cambridge*: Cambridge University Press p.153.

One could seamlessly identify this strong emphasis on the centrality of laws in nearly all treatises of the so-called western political philosophy, but this seems to have a greater centrality in the pronouncements of the main contributors to the republican doctrine such as Cicero, Machiavelli, Bodin, Rousseau and Montesquieu. In the case of Rousseau for example, the centrality of the rule of law is taken to the level where it is even claimed that any form of government grounded on the sovereignty of the laws - regardless of the actual political form that it could assume - is a republic<sup>112</sup>.

The critical point here is not just the ability to participate in the process of law-making - which in any case constitutes the basic foundations towards avoiding the arbitrary will of other agencies or even the majority. Rather it is more importantly, to be able to subscribe to universal non-arbitrary norms that are applicable to every individual and are endorsed and promoted by them in a spontaneous manner that tracks the agent's interests and concerns. This undoubtedly is a reminiscent of the Roman principle of *quod omnes tangit*, namely that any decision which regards the multitude should be decided by the universal process of decision making in conformity to the laws and sanctioned political processes<sup>113</sup>.

It is interesting to note that in the context of the French revolution of 1789 which was heavily inspired by the ideas of Rousseau and Montesquieu, a greater emphasis seems to have been placed upon the so-called principle of positive liberty as self government<sup>114</sup>. Thus it comes as no surprise to observe that the essential character of the French republic is claimed to be its anti-monarchic and anti-ecclesiastic nature as mentioned previously<sup>115</sup>. The fundamental principles were declared to be "equality" and "fraternity" as endorsed by the fathers of the French revolution such as Voltaire, Mably and Condorcet<sup>116</sup>. Mably's scholarship in the field of social equality and acute analysis on what he regarded as the source of all societal problems being that of the private property, appears to be truly pioneering. He is sometimes even credited for being one of

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<sup>112</sup> Rousseau, Social Contract II, 6

<sup>113</sup> Viroli, M (1999) p.9, the complete versions of this sentence in latin is: *Quod omnes tangit ab omnibus approbari debet*

<sup>114</sup> See for instance Nicolet, C. Ch.1 pp 59-81.

<sup>115</sup> Ibid

<sup>116</sup> Ibid

the original ideologues of socialism and even later communist ideologies<sup>117</sup>. This was aimed at rooting out any special privileges that some individuals or groups were enjoying through paving the way for direct participation of the people in the political processes. It is not difficult to observe that this specific approach, besides providing obvious republican advantages, could also justify recourse to a tyrannical state with strong interventionist tendencies<sup>118</sup>. Indeed the previously discussed contemporary Anglo-Saxon theoreticians of the republican ideology, particularly Pettit and Skinner, consider this as a major diversion from the traditional republican ideology in which the priority was given to the centrality of laws and institutions and particularly the advantages that a system of mixed constitution could offer in terms of spreading the repositories of power rather than self-mastery<sup>119</sup>. Such a categorical rejection of the French school of republicanism by Pettit, on grounds that it has shifted emphasis away from the core republican principles, seems to be a slight overstatement as one could still identify a strong republican tradition of the promotion of individual liberties through a typically republican process of sovereignty of laws and equality before it together with extensive efforts towards the institutionalization of rights.

This emphasis on having strong laws and institutions was deemed to be the only viable means to guarantee that the citizens were not dependant on others for their liberty and only actions regulated by such laws could be regarded as free actions. On the other hand what Pettit defines as the “communitarian misreading of the republican freedom”<sup>120</sup> denotes this same egalitarian character of the Franco-German republican schools which is regarded as according minor importance to the principle of a mixed constitution that underlies the basic needs for checks and balances in a republic that could eventually lead to tyranny and domination<sup>121</sup>. Nevertheless as highlighted above, a closer look at the French republican literature reveals a much more complex treatment of these concepts with different republican core principles being at the heart of the political discourse in various eras. Most interestingly the main theoreticians of the French and German republics insistently warned against this “democratic danger” of the

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<sup>117</sup> Ibid p.69

<sup>118</sup> See for instance Friedman *ibid* Ch10

<sup>119</sup> Marti, J. L. & Pettit, P. *ibid* pp.65 & 67

<sup>120</sup> Pettit *ibid*

<sup>121</sup> Pettit *ibid*

republics<sup>122</sup>. As cited above such instances as labelling Kant an “anti-democrat republican”<sup>123</sup> clearly demonstrates how far these philosophers were prepared to go to distinguish and safeguard the republican principles. The same idea could be perceived from the famous declaration by Louis Blanc (1811-1882) a French republican ideologue who famously declared: “the people are the universality of the citizens and not the majority”<sup>124</sup>.

Therefore it follows that a fundamental function of the state would be to prevent powerful institutions and organizations to dominate individual freedom by arbitrarily reducing their sphere of rights, power and the available social options. Examples of such entities include, but not limited to, large economical corporations, military organization, religious institutions and other exclusionist ethno-cultural or socio-political congregations. In line with this objective, the notion of a “mixed constitution” seem to have been the republican’s answer to the question of how to balance power to address the interests of various groups through the basic tools of power distribution and the separation of deliberative and executive branches of the government. Here again the ground-breaking Machiavellian notion of checks and balances in a *respublica mixta* (mixed constitution) come to play a crucial role in keeping a watchful eye on various power repositories by allocating equal rights and means to other entities to fight imbalances and the concentration of power in the hands of certain privileged individuals or groups<sup>125</sup>. One could certainly postulate that the basic prerequisite for all these institutions and republican elements is to be elected entities in a constitutional democratic context in the first place. This would provide for the possibility that the citizenry can have effective control over them to enable individuals to, directly or through their representatives, exercise their influence over their process of selections, deliberation and employment of public coercive forces.

Thus one could certainly claim that one of the most important functions of the institutions and legal provisions is to facilitate the public participation in every single

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<sup>122</sup> Grange, J. *ibid* pp.47-48

<sup>123</sup> *Ibid*

<sup>124</sup> Blanc, L. (1882), *Discours Politiques*, Paris, Germer-Baillière, p.250.

<sup>125</sup> See for instance Van Geldern, M. and Skinner, Q. (2002) *Republicanism, A share European Heritage* :Cambridge University Press, p. 4

step of deliberation to register their interests in the process of policy making and executive administration of authority. Hence these institutions need to be open to all and their very foundations should be open to debate and contestation, this is the exact nature of the refutation of the arbitrary power in a republican system.

To this end, the state's judiciary apparatus plays a vital role in supporting not only the basic rights of appeal but also to solicit issues of public and private concern and scrutinize instances of arbitrary interference - not only by other individuals and groups but also by the government itself. The basic requirement of such a capability is to have independent legal and judiciary infrastructures in place that play a disinterested oversight role to scrutinize the instances of domination in a fair and impartial context. This judiciary component of non-domination is yet another powerful instrument to safeguard the private interests of the citizenry and provide a further layer of checks and revisions at a practical level; both *a priori* and also after the public deliberations and procedures are operative. Hence the independent judiciary system plays a fundamental role not only in stopping the arbitrary interferences of the people themselves, but also to guarantee that other branches of the government do not become dominating powers in the life choices of the citizens<sup>126</sup>.

One last important notion to emphasize before closing this section is the definition of "constitution" that I have referred to on numerous occasions thus far<sup>127</sup>. A closer look at various strands of the republican ideology clearly highlights the salience of the constitution in terms of the republican political layout of power and the actual form that the state assumes under the republican "mixed constitution" definition. This seems to be at odds with our present day perception of the constitution which commonly denotes a written document containing the rules and laws needed to run a democratic system. As I have argued so far the greatest bulk of the republican discourse is centred on the first interpretation of the constitution defining the ideal government as a balanced system composed of various power centres and numerous bodies, with different and counterbalancing functions to obtain maximum checks on the sovereign authority and

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<sup>126</sup> Ibid. p.147

<sup>127</sup> For a detailed analysis of this concept see Miller, D. Republicanism, National Identity and Europe. In Laborde, C. and Maynor J. (2008) Ch.6.



prevent the concentration of arbitrary power in individuals or groups' hands. This prevailing sense of a political constitution as compared to the legal one is closely linked to the procedural perception of democratic systems as opposed to the output based approach which will be discussed further in the next section<sup>128</sup>. Nonetheless I would be using both perceptions of the term in the sense of the actual form of the government when discussing the republican institutions in Chapter 5 and also the very legal document aimed at upholding various articles of the republican liberty, also through the designation of the form of the government itself in Chapter 3 dedicated to the republican constitution.

In any case, the equality before the laws, individual liberty, centrality of the role of the citizens and an egalitarian access to the resources, all seem to be firmly at the heart of all republican narratives, as I argued so far. Nevertheless the emphasis on the egalitarian prescriptions of the republican ideology has demonstrated to have significant implications on the anti-oligarchic and anti-monarchic traditions in some schools of republicanism, notably the French one. This at times seems to have created a degree of conceptual confusion regarding the actual form of a republican political state which needs further illustration.

## **V. Republicanism versus Monarchy**

It is important to address a common misreading by some scholars that consider certain trends within the republican tradition, notably the above discussed French school, as evidence that a republican order would only come into existence in an absence of a monarchic system of government<sup>129</sup>. It is true that one of the main components of the early western republican ideology was its regicide nature such as the one seen in the early Dutch republican tradition<sup>130</sup>. Nevertheless this could be regarded as the outcome of the conclusion that in certain junctures of the European history of political thought the monarchic system was considered as the main embodiment of the despotism inimical to

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<sup>128</sup> Ibid pp.139 & 160.

<sup>129</sup> See for instance "Republicanism Versus Monarchy" by Price Chropence, (1872) And Pettit, P. Civic Republican Theory in Marti, J. L. & Pettit, P. Ibid p. 57

<sup>130</sup> Velma, W.R.E, (2002 ) That a Republic is Better than a Monarchy: Anti-monarchism in Early Modern Dutch Political Thought, in Van Geldern, M, and Skinner, Q. pp. 9-25

the core principle of the republican liberty<sup>131</sup>. In spite of this strong tradition, throughout the main body of the literature of the republican discourse one could observe that most authors have constantly reiterated that the actual form a government may take does not necessarily bare any consequences against its republican credentials<sup>132</sup>. As Radford correctly argues:

Cicero maintained that the state's moral and philosophical foundation is consent (or participation) of a whole people united in their conceptions of justice and their common good. According to Cicero, this is not a function of the particular type of constitution a state might develop because a state may be a monarchy, aristocracy or a democracy<sup>133</sup>.

Indeed it is not uncommon to encounter such affirmations as the existence of a republican liberty or even the republican concepts of “mixed constitution” in the monarchies such as the Dutch or the Spanish ones<sup>134</sup>. In line with these considerations we encounter affirmations by the likes of Marsilius of Padua in his major work *defensor pacis* who deems all secular regimes including the system of *signori* and hereditary monarchies as legitimate form of government<sup>135</sup>. More pertinent to the republican cause is the Machiavelli's remarks in the *Discorsi*, underlining that a community could well be ruled based on its free will in a *civitas libera* (free state), both under a republic or monarchic system<sup>136</sup>. One could well have a *principalibus* which is enshrined in the context of a constitutional system that guarantees fundamental rights for the citizenry by providing adequate “tribunes” for tracking their interests and providing basic egalitarian conditions required by the republican system to ensure that the “interventions are not the impositions of an unchecked master”<sup>137</sup>. Alternatively one could well conceive of a communitarian system of government in which the lack of the aforementioned institutions of checks and balances or good laws effectively reduces the people to the condition of slavery<sup>138</sup>. Thus the tyranny of individuals, groups or the majority would all fall into the aforementioned Roman concept of *imperium* that is regarded as the most

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<sup>131</sup> As it was argued previously this was amongst the main themes of the French republican revolution.

<sup>132</sup> See the above declaration by Rousseau in the social contract Book II, p.6

<sup>133</sup> Radford, R. pp.75

<sup>134</sup> Velma ibid

<sup>135</sup> Marsilius, *Defensor pacis*, Ch. 33

<sup>136</sup> Machiavelli. *Discorsi*, p.129.

<sup>137</sup> Marti, J. L. & Pettit, P. Ibid p.74

<sup>138</sup> Pettit ibid

inimical to freedom. More recent Philosophers like Jean-François Lyotard (1924-1998) have expostulated even further with claims such as:

“... I remind you that for Kant, reflecting on the political questions, a strong distinction is being made between the forms of the sovereignty (*Pouvoir*) and the forms of government. Now, democracy is a form of government as is the monarchy, but as regarding the forms of sovereignty, there are only two, republics and despotism...”<sup>139</sup>

Thus based on my close examination of the relevant republican literature, I could be able to conclude that the entire anti-monarchic nature of the republican ideology could be safely summed up in a struggle against the unchecked sources of power, whether hereditary, as in the case of a monarchy or other extra-constitutional status accorded to certain public figures, groups or seats of power.

## **VI. Identifying the Common Good**

Central to the republican ideology is the notion of the common good<sup>140</sup>. To go back to the classic principles of republicanism it is interesting to note that in Cicero’s definition of a republic the emphasis is placed upon two main constituting elements. On the side of the *populus* there should be a shared sense of justice, an agreement on the principles of law and common good. Cicero explicitly defines the state as:

something which belongs to the people. But by people it is not meant as a random aggregation of men, rather it is an organized society that these have founded for upholding justice and promoting their common interests<sup>141</sup>

All the above mentioned processes aimed at fighting off domination would relate in one way or another to the identification of a greater good that could embrace the interests of a greater number of individuals. It is obvious that there are fundamental utilitarian bases inherent to this concept that underpin its centrality in the pursuit of the republican ideals of egalitarian access to the resources and equal opportunities based on the will of all as opposed to private or factional interests. Pettit defines the common good as: “the interests of the community as a whole that all members can recognize as having a certain importance, at least if they are prepared to live on equal terms with others”<sup>142</sup>. That is, a

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<sup>139</sup> Lyotard, J.F. 1985, Critique, nr:456, pp.583, as cited by Grange, J. *ibid* p.9

<sup>140</sup> This is one of the main keywords of Machiavelli’s *discorsi* and Rousseau’s *Social Contract*.

<sup>141</sup> Cicero, *Dello Stato*, *ibid*, p.39

<sup>142</sup> Marti, J. L. & Pettit, *Ibid* p.84

greater good that can even justify the state's use of coercive power to moderate and even override individual liberties to achieve a greater value extendible to a greater number of individuals whilst at the same time watching against the tyranny of majority and the use of demagoguery to create domination.

In spite of the centrality accorded to this notion from the time of Aristotle to nearly all classical and modern schools of the political philosophy, the exact nature of this common good and the procedure to attain it has been at the centre of most heated debates; in particular those amongst modern advocates of liberalism and republican ideologies. There is no doubt that what could be regarded as the ultimate good for an individual or a group might well be considered to be the absolute evil for others to be avoided by all means. And unless one claims to be holding the absolute truth, as in the case of religious dogma, one can never be entirely certain that what is being promoted as the common good is indeed the ultimate desired result under all circumstances. Indeed many modern republicans see the acknowledgment of this inescapable discord and class conflict as an extraordinary contribution of Machiavelli to the entire political discourse that sets him apart from all previous authors and signals the start of a new era in the philosophy of politics<sup>143</sup>. While the previous generations of political authors unanimously highlighted the centrality of *concordia ordinum*, the Machiavellian school of politics seems to have come to terms with the inevitability of the social pluralism and the need to provide an entirely new definition for the society's universal common good<sup>144</sup>.

This relativism and uncertainty seems to be casting a serious shadow of doubt over the very viability of a political system allegedly geared towards objectives that seem too contingent and idealistic. How can one ensure that the rights of weaker groups are protected and the identified public objectives are not results of illusory consensus or efficient rhetoric in the absence of the "ideal speech situation", to use Habermas's terminology? This could then result in the employment of public power and resources to obtain and even coerce the reluctant citizenry to endorse objectives that do not mirror their interests. This seems to have been one of the main preoccupations of a great

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<sup>143</sup> See Viroli, M. Viroli, M (1999), Skinner, Q. (1998) , or Bock, G. Skinner, Q. Viroli, M. (1990)

<sup>144</sup> Bock, G. Skinner, Q. Viroli, M. (1990)

majority of the theoreticians of the republican ideology. For instance within the French tradition of republicanism, one could not overlook the persistent emphasis that Auguste Comte (1798-1857) places on the various forms of tyranny which could well materialize in a republican system. He goes on to define two specific types of such tyrannies, *dictature collective* and *dictature militaire*<sup>145</sup>. Yet surprisingly this very same paradox here appears to present us with a scenario that provides compelling evidence for the superiority of the republican ideology to address this apparent contradiction.

The most interesting solution to this issue by the neo-Roman republicans - as opposed to those provided by the liberal versions of the participatory democracy based on positive liberty, seems to be the one outlined in an essay by Richard Bellamy<sup>146</sup>. In it he argues that the Republican non-domination concept examined above can provide two distinct methods against the dominating practices. The first one is the so-called “output based” method whereby all efforts are concentrated on identifying the non-dominating outcomes towards which the republic needs to direct its overall efforts. The second method is the “process based” approach in which, regardless of the actual outcome of policies, the procedure to reach that objective needs to be free from domination and arbitrary input. The output based view - directly linked to the participatory version of the republican thought, requires that by “treating citizens in ways that track their common interests and offer them equal concern and respect”<sup>147</sup> the end results should closely reflect their collective interests. This would in turn enable them to autonomously identify values that reflect the interests of the greatest possible number of individuals within the society. This is closely linked to Rousseau’s “general will” as opposed to the “will of all” which is simply the product of private and groups’ interests. However, with this approach the critical issue is the difficulty of identifying and measuring these common values whilst at the same time striving to accommodate the individual’s interests without falling into the tyranny of majority on the one hand, or the practical impossibility of coming up with any decision whatsoever - which could easily lead to an impasse and the maintenance of the *status quo*, on the other. Here again the non-

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<sup>145</sup> Comte, A, (1864 ) *Course de Philosophie Positive*, Paris, Bachelier Pub, available online at <http://archive.org/stream/coursdephilosop00littgoog#page/n9/mode/2up> lesson 56.

<sup>146</sup> Bellamy, R. (2008). Republicanism, Democracy and Constitutionalism, in Laborde, C. & Maynor, J. (2008).

<sup>147</sup> Ibid. p.164

dominating process-based republican approach seems to be providing the necessary safeguards. If one is unable to identify the end results and the outcomes that are free from domination and arbitrary influence, he could instead focus on the process and path to obtain those results and make sure these procedures are non-arbitrary and in line with non-dominating principles. Thus the processes of selection and contestation of public deliberation need to be fair and legitimate, including the right of appeal and debate to ensure that the concerns of all individuals are correctly accounted for regardless of the ultimate good that might not be universally shared by everyone. This approach not only endorses the basic egalitarian concerns of the republican systems to reduce private and public dominion, it also acknowledges the epistemological principle that there can never be an absolute unalterable right or wrong in the public sphere. Therefore those on the losing end of the deliberation could also “hold onto their integrity”<sup>148</sup> and share the end results for having satisfied the legitimate procedural norms in conformity with the due processes that they have also contributed to conceive.

This is an unsurprising product of the previously mentioned Renaissance humanist heritage with its fundamental refutation of the existence of the ultimate source of truth by endorsing the notion of common good which were closely tied to the human political activity rather than the epiphenomena of transcendent realities<sup>149</sup>. In line with these observations, Bellamy also cites some successful democracies like Australia based on this republican procedural constitutionalism, even in the absence of such fundamental republican guarantees as the citizens’ bill of rights enshrining basic articles of individual liberties. Here, he observes, the constitution merely outlines the procedures and the machinery for decision making and specifies the various state infrastructure to safeguard such processes and power management and administration<sup>150</sup>.

And finally there is no doubt that there will always be cases in which one comes to a deadlock of incompatible interests and fundamental discords on the desired ends. In such a challenging case one of the *raisons d’être* of the state would be to actively and sometimes even aggressively confront those ideologies that seek to dominate others with

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<sup>148</sup> Ibid. p.168

<sup>149</sup> Yaron ibid

<sup>150</sup> Ibid. p.174

their arbitrary interferences in order to guarantee the very existence of the liberty as non-domination. Nevertheless there could well be cases in which the interested parties could identify a third possibility of accommodating the other side's views and reach a compromise. The primary steps towards reaching such social concord is to learn how to negotiate and accept other's views and promote their goals in a non-dominating manner that complies with the procedural republican requirements and social skills needed to that end. This will be partially realized through the active education of the citizenry to master certain social faculties of interaction which will be the subject of my discussion that follows.

## VII. Contestatory Citizenry

Unsurprisingly then it appears that Cicero was one of the first philosophers in human history to advance basic ideas of the legal equality of all citizens<sup>151</sup>. Livy, Seneca and Sallust amongst others, repeatedly remind us that one of the greatest causes of the loss of liberty would be “when people submit to the jurisdiction and control of a few powerful people in an obnoxious manner living in servitude to them”<sup>152</sup>. Thus it becomes paramount that the greatest theoretical challenge to the republican theory has always been to get the right balance between the scopes and the reach of the state's laws and institutions and the individual's liberties protected or alternatively restricted by such policies. In short how can one make sure that the state itself does not become a dominating force whilst it attempts to fight off private domination? To this end, it becomes compelling that the republican doctrine should be very demanding on the people themselves to fulfil all their citizenry undertakings and obligations. One could seamlessly observe that the relevant citizen's qualifications and commitments in the form of their virtue and values of patriotism and active participation have been systematically endorsed and promoted throughout the entire history of the republican ideology. What Machiavelli defined as *vita activa* was fundamentally endorsing this proactive engagement of the citizenry to promote virtue and common good.

The virtuous citizens love the security that the *vivere libero* offers... when necessary they know how to observe their duties and respect magistrates and laws, (but) in due

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<sup>151</sup> Radford, R. pp.73,79

<sup>152</sup> See for instance Sallust. *Bellum Catalinae*. 1931. p.34.

time they also know to resist and mobilize against those who aim at the destruction of the *vivere libero*<sup>153</sup>

Furthermore in the *Discorsi*, Machiavelli identifies that the social class struggle is actually healthy to the republic and that Romans were free people as long as they could have these public confrontations of citizens which embody the basic principles of *libertas*<sup>154</sup>.

It is essential to underline that this concept is different to the ancient Aristotelian direct participation of the populace in the ruling system in which the emphasis is placed upon being able to rule and directly participate in the law-making process. It should be banal to underline that most citizens might not actually be inclined towards a first-hand participation in such law giving procedures. Whereas the concern here seems to be of a system which gives prominence to the existence of an actively interested citizenry towards the promotion of virtue and most importantly on a guarantee of an inviolable power and right that they need to have in order to challenge the government's deliberations if they found them non-compliant with their interests and desired ends. Once more, in line with Florentine civic humanism, the liberty is conceptualized in being an active participant of the social life as the political ideals were regarded to be the consequences of individual reason and the ensuing political activities.

Furthermore it is unambiguous that in the modern day's large multicultural and diversified societies one could not expect to have a ruling government comprised of the whole of society, rather the only practicable option would be to delegate power to the democratically elected representatives: i.e. the republican principles of delegation and representation. In spite of this the critical point here is that the citizenry would never entirely "alienate" its power and constantly preserves a contestatory right together with the actual power to influence the representatives' decisions and recall them or even to substitute them when deemed inadequate or motivated by other interests<sup>155</sup>. Here again the electoral system alone cannot guarantee such rights and obligations unless the previously mentioned system of mixed government is devised in such a way that it

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<sup>153</sup> Machiavelli. *Discorsi*. II.2. as cited in Viroli, M. (1999). p.63.

<sup>154</sup> Ibid

<sup>155</sup> Pettit as cited by Laborde, C. and Maynor, J.



accommodates a significant role for the “contestatory membership”<sup>156</sup>. This also includes various non-electoral checks and diversified associations and entities of the citizenry who actively monitor the performance of the representatives and subject them to a constant process of scrutiny and counter balancing normative constraints. The basic hurdle here is to provide alternative “options” for the disadvantaged citizens in order to put them on an equal social pedestal with the rest. For instance in case a serious divergence occurs between the individual’s interests and the government’s policies, a republican citizen should have the option of seeking the judgment of external bodies such as private auditors and legal experts and advisors<sup>157</sup>.

Therefore the previously discussed notion of mixed constitution together with the *vita activa* of the citizens are the basic requirements for constantly keeping the government’s *imperium* under control and ensuring that the permanently evolving objectives of the public policies are always adequately discussed and challenged through social and political means such as the Roman’s “*tribuna della plebe*” and other modern day instruments of monitoring and control. Thus the active contestatory citizens construct one of the building blocks of the republican ideology by playing a critical role in checking the state’s power to ensure that the risk of the government’s domination is minimized. Again in Pettit’s words, in an inclusive republican system:

There will be continual discussion and disagreement about what government should be doing in this area or that..... the people have to be a restless, engaged and critical body, if there is to be any hope of keeping the government in check and ensuring that it is not an arbitrary presence in their lives.<sup>158</sup>

Viroli in an attempt to contextualize these classic principles of virtue and active participation of the citizens in the modern societies, highlights various aspects of civil virtue which empowers the citizens to do whatever they can, and when they can, to serve the common liberty<sup>159</sup>. These include such actions as fighting corruption, performing their duties with honesty, being always ready to mobilize against the ratification of an unjust law, pushing the government to tackle issues of common interest, actively

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<sup>156</sup> Marti, J. L. & Pettit, P. Ibid p.85

<sup>157</sup> This specific point will be scrutinized in more details when I will the role of the lawyers and legal advisors in Iran in the relative section

<sup>158</sup> Marti, J. L. & Pettit, P. ibid p.89

<sup>159</sup> Viroli, M (1999) pp.65-66

participating in professional, cultural, political, and other relevant organizations and pursuing national and international affairs with interest<sup>160</sup>.

The idea again here is not only to disperse the power to promote mutual checks and balances necessary for the republican state to operate in the first place, but also to engage the citizen through an active role to contest and monitor both the government and one another.

Hence these essential institutionalized counter-balancing authorities and dispersion of power together with inclusive and freely accessible public forums and tribunes, are deemed by republicans to be the crucial provisions to reduce the possibility of individual or group domination and also the tyranny of the majority, a common challenge to many forms of democracies. Therefore while the democratic principle of popular sovereignty, accountability and rule of law embodied in constitutional systems of periodic public consultation are the primary prerequisites for the republican system to exist in the first place, they do not appear to be providing sufficient guarantees against the deviation of the system towards the monopoly of power by individuals and groups and even tyranny.

Thus as I discussed above, it is a common republican conviction that such constant threats to liberty will only be adequately dealt with when one also includes sufficient space for republican elements of popular checks and balances to put the citizen on an equal footing with rulers and other individuals to question and challenge any potential source of domination. This is the essence of the previously mentioned “eye-ball test”. Therefore, it should be paramount that there be no repository for power and authority that can evade this public scrutiny through open and inclusive forums. The republicans’ experience seems to have unequivocally demonstrated that the very existence of some entities that could discount and avoid public contestation and invigilation would undoubtedly transform these unchecked elements into constant threats of domination; even though these might actually be working within the constitutional and legal political frameworks or alternatively be reluctant to exercise their overriding authority. Therefore it would appear that all roads lead to the inevitable republican conclusion that

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<sup>160</sup> Ibid

in order to effectively minimize the possibility of *dominium* and *imperium*, not only a whole array of democratic requirements should be in place but also an active contestatory citizenry needs to be formed that embodies various agencies of public debate and scrutiny to empower the diverse interests that make up a polity to play a prominent role in advancing the principles of their own non-domination.

## VIII. Civic Education

It comes as no surprise that one of the main battlegrounds of the republican doctrine of the political would be to reject the neutrality of the state in playing a positive role in the promotion of liberty as non-domination. In order to achieve this objective the role of the republican educational apparatus proves crucial. Again here I could cite various narratives from the progenitors of the republican thought, in all its forms, relentlessly underlining the importance of a comprehensive republican education system that inculcates and instils the fundamental values of citizenry in the population<sup>161</sup>. This was aimed at enabling the citizens to assume an active role in the enhancement and protection of their own liberty. As mentioned in various occasions, these are rooted in the deep-seated republican recommendations of active participation of the citizens in the public lives of their polities. This would be the inevitable consequences of the fundamental shift from abstract to concrete and from metaphysical and divine to practical and contingent that were claimed to be the idiosyncratic feature of the republican doctrine of the political.

It goes without saying that this would in turn engender crucial consequences on the role and requirements that its constituting elements, i.e. the people should be prepared with. To cite further examples of the classical republican treatises, one could not overlook the meticulous emphasis which Machiavelli places upon the public education in the *Discourses* in order to promote such values of *rispetto* (respect), *prudenza* (prudence), *grandezza d'animo* (magnanimity), *generosità* (generosity), *coraggio* (courage), *amore della patria* (patriotism) etc, all of which are to be employed to fight what he globally labels as *corruzione* (corruption), which could affect various aspects of

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<sup>161</sup> This point seems to have underpinned most works by the French republican theoretician Condorcet (1743 – 1794) see for instance Condorcet, N. (1999) *instituer le citoyen*, Paris, Michalon Publication.

social life<sup>162</sup>. Indeed most of the examples he cites for these “corrupted” states throughout his works are those in which the education has failed to create upright and honourable citizens that could contribute positively to their own liberty.

This explains why such lengthy treatises in particular in the French republican tradition have been dedicated to this crucial aspect of the republican thought. Condorcet, Voltaire and Rousseau are the prominent examples of such philosophers who painstakingly highlighted the importance of the public education as conceived by the republican doctrine. Condorcet for instance, who is regarded as the father of the positivist school of philosophy and even considered to be the prominent theoretician of “when a republic becomes republican”, retains this republican objective to materialize through a meticulous employment of the fundamental principles of the public education<sup>163</sup>.

Therefore in the light of the republican objectives to empower the citizens to fully assume their contestatory role in a constitutional system, they need, in the first place, to be well informed and educated on their rights and responsibilities and to identify the legitimacy of the republican constitutions and endorse their legal sanctions. Furthermore the republican citizen needs to know of their liberty and be fully aware of their power to question and revise policies free from any arbitrary interferences. This is where the educational and informative role of government, and most importantly the independent institutions, play a critical part<sup>164</sup>. Furthermore this republican citizen needs to be aware and well informed of his basic rights and privileges both as reflected in the national constitution and recognized as the “rights of humanity” encoded in the universal declarations and covenants on the basic human rights.

Most interestingly I could underline a significant emphasis placed on the importance of the private education systems: those emanating from the people themselves rather than the state advocated ones, by Condorcet. This is an obvious safeguard against the potentials of domination hidden in all state sponsored educational projects, which in

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<sup>162</sup> For a detailed analysis of Machiavellian endorsement of civic virtues see Burt, S. (1990) *The Good Citizen's Psyche: On the Psychology of Civic Virtue*, London, Polity. p.25:37

<sup>163</sup> Nicolet, C. *ibid* pp.74-81

<sup>164</sup> Condorcet *ibid*

Gramsci's term, could lead to "cultural hegemony"<sup>165</sup>. One of the fundamental obligations of the republican state is to provide suitable grounds for "civilizing the republic" through promoting widespread civil virtue and acknowledgement of liberty as non-domination in all public and private spheres.

From the outset the civic education serves the republican objectives by teaching the citizenry their rights and obligations to live in a society based on liberty as non-domination and abide by commonly agreed laws and norms of the state as adequately encapsulated in John Maynor's following words:

The primary goal of a republican approach to civic education is the inculcation of values and virtues aimed at teaching individuals the necessary skills of non-domination and how to cast and express their ends in a non-dominating fashion<sup>166</sup>.

Nonetheless it should inevitably go much further than this by actively promoting deep-seated republican values of toleration, active engagement and mutual respect. Also the values of critical thinking and relentless pondering on the consequences of their life choices will be inculcated in the citizens to deliberate on the overall outcome of their actions and whether these might potentially interfere arbitrarily with other agents' choices within the greater social context<sup>167</sup>.

There is no doubt that a major component of this mutual comprehension and striving towards a non-dominating behaviour is to have the means to share a common channel of social communication through which the populace can constantly register their interests and most importantly come to appreciate the interests and reasons of other social stakeholders. This common language of citizenship is rooted in the fundamental Roman rule of *audi alteram partem* (always strive to listen to the other side)<sup>168</sup>. This in turn underpins the primary rules of mutual understanding based on "communicative reason" to use Habermas' term, which he defines as the "telos of mutual understanding"<sup>169</sup>. That is an active involvement in the communicative action geared towards problem-solving

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<sup>165</sup> More on this theme will follow the chapter related to the Republican Education and Contestatory Citizenry.

<sup>166</sup> Maynor, J. (2003) p. 186.

<sup>167</sup> *ibid.* Ch.7.

<sup>168</sup> *ibid*

<sup>169</sup> Habermas, J. (1996), *Between Facts and Norms*. Polity, 1997 pp.3-6.

practices through non-dominating exercise of the common republican reason and values of republican citizenry.

And finally, through this comprehensive public education the citizens come to a full appreciation of the basic republican institutions and forums which are open to all and learn how to use them and interact with them and most importantly how to challenge them if need be. Hence Maynor's acute analysis of this profound tradition of the republican educational system could be summarized in the idea that a republican education not only prepares the citizens to assume their civil roles in the specialized social functions, it also instructs citizens on their obligations towards each other. This is also an implicit acknowledgment of the fundamental republican components such as a bill of rights endorsing and promoting active role of the people in their own non-domination<sup>170</sup>. This would in turn lead to practical instructions on how to articulate their private interests and concerns in a "reasonable non-dominating language of common citizenry" that could protect and track their concerns through an active social engagement and mutual interaction of the republican means. Therefore the ideal objectives here are not merely to educate the citizens to tolerate and respect the unavoidable elements of moral pluralism of modern societies, but most importantly to inculcate civil values of virtue and capacities to formulate their interests in total compliance with the republican non-dominance principles, which sometimes might entail "compromise and accommodation"<sup>171</sup>.

## **IX. Contemporary Republicanism**

Thus far my main objective has been to demonstrate that the republican school of thought enjoys a rich and multi-layered tradition which has historically proven to be capable of addressing various socio-political aspects of civil life. The basic system of guarantees that it prescribes to safeguard individual liberties against *dominium* and *imperium*, seem to be an extremely efficient and flexible means of providing a comprehensive recipe for our complex modern societies based on multicultural and diversified systems of values. In spite of this, in particular in recent decades up to the onset of the global financial crisis in 2008, in the western political circles - which were

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<sup>170</sup> Maynor *ibid*

<sup>171</sup> *Ibid.* Ch.7.

heavily influenced by the Anglo-Saxon liberal ideologies, the republican concepts strongly had fallen out of interest to the point where they were even considered irrelevant and outdated<sup>172</sup>. Indeed a significant prevalence of the political philosophies focusing on the rights of the individual could be readily identified as compared to the republican notion of common good, civic virtue and republican institutions to protect and promote citizenry rights and liberties. In this light the republican doctrines were even regarded as oppressive and reactionary and their strong connection with the modern political philosophy in particular socialism was systematically criticized or ignored<sup>173</sup>. Nevertheless as I argued throughout this Chapter, there have been strong adjustments and reorientations of the interests towards the republican ideologies, also in part due to the recent setbacks of the financial sector at the heart of the liberal and capitalist democracies. Thus it appears that various republican concepts are once again being evaluated in a new light of appreciation. Most importantly the fundamental republican rule of non-domination is increasingly proving to be flexible enough to accommodate various perceptions of the common good as long as these do not violate the basic criteria of independence and arbitrary interference.

I am also bound to acknowledge the major republican characteristic of ideological flexibility and constant capacity for mutation, namely what George Clemenceau (1841-1929) defines as the republican capacity to provide the possibility for the “constant peaceful and legal revolutions in the society”<sup>174</sup>. Consequently it appears that a significant repository of the republican political doctrine has been passed down to us from the Roman and Renaissance philosophers and matured with the Enlightenment’s actualization and elaborations. These also include prominent contributions by the likes of Montesquieu with his emphasis on the separation of powers, Voltaire’s underlining of the freedom of conscience and tolerance, Rousseau’s highlighting of the people’s sovereignty and Condorcet’s emphasis on the importance of public education<sup>175</sup>. All these momentous and impressive edifices of the political philosophy could provide clear guidelines which regardless of the main centre of focus, could be served as a powerful

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<sup>172</sup> See for instance Grange, J. pp.9-12.

<sup>173</sup> Ibid

<sup>174</sup> Nicolet, C. *ibid* p.89

<sup>175</sup> *Ibid* p.80

background to analyse any notions of the political sovereignty and principles of individual liberty.

More relevant to the contemporary questions of liberty is the acute analysis by Philip Pettit, and what he regards as the basic elements in guarding against private power<sup>176</sup>. These include such factors as having a robust economy, a resilient and impartial legal system and a universal and fair welfare system. Most importantly I highlighted a republican endorsement of an active intervention by the state to empower the weak and vulnerable and to regulate with efficiency the powerful organizations, ideological groups and agencies that always have the tendency to bypass the rules and enforce their arbitrary domination on the citizen's lives<sup>177</sup>.

I wish to postulate a practical example here that could elucidate some of these principles underlined herein. Consider the case of a woman who is subject to the domination of a violent husband. The republican's basic non-domination principles require that the vulnerable party here be placed under an active intervention by the state to stand up for her rights and obtain justice. This could materialise through an empowering legal system which enables her to trigger the legal procedures to even terminate her marital commitments and provide her with resilient legal and economic protection. Such a system of rights would also provide adequate safeguards against society's other powerful cultural and religious convictions and prejudices. Therefore from the outset the republican system requires the existence of sound laws, as I argued before, that guarantee the equality of the sexes and limit the arbitrary power of the dominating side. The same considerations apply to an employee who is dependent on the will of his boss who can arbitrarily interfere with him and limit his choices by burdening some of his options with penalties or even by mere intimidation and invigilation that could result in a submissive behaviour to keep the dominant party sweet in order to avoid possible retributions<sup>178</sup>. Here again a republican system provides protective laws and provisions to defend the moral and physical integrity of the

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<sup>176</sup> Philip Pettit has kindly given me access to his collection of insightful articles even preceding publication within the public domain, which as one could note, constitutes one of the main reference sources for this chapter. This collection is entitled *A Political Philosophy in Public Life*

<sup>177</sup> Marti, J. L. & Pettit, *ibid*, p.78

<sup>178</sup> Viroli, M (1999). pp.38



employee and reduce the domination by providing him with an equal standing to pursue his interests and most importantly to have alternative options if he needs to leave his current employment in the form of temporary state economic and social support<sup>179</sup>. Pettit mentions three elements of rights, powers and options as the necessary resources needed to efficiently protect the vulnerable against the domination<sup>180</sup>.

And finally I came to consider the neo-republican recipe to limit and contain the state itself from becoming an arbitrary presence in the citizen's lives. As I mentioned previously the imposition of the just laws, based on the criteria outlined previously, should be exempted from these considerations. Needless to reiterate that these active interventions are not regarded as arbitrarily dominating citizen's lives, as their end is not to attribute an unfair advantage or privilege to a specific group or faction based on certain idiosyncratic criteria, such as ethnic, religious or economic privileges. Thus the laws which track the overall interests of all citizens – and they all freely and inclusively participate in all the proceedings that affect them, or have the inalienable right to do so, should not be regarded as arbitrary interference of an unchecked agent<sup>181</sup>. Therefore it should be clear by now which type of domination is considered here to be inimical to the republican ideals. The *imperium* is therefore a result of those state initiatives which have not been subject to popular scrutiny and comprehensive debate preferably through various stages of trial and field experimentation and popular consultation. Thus in a republican system the body politic is being controlled and checked equally by all concerned stakeholders which as emphasized before, does not necessarily entail the citizenry's direct participation in all political procedures. The basic prerequisite of such a system is that the state itself should be a democratically elected entity which leaves ample space for the citizen's control and contestation and itself subject to various counter-balancing checks and verifications.

It is evident that holding periodic elections does not automatically entail that a system is compliant with the republican principles<sup>182</sup>. A Republican system does not guarantee

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<sup>179</sup> These examples are taken from Pettit and Viroli works mentioned above

<sup>180</sup> Marti, J. L. & Pettit, P. *ibid* p.79

<sup>181</sup> See above for a detailed discussion

<sup>182</sup> Grange, J. *ibid* pp.47-48

*carte blanche* to its rulers even though these might have been democratically elected through public consultation. Therefore the participatory democracy is an insufficient condition for the realization of the republican ideals, as this might easily fall into an elective despotism<sup>183</sup>. Therefore there is a requirement to have numerous agencies and institutions and spread the power amongst these various entities as much as possible to keep one another under constant monitoring and active scrutiny. To cite again an eloquent passage in this regard I could mention Pettit's considerations on the institutional requirements of a republican system:

Institutionally, the effective, equal control of government requires to the mainline tradition that government should operate under the mixed constitution in a context of civic invigilation. The idea of the mixed constitution and contestatory citizenry... remains a centrepiece of republican thought and practice.<sup>184</sup>

It goes without saying that other third party monitoring systems such as independent auditors, human rights watch organizations, autonomous legal advice agencies, public media and most importantly proactive citizenry initiatives and grass-roots interest groups are all pieces of the overall jigsaw of the republican political philosophy of liberty as non-domination. The fundamental Machiavellian notion of "mixed constitution" with its later developments in the republican traditions, not only requires the existence of various constraints and entities to ensure the separation and dispersion of power and authority, it also places heavy reliance on the rule of law and public invigilation in a fully transparent and contestable setting of inclusive social order.

It goes without saying that even this universal system of checks and balances could be subject to constant revision and contestation to ensure that it is always capable of addressing the practical requirements on the ground without falling into impasse or neutrality<sup>185</sup>. And once again no element of this overarching socio-political order should be immune to the public contestation and accountability, which indeed make up the nucleus of the republican provision to circumscribe the interfering power of the government itself from degenerating towards the much feared *imperium*. Thus recommendation such as the separation of the law-related functions, bicameralism, the

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<sup>183</sup> Ibid

<sup>184</sup> Marti, J. L. & Pettit, P. *ibid* p.85

<sup>185</sup> See previous notions put forward by Georges Clemenceau

adoption of a bill of rights and decentralisation of the administration probably even through a federal system are all among the provisions to guard against the arbitrariness of power<sup>186</sup>.

## **X. Republicanism and Religion**

One last aspect of the republican doctrine that I wish to highlight here is its relation to the eschatological principles in general and clerical institutions in particular. As argued previously the pioneering Florentine civic republicanism was firmly grounded in a stout refutation of any metaphysical and abstract sources of transcendent truth central to the hitherto prevailing scholastic discourse. By considering the political reality as contingent and a result of individual's direct civic participation, other sources of legitimacy would inevitably be dismissed and subordinated to the overriding authority of the human reason. This would at minimum entail a considerable level of religious neutrality within the political layout of the state. In any case it is not difficult to detect a significant level of tolerance and even acknowledgment of the religious beliefs in the private societal spaces by the republican ideologues both ancient and modern with an exception of a considerable corpus of the French republican teachings<sup>187</sup>. Indeed the French Revolution with its egalitarian claims proved to be a radical socio-political upheaval against all privileged institutions in particular the clerical one which hitherto enjoyed a prominent social standing. The so-called processes of *déchristianisation révolutionnaire* even went as far as forcing the clergymen to take an oath of allegiance to the French state rather than Vatican<sup>188</sup>. This was unsurprisingly declined by a majority of them which resulted in thousands of priests being forced to abdicate or guillotined<sup>189</sup>. It goes without saying that such vertical inculcation of the revolutionary ideologies predictably encountered significant resistance at social levels which eventually ended in the Concordat of 1801 in which the government recognises the Christianity as the “religion of the majority of the French people”. It is interesting that such ideologues of the French revolutions as Robespierre seem to have accepted such acknowledgment of the religion

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<sup>186</sup> Pettit *ibid*

<sup>187</sup> See previous argument on the French anti-clerical convictions in particular those expressed by Gambetta.

<sup>188</sup> Cousin, B. et al. (1989) *La Pique et la croix*. Histoire religieuse de la révolution française, Paris, Centurion p. 135

<sup>189</sup> Boudon, *ibid* p. 15.

due to the preoccupations that a radical elimination of faith might have “demoralizing effect on the population”<sup>190</sup>. The question seems to have been how to subordinate these ideologies to the republican institutions and principles rather than the other way around<sup>191</sup>. Hence in other contexts such as the United States, a traditional solution was promoted in the form of the acceptance of the religious beliefs in a completely secular political arena to, on the one hand, take advantage of the potential social benefits of the religious ideology and on the other, to reduce the possibility that the eschatological interests and concerns would jeopardise individual “right to pursue happiness as he or she saw fit”<sup>192</sup>. Veritably, the tolerance of faith has by no means taken the form of an official endorsement of religion in public spheres and any institutional embodiments of such ideologies by the republicans. In fact, quite the contrary, one still witnesses significant efforts towards the so-called privatization of religion to lessen the possibility that it might become a matter of public order instead of being restricted to the personal domains of interest<sup>193</sup>. The examination of this very theme and the conceptual and practical viability of a religiously imbued system of the political within the republican framework would indeed make up the unifying thread of the current study.

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<sup>190</sup> Langlois, C. (1988) *L'inqualifiable et l'inévitable. La déchristianisation révolutionnaire in Révolution et religion en mémoire*, Archive des sciences sociales des religions, 1988, vol. 66, no 1, p. 28.

<sup>191</sup> Nendza, J. (1984), Religion and Republicanism in More's Utopia, in *Western Political Quarterly* Vol. 37, No. 2 1984, pp.195-211

<sup>192</sup> Ibid

<sup>193</sup> See for instance Hefner, R.W. (2001), Public Islam and the Problem of Democratization, in *Sociology of Religion*, vol. 62:4 pp.491

## **XI. Conclusion**

Throughout this chapter I have attempted to provide a general survey of the main concepts making up what we come to collectively recognize as the republican ideology. As I underlined before this doctrine should not be regarded as a monolithic block which has been resistant to mutations and renewals<sup>194</sup>. Indeed it proves to be a very flexible doctrine which comprises various democratic, and even communitarian and liberal readings whose unifying thread could well be regarded as the powerful interpretation of the fundamental notion of the republican freedom. Despite all these formal and conceptual understandings of the republican thought, one comes to appreciate the core distinctive features of this philosophy and their compelling potentials to address most of today's socio-political requirements of modern polities.

More specifically the contemporary advocates of this school of thought whose main ideas and ideals were studied here, have shown that this political system, although its foundations could easily be traced back to as early as the Roman Republics, could still be relevant to our time in particular when the modern liberal political discourse seems to be facing an uphill struggle to tackle current social challenges generating an ever growing sense of helplessness caused by their core principles of state neutrality and non-interference.

As it was underlined on various occasions in this chapter, throughout this research project I have chosen to primarily follow a conceptual framework that generally feeds upon and further develops the fundamental republican notions endorsed by three major contemporary authors namely: Philip Pettit, Quentin Skinner, Maurizio Viroli, and brilliant interpretations of those doctrines by John Maynor. These scholars, together with numerous other political philosophers in particular from the French school of republicanism, all had an indelible impact on the arguments addressed here and the chosen approach of treatment. The resulting line of argumentation has been an outcome of various individual enquiries into the works of the previously mentioned scholars, in particular Pettit, Skinner and Maynor who have generously provided first hand access to

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<sup>194</sup> Clemenceau *ibid*

their processes of intellectual argumentation and on several occasions provided important suggestions and advice.

As I argued above the Italo-Atlantic version of republican thoughts, as Pettit likes to call it, through some momentous contributions of the neo-Roman theoreticians, most importantly the Florentine civic republican ideologues, highlights the centrality of the republican elements of the rule of law, mixed constitutions, inclusive public forums and in particular the role of contestatory citizenry. In spite of this I hope to have provided enough evidence to underline the importance of other philosophical currents within the republican ideology, particularly the French branch, which faithful to the original humanist traditions, provided significant contributions to the development of some of the core republican ideas namely the equality before law and the importance of the public education amongst others.

On the other hand it was argued that the domination could materialize through the interference in the form of intimidation or invigilation rather than an actual physical limitation imposed on someone's choice. In Pettit's formulation: interference not only includes coercion and punishment, but it is also extended to include manipulation which may take the form of "agenda-fixing, the deceptive or non-rational shaping of people's beliefs or desires or the rigging of the consequences of people's actions".

All these expounded concepts provide a workable platform and several resilient criteria to assess any current political system and determine to what degree these are coherent with the republican claims they advance. It should be reiterated that the objective here is not to advance perfectionist principles to endorse a pass or fail mark for any system of thought as these highly rely on the practical necessities of every socio-cultural setting rather than idealistic philosophical considerations. Nevertheless at least at a theoretical level I should be able to analyse various elements of power and administrations entailed by these structures of ideological reasons and determine the degree of their compliance with the basic republican legitimacies of the political authority that these systems themselves advance. More importantly in order to provide a manageable field of enquiry, by focusing on a more practical analysis of the subject under study, this chosen framework of analysis should provide more tangible criteria of

evaluation as compared to the equally important abstract socio-philosophical evaluation of the role and place of faith in a modern society or other parallel examinations of numerous closely related concepts such as comparative studies of revolutions and totalitarianism.

To summarize what was discussed in this chapter I can delineate the following core republican elements based on my academic enquiry into the fundamental cornerstones of republicanism. These would consequently form my theoretical framework to treat basic republican credentials of my specific setting of reference and would delineate the guiding approach throughout this research project.

***-Principle of republican freedom as non-domination in all socio-political situations and the “eye-ball test”***, the sort of immunity to interference that would enable anyone to look each other in the eye and defend his interests without fear of consequences or the actual impracticality of the attainment of results for being launched from uneven grounds. This is based on the fundamental republican conviction that depending upon another’s arbitrary will is what it means to be a slave. Hence an equal protection of liberty is one of the basic duties of government. Thus the discretionary power must permanently be illegitimate and in a republican state no element shall depend upon the will and arbitrary discretion of another element which would result in a condition of dependence and domination; even though this might be characterised by the absence of any actual interference. The basic expression of this principle in the form of the republican safeguards against *imperium* and *dominium* would form the main structure of analysis throughout my study. In particular I will extensively draw upon these guidelines in the study of the republican sovereignty, state institutions and contestatory citizenry within my chosen field of research.

***-Principle of rule of law, and independent judiciary system***. The so-called “empire of law and not of men” is what all republican systems strive to achieve. No element in a republican system could claim to be above the law or fall outside the purviews of the overarching legal and normative arrangements of the state. In this system there is no space for idiosyncratic privileges or socio-cultural advantages that could allow a specific

ethnicity, religion or group to waive the rule of law and confer themselves specific immunity or authority that resides outside the fair egalitarian provisions of a democratically instituted legal system. Thus the rational, unambiguous and resilient legal principles should be applicable to every single individual including the legislators and leaders themselves together with all agencies of power and administration which should follow the established procedures and protocols without exemption. Furthermore people should have an unequivocal sovereignty over every aspect of these normative arrangements and their provisions and proceedings. This includes not only the sovereignty over the conception of the constitution itself and all its derived legislations, but also over numerous provisions for the exercise of the sovereignty foreseen therein. Thus to live in a republican state signifies living under a constitution in which “the body politic is never moved to act except by the will of the citizen body as a whole”<sup>195</sup>. In this regard the constitution and the inclusion of a set of universal principles of rights within it would undisputedly play a momentous role. It goes without saying that from ontological point of view the contents of such laws should be in line with the basic republican principles of non-domination on both private and public levels. These normative aspects will be systematically analysed particularly in the Chapter 3 on the Iranian Constitution and Chapter 4 on the principles of Republican Sovereignty.

***-Principle of republican mixed institutions:*** primarily all offices that confer political power on their holders should be elective to be able to track the interests of the people and that these agencies should be held in rotation to prevent the encroachment of power which would prevent the representatives from acting simply according to their own or their faction’s *arbitrium* and interests. Thus the extent to which the political institutions embody arbitrary or discretionary power corresponds directly to how much they enslave and are inimical to the principle of freedom. Hence any public office in a republican system should be freely accessible and open to all the social diversity that the modern polities inevitably have. No one should be excluded from registering their interests in the public institutions based on gender, ethnic, religious, economical or even moral convictions and values.

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<sup>195</sup> Van Geldern, M. and Skinner, Q. p. 4



Furthermore this republican guideline for institution building underpins the basic preconditions of the division and separation of power and spread of authority among various counterbalancing entities. This would address basic republican requirements of checks and balances which is thought to be achieved exclusively through the diversification and dispersion of the offices that hold power to create numerous repositories of political sovereignty that could keep one another under constant scrutiny and monitoring. Therefore a republican state should not only have a clear separation of the legislative, executive and judicial powers, it should also provide further distribution of power within these entities to minimize the risk of domination. The concentration of the legislative, judiciary and executive power in the hands of an individual, group, particular belief or even the majority has always been regarded as the most detrimental to the basic republican convictions by all theoreticians of the republican ideology. I will include an extensive body of research and observation based on this principle particularly in Chapter 3 on the Republican Constitution and Chapter 5 on the Republican Institutions.

***-Principle of republican contestatory citizenry:*** This is probably the most idiosyncratic feature of the republican ideology which in spite of appearing to be idealistic and perfectionist, proves to be the utmost guarantee against the protection of individual liberties and the preclusion of various possibilities of domination. The traditional republican core principles require any political system to consider significant space to accommodate active participation of the vigilant citizenry through such provision as the open and inclusive public forums and financial, legal and intellectual support for the citizenry to participate in public debates and proceedings. This could take the form of reviews of the government's results since the office-holders, as representatives, should be responsive and accountable to the criticism and will of those who elect them. Thus the government should not only leave the contestation channels open, It also has to provide the citizens with the physical means and provisions to be able to get their voices heard in adequate deliberative and inclusive forums. This principle would form the main theme of my final chapter on the Republican Citizenry.

**-Principle of republican public education and civic virtue:** For a citizen to be capable of active participation and promotion of his social interests, from the outset they should acknowledge the legitimacy of law and be aware of their rights and duties within a republican system. This objective is mainly achieved by the active intervention of the state to instil and promote certain republican core civic values and ideals such as patriotism, mutual toleration and respect for different views and critical thinking. A republican system should actively seek to inculcate the republican values of social engagement through communication in a non-dominating fashion in particular towards those who make incompatible life choices. The republican education system indeed underlies all other republican principles as no elements of freedom as non-domination, contestatory citizenry and even republican institutions could have any hope of existence if the building blocks or *materia umana*, as Machiavelli used to call them, of a republican system are not prepared with *buoni costumi* (good habits) to assume their republican part in their own non-domination. Needless to say that one of the most fundamental roles of the republican education system would consist of informing the citizens of their basic rights and liberties as reflected in the principles of the Fundamental Law and other universally recognized declarations of human rights.

In summary, I reiterate again that all main republican schools of thought that I examined here were fundamentally rooted in the previously mentioned principles of guarding against the *imperium* which was defined as the state domination and *dominium* that was said to be the instances of the interpersonal dominatory relations. Thus a close examination of these two prominent safeguards towards the protection of the republican liberty would form the basic foundation of my enquiry. I will attempt to extensively scrutinize various repositories of public power in the Islamic Republic of Iran by initially examining the provisions of the Iranian Constitution from where I will proceed to evaluate the structure of the political sovereignty and leadership. Once these conceptual aspects are fully addressed, I will continue my enquiry into the concrete Islamic Republic's institutional structure and their compliance with these republican principles. The last section of my project will be devoted to the actual building blocks of the republican state i.e. the people themselves and their rights to public education and contestatory citizenry privileges.

It is evident that my case study is also claimed to be firmly rooted in a specific interpretation of the Islamic Shari'a which is declared to be providing compatible or at least neutral grounds for coexistence with the above illustrated republican tradition<sup>196</sup>. Thus in order to provide an exact analysis of these repositories of sovereignty I need to take a closer look at the second cornerstone of the Iranian socio-political doctrine of state, that of the prevailing school of the Islamic ideology based on the Iranian contemporary Shi'a political thought. This will constitute the theme of the forthcoming chapter.

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<sup>196</sup> See for instance Bayart, JF. (2008), *l'Islam Republicain* Paris, Albin Michel Publications

## Chapter 2 - Political Theology

### I. Divine Sovereignty

It could be considered as a well-grounded theological principle that in all western religions the ultimate sovereign and true holder of power and authority is God. The whole universe is perceived to be the manifestation of the *loft* (grace) of the ultimate ruler and law-giver<sup>197</sup>. As a consequence of this fundamental belief, it comes to no surprise to observe that any man-made system of authority should be able to demonstrate a degree of compatibility with relation to this ultimate sovereign to claim some levels of religious legitimacy. Traditionally in Islam there seems to have been a higher level of interdependence and intricacy between the divine and the temporal power as compared to, for instance, certain periods of Christianity<sup>198</sup>, which have shown some degree of flexibility towards the recognition of “Caesar’s” worldly mandate<sup>199</sup>. This is well reflected in the simple fact that the Islamic calendar starts with the Prophet’s *hijra* (emigration) to medina that is when an actual comprehensive political authority was established rather than the Prophet’s birth or other ceremonial events. However, it is banal to highlight that the relationship between the Church and state in the Christian world has also not been that amicable in particular when one considers the history of the European Concordats and the papal reactions to such effective separation of the *raison d’état* from the *raison de foi*<sup>200</sup>.

It is said that from 6000 verses of the Quran around 200 of them explicitly provide juridical and legal guidelines to regulate Muslim societies<sup>201</sup>. One could also encounter instructions that explicitly recommend believers to follow the example of the prophet - and as one of the Prophet Mohammad’s greatest achievements has been to establish a political government - this could therefore constitute a worldly pursuit by the

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<sup>197</sup> Both Old and New Testaments together with the Quran are full of examples of such affirmations, for instance The Bible, Mark 12:17.

<sup>198</sup> See for instance Enayat, H. (1988), *Modern Islamic Political Thought*, London IB Tauris 1998.

<sup>199</sup> "Render unto Caesar what belongs to Caesar and to God what belongs to God". (Synoptic Gospel, Matthew 22:21)

<sup>200</sup> Gauchet, M. pp.83-88

<sup>201</sup> Miethe, T. & Lu, H. (2005) *Punishment, a Comprehensive Historical Perspective*, Cambridge, Cambridge University Press. p. 156

believers<sup>202</sup>. Consequently in Islam the ultimate objective of salvation is achieved through a divine system of morality which is rooted in the absolute justice only attainable by following the guidelines of the sacred scripture and the Prophetic tradition. These provide some of the principal instructions for constructing a society based on the divine justice which is the only system capable of providing eternal redemption and salvation for mankind. Hence it may not be an overstatement to conclude that if any dividing line between Islam and other western religions could be drawn, it may well be based on this search for absolutism on earth as perceived by the majority of Islamic theoreticians, which in the absence of a radical reformation process continues to be strongly present within the certain prominent schools of the Islamic political theology. It appears that this is a salient feature of Islam as compared to other members of the Abrahamic religions in which a significant body of interpretations, in particular following momentous reformation processes, have postponed the realization of the absolute justice to the afterlife with fundamental implications on the acceptance of the worldly profane authorities. Nevertheless as it will be demonstrated below the dissimilarity is not always that clear cut with competing ideologies within the same Islamic school of thought gaining preference or otherwise losing the interest of the scholars of the time.

In Shi'a jurisprudence two major rights have been identified which are said to be explicitly recognized and endorsed both by the Quran and the apostolic traditions; namely *Haq Allāh* (the right of God) and *Haq al-nās* ( the rights of people)<sup>203</sup>. The latter is self-explanatory and is the rights that people might have or acquire against each other. These include such inherent rights as those over children and slaves, and other acquired rights arising from social interactions and the so-called division of labour and exchange of goods and services. The first type of right, God's rights, are those aimed at building a moral society based on His law by providing ethical guidelines such as the prohibition of alcohol, gambling and eating certain foods and so on. These are all considered acts against God's will as expressed in the Quran and *sonnat* (the prophetic tradition)<sup>204</sup>.

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<sup>202</sup> The Quran 33:21

<sup>203</sup> For a detailed description of these concepts see for instance Ašuri, M. (1997) *Edālat Keifari*, Ganj Tehran, Dāneš Publication, pp.214 or Musavi Ardebili, A. (2002) *Feqh al-Qazā*, Qom, Moassesa al-našr lejāmea mofid, 14232002, pp.188, 195, 196

<sup>204</sup> Ibid

The divine right to absolute sovereignty could be regarded as the main expression of the above mentioned *Haq Allāh*, even though this also includes other acts, or refraining from certain acts, that could impact the “common good” of Muslim society<sup>205</sup>. This undisputed right to sovereignty has been strongly emphasized by Von Grunebaum:

Islam is the community of Allāh...He is the mundane head of his community which he not only rules, but governs. He is the reason for the state's existence, he is the principal of unity, the *Staatsgedanke* which both upholds and justifies the continuance of the commonwealth...the burden of lawmaking rests on Allāh's shoulders. Every order issuing from him carries the same compulsion. It is not for man to grade his rulings as more or less important, nor is there any differential to separate the sphere of his direct interference from a neutral or a purely human zone<sup>206</sup>.

There is no doubt that this act of submission to God, or its authorised representatives and the strive to build a society based on this divine will whose objective would be to obtain eternal salvation for mankind, is something that one could effortlessly identify throughout the history of western religious discourse as well<sup>207</sup>. In Islam, as I will demonstrate below, this preoccupation with the state affair seems to have been further enhanced and adapted at various stages to address social and political needs of the contemporary nations<sup>208</sup>. God has given humans the power to reason and free will (*Extiyār*) in order to worship him and establish God's rule on earth based on justice and morality. One underlying principle of such a belief would be the assumption that there are universal notions of justice and “good” which are valid in all eras of human history and could only be achieved through a righteous government endorsed and legitimated by the divine will. Hence any government, in order to be regarded as legitimate, has to be based on principles sanctioned by the divine revelations.<sup>209</sup>

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<sup>205</sup> Širi, A. (1983) *Soqute Mojazat dar Hoquq Keifari Eslam va Iran*, Tehran, Jahad Danešgahi pub. pp. 112-114

<sup>206</sup> Grunebaum, G. E. von. (1953) *Medieval Islam: A Study in Cultural Orientation*. Chicago, University of Chicago Press p.142

<sup>207</sup> This could very well be seen in Pope's 1906 declaration in which he complains of the fact that following the Concordat, there had been an effective separation of religion and the affairs of the state through which the “state does not preoccupy itself anymore with the important task of attaining eternal salvation for the faithful”. As cited in Mayeur, J.M. (1966), *La Séparation de l'Eglise et de l'Etat*, Paris Julliard pub. p.119

<sup>208</sup> See The Quran 5:55 and 47:11, for instance.

<sup>209</sup> Sachedina, A. A. (1988) *The Just Ruler in Shi'a Islam*. New York, Oxford University Press. p.126

Thus there is no doubt that in Islam the ultimate sovereignty always belongs to God: “To God belongs the kingdom of the heavens and the earth”<sup>210</sup> or “God is the true King”<sup>211</sup> are some of the numerous affirmations that the Quran repeatedly endorses to reiterate that God is the source of all authority and sovereignty existing on earth. Undoubtedly all sacred texts have always shown enormous flexibility towards various interpretations which are sometimes totally contradictory. Nonetheless one could easily discover that such perceptions of these concepts based on creating the God’s rule on earth, or at least a religiously guided political system in the concerned territory, has been the a strong current of thought amongst Muslim theoreticians. No need to mention that due to some obvious practical reasons this might not have found the space for overt manifestations.

This is a fundamental cornerstone of any system of authority and law which is rooted in religious doctrines. Islam also strives to provide a comprehensive set of guidelines and tools to materialize such an ideal social order to facilitate societal harmony and promote common good which in this context is defined as God’s satisfaction (*rezā Allāh*). This would in turn translate into the redemption and promise of paradise for the believers. The realization of the divine will on earth inevitably has a personal component within it which relates to individual acts of worship and recommended deeds, but most importantly it contains some social aspects which inevitably affect human society in multiple ways. As I will expound below, some religious scholars, especially within Shi‘ism, have gone so far as to define an ideal socio-political order as an indispensable prerequisite to the realisation of such an ethical society. This is a community that is exclusively led by a divinely guided leader who acts as the defender of the faith and an infallible administrator of the impeccable divine law. The justifications provided in support of the necessity for such a government are all fundamentally based on the belief in the inherent flaws in the human reason being prone to deviate and lose the right path as warned in the Quran<sup>212</sup>. As a result of this specific interpretation of the religious dogma, the achievement of an ideal society is exclusively feasible through divine guidance and sovereignty, *Velāyat al-elāhyat*. The final

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<sup>210</sup> The Quran 6:73

<sup>211</sup> The Quran 20:114

<sup>212</sup> The Quran 70:19-20

objective of which would be to extend God's sovereignty on earth by establishing a universal Islamic government in order to achieve absolute justice and righteousness under the guidance of the ultimate commander and sovereign - the only true leader capable of distinguishing what is in humanity's best interests and what socio-political path to follow to attain these universalist values of truthfulness<sup>213</sup>. It is evident that from the outset, the fundamental challenge of this strand of the religious doctrine would be to endorse and legitimize an actual authority and sovereignty who would be the embodiment and the tangible materialization of the divine will adequately sanctioned by the sacred scripture. The Quran explicitly requires total obedience in three sources of spiritual and temporal sovereignty, God, the Prophet and those holding the authority<sup>214</sup>. The divine dominion was treated here above hence the other two legitimate sources of political sovereignty need to be treated more extensively.

## II. Shi'a Political Theology

As mentioned above, the Quran explicitly commands the believers to "obey the Prophet and those in authority among you"<sup>215</sup>. The legitimacy of the political authority of the Prophet is derived from his direct lieutenancy of the divinity entrusted upon a chosen messenger to be the materialization of the deputyship of God's presence amongst humanity. The key element here is that of the divine appointment (*entesāb*) which is established here through direct investiture of the chosen figures through sacred scriptures and proclamations. Hence this super human figure of the Prophet, and - in Shi'ism by extension, the Imams, are the only legitimate embodiments of the entire socio-political divine agenda for mankind. The element of superiority with which these divinely sanctioned figures are equipped is their *esmat* (infallibility) which makes them immune to error and failure in their assigned mission<sup>216</sup>.

Undoubtedly the sole element of infallibility alone would not suffice if the messenger is not equipped with an absolute source of knowledge and wisdom necessary to guide humanity and to overcome the intricacies and challenges of the path to salvation. In

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<sup>213</sup> The Quran 4:58 and 4:135.

<sup>214</sup> The Quran 4:59, this verse of the Quran has been subjected to various interpretations nonetheless it is the main verse repeatedly cited by the proponents of the Islamic government within the Shi'a ideology.

<sup>215</sup> The Quran 4:59.

<sup>216</sup> Dabashi, H. (2006), *Theology of Discontent*, New Jersey, Transaction Publishers, 2005: p.463



Shi'a this fundamental distinctive feature of superiority is an extension of the heavenly knowledge (*elm*) directly bestowed upon the Prophet and subsequently inherited by the Imams. This crucial distinctive feature is unambiguously underlined by the Quran<sup>217</sup>, whereas there is no explicit mention of the Imams in the sacred scripture hence they need to possess certain personal virtues that qualify them to be the true successors of the Prophet, and as said above, the most obvious candidate for this exceptional characteristic would be their super-natural level of *elm* which turns them into undisputed *ālems* (knowledgeable) *par excellence*<sup>218</sup>.

It comes as no surprise that during the Prophet and Imams' lifetimes they had to delegate certain tasks such as the administration of justice to other close associates due to practical necessities. Indeed as the Muslim nation grew and expanded into new territories it became mandatory to have local representatives especially for the collection of religious taxes and enactment of the legal functions<sup>219</sup>. By 941 the Shi'a community was faced with a major doctrinal challenge following the so-called Greater Occultation, that is the concealment of the Imam from public appearance. Hence this deputyship entered a new phase as there was a paramount question of community leadership, in particular as to who should take charge of the Shi'a community's religious and legal affairs. Accordingly the Shi'a ideology had to adjust and accommodate ample interpretations in order to extend the notions of authority to these classes of religious jurists who had no explicit mandate to assume such crucial occupations in the absence of any direct appointment by the Imams<sup>220</sup>. On this long path to the recognition of authority, the Shi'a ideologues had to overcome various obstacles, mainly the aforementioned lack of any direct delegation of authority or unambiguous deputyship, not even in common religious matters. With the exception of the obscure notion of

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<sup>217</sup> Evidently there are some small currents within the Islamic ideological community who refuse to believe in this concept particularly based on the affirmations of the Surah Al-Fath which implied that God will forgive the prophets' past and future faults, nevertheless this so-called "Khareji" school of thought remains a marginal school within the Islamic doctrine and actually negligible in Shi'a ideology.

<sup>218</sup> See Alkulaini, *Kitab Alkafi* Vol. I p.202 for instance in which it is claimed that Imam Reza reportedly affirmed to one of his followers that: "When someone is chosen by God to administer the affairs of men, God expands his breast for him, places the well springs of wisdom in his heart, and inspires him with knowledge, so that he will be able to solve any problem that arises. He will know well the straight path of the truth. Such a one is none other than the Inerrant Imam, who enjoys the aid and support of his Lord and who lies beyond the reach of all error and sin."

<sup>219</sup> Litvak, M. (2002), *Shi'i Scholars in Nineteenth Century Iraq, The Olamā of Najaf and Karbala*. Cambridge University Press. 2002. p.11

<sup>220</sup> The best example of such works is Khomeini, R. (1993) *Velāyat-e Faqih va Jahād-e Akbar* Tehran, Markaze Našre āsāre Emam Khomeini pub.

*ololamr* (those in authority) which, on closer examination, could easily be extended to any authority in charge of the state's political administration. There are indeed very few and generally vague references to the temporal authority within the traditional *hadīth* which directly or indirectly treat this argument as the below one attributed to the Prophet:

When innovation occurs in my nation, a learned authority will expose them through his knowledge. And if he does not do so, then may God's curse be upon him.<sup>221</sup>

Or another *hadīth* attributed to Imam Ja'far Sadiq, the sixth Imam, which reads:

The earth shall not remain without there always being a learned authority from among us, who will distinguish the truth from the falsehood.<sup>222</sup>

A third *hadīth* persistently referred to by Khomeini in his justification and extension of the role of the jurists into the temporal political authority, is the one attributed to the Prophet which postulates: "may God bless my successors", the Prophet is then asked who would these successors be? To which he replied: "those who narrate my *hadīth* and tradition". According to Khomeini - based on some other sources not accepted by most jurists, there has been a further phrase following this reading as: "and those who teach people (my tradition)"<sup>223</sup>.

This idea is at the heart of the notion of *Faqih* (religious jurist) which is central to the narratives that endorse the legitimacy of the Islamic jurists to assume religious and also temporal authorities. Nevertheless after careful examination of the Quran and all the *hadīth* concerning this argument, I was unable to find any explicit endorsement of the role or even the very existence of the *Faqih* position in the first hand prophetic and Imamate sources<sup>224</sup>. Indeed one could hardly find overt treatments of any aspects of temporal authority in the sacred book of Islam and the *sunna*. It is therefore not unexpected that this argument has been at the heart of heated debates impacting the very

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<sup>221</sup> Āmili, *Wasā'il*, 11/510, *Hadīth* nr.1.

<sup>222</sup> Āmili, *Wasā'il*, 11/483, *Hadīth* nr.2.

<sup>223</sup> Khomeini, R. *ibid*

<sup>224</sup> A similar affirmation was encountered in my personal interview with former Iranian President Abolhasan Banisadr which is presented in the Appendix.

foundations of the Shi‘a ideology and in particular those treating the administration of sovereignty in the absence of a divinely appointed authority ever since<sup>225</sup>.

As I will expound below, a careful study of the argumentation put forward by the leaders of the Imamate community in support of the role and authority of the jurists in the absence of any direct divine endorsements reveals that the solution to this significant challenge has been pursued in two different directions. The first path seems to have followed a line of separation of spiritual authority from the temporal one, and the second direction has been aimed at a practice of attributing more prominence to such personal qualities as sound belief, sound character, justice and most importantly *elm* (knowledge) to compensate for the apparently insurmountable absence of a direct designation.

One could identify numerous stages and periods in this regard which all seem to have appeared due to practical realities and necessities of the time. In the long historical phase after the Complete Occultation of 941 and under the “illegitimate” rule of the Abbasid dynasty, such authors as Shayk al-Mufid (d. 1022), Sharif al-Murtadā (d. 1044) and Shayk al-Tusi (995-1067) started to address the argument of the authority and political power of the Faqih during the Occultation period<sup>226</sup>. In particular Mufid’s emphasis in the “reasoned argumentation” (*elm al-kalām*) made a ground-breaking contribution to the other principles of the so-called *Mu‘tazaliyya* school with significant consequences on such sources of jurisprudence and theology as *ejmā* (consensus), *qiyās* (analogy) and *ejtehād* (individual deliberation)<sup>227</sup>. Sharif al-Murtadā went even further by claiming that serving the illegitimate rulers (*ja‘er*) in certain circumstances might be admissible such as under duress or when the position enables the occupant to enact a justice<sup>228</sup>. Tusi’s arguments were basically along the same lines emphasizing the fact that the legitimacy of rule belongs to the Imam and the service of any illegitimate ruler to become acceptable only when this ruler recognizes the authority of Imam<sup>229</sup>. One could clearly perceive an apparent tension and an incessant strive in the works of these authors to extend at least some part of the political authority (*Velāyat*) of the Imams to

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<sup>225</sup> See for instance the article by Akhund Khorāsāni on temporal authority found online

<sup>226</sup> Sachedina, A. A. pp.70, 71, 233

<sup>227</sup> Halm, H. (1991), *Shi‘ism*, New York, Columbia University Press, p.49

<sup>228</sup> Ibid 54

<sup>229</sup> Ibid

the *Faqih* who were *de facto* controlling the daily affairs of the Shi‘a community. Nevertheless one could readily identify a marked limitation on the scope and extent of this authority which for obvious reasons could never assume the form of a complete deputyship (*niyābat*) of a formally absent Imam, not least because the Occultation could not be interpreted as a complete absence. The apparent limitations and even uncertainties imposed upon the jurisprudence of the *Faqih* in such matters as offensive *jahād* (holy war), capital punishment and Friday prayer (*jom‘a*) are all examples of such restraint in the attribution of the full *niyābat* to these new embodiments of the *ololamr*.<sup>230</sup>

Furthermore two main schools of thought within the Islamic doctrine could be identified to have had a fundamental impact on the political discourse of Islam, these were the Mu‘tazilite and the Ash‘rite schools of theology. The former is based on the line of argumentation that human reason is capable of determining the good from the bad based on an actual context of the phenomena<sup>231</sup>. In other words, the value of an act is directly tied to its actual observable benefit or harm. Whereas the second school, the Ash‘rite, retains that the correct ruling on the value of an act could only be derived from the revealed law<sup>232</sup>. Consequently the Mu‘tazilite school of theology tended to be more receptive to such notions as *soltān ādel* (just ruler) and the possibility of establishing a temporal rule based on the necessities of the rationalistic objectivism arising from the day to day running of Muslim affairs. More relevant to my study of the Shi‘a political theology is the distinction between the Osuli and Akhbāri schools which mainly centres around the sources of law, the means of attaining the knowledge and authority of the Olamā as heirs to the Imams<sup>233</sup> with the fundamental difference in the treatment of the notion of *ejtehād*<sup>234</sup>.

By the establishment of the Buyid dynasty (945-1055) these Shi‘a scholars were faced with the necessity of extending the exclusive legitimacy of the Prophet and Imams

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<sup>230</sup> Sachedina pp.173-179

<sup>231</sup> Opwis, F. (2007) in Amanat, A. and Griffel, F. (Eds.) *Shari‘a*. Stanford, Standofrd University Press. p.64.

<sup>232</sup> Ibid

<sup>233</sup> Litvak, M. p.14

<sup>234</sup> See for instance Amanat, A. and Griffel, F. p.125

to establish a temporal rule to include the Shi‘a sultans of the Buyid dynasty: at this time the Shi‘a community had its own temporal power and was not interpreting matters as a bystander minority force. Unsurprisingly this attempt would have proved very challenging. As mentioned above the explicit *nasb* (appointment) of the Imams and their divine designation was the only acceptable source of legitimacy to assume both religious and temporal authorities of the community, hence the obvious solution seems to have been to separate these two realms to delegate the temporal authority of the Imams to the *de facto* rulers of the Islamic community hence freeing the Imamate doctrine from the necessity of having an actual political investiture<sup>235</sup>. Despite these attempts to acknowledge the existing Shi‘a political system even in the absence of an explicit divine mandate, the main scholars of the Baghdad school - such as the previously mentioned Mufid, continued to consider these temporal rulers as the usurpers of the political authority which rightfully belongs to the Imams. The Imams were considered to be connected to a prophetic source of knowledge and believed to inherit the authority through the proper channels of *nass* (*designation*)<sup>236</sup>. Therefore since man is considered fallible, the true sovereignty would only materialize through the return of the Hidden Imam Mahdi whenever such a time as God deems appropriate and all ruling Khalifs would be considered unjust, sinful and tyrannical<sup>237</sup>.

In the centuries that followed, particularly between the twelfth and fourteenth centuries the works of the Baghdad school were expanded by such scholars as Muhaqqiq al-Hilli (1205-1277), Ibn Idris (d. 1202) and most importantly Allāmah Al-Hilli (1250-1325) who firmly grounded the foundation of the Shi‘a jurisprudence in such notions as *ejtehād* and *taqlid* (emulation). Allāmah Al-Hilli went further by claiming that although “no *mojtahed* is infallible, every *mojtahed* is right” based on the principles of *ejtehād*<sup>238</sup>.

Another fundamental concept put forward by these scholars was *taqlid*<sup>239</sup>, namely the emulation by the followers. This is a very interesting concept as far as my area of

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<sup>235</sup> See for instance Arjomand, S. (ed.) (1988) *Authority and Political Culture in Shi‘ism* ” New York, SUNY Pub.

<sup>236</sup> Halm, H. p.50

<sup>237</sup> Ibid p.53

<sup>238</sup> Ibid p.67

<sup>239</sup> Ibid

research is concerned as *taqlid* in practice entails the total obedience and submission to the source of emulation (*marja'*). Although it is evident that the believers voluntarily submit to their chosen *marja'*, nevertheless this total obedience in the *quasi* total absence or obligation of reasoning would pose a significant challenge to any secular system claiming any degree of popular sovereignty. Evidently these were the first attempts towards the extension of the Imam's prerogatives to the *mojtaheds* as these were deemed to be the least prone to error and corruption as compared to secular rulers. Heinz Halm goes as far as to claim that the Allāmah Al-Hilli's concept of *taqlid* and *ejtehād* is the main foundation of today's rule by the ayatollah in the Islamic Republic of Iran<sup>240</sup>. Indeed a closer analysis of these concepts proves their fundamental impact on the later development of such notions as *Velāyat-e Faqih* which were aimed at extending the various principles of sovereignty to the class of clergy within the later Shi'a school of theology, as I will detail below.

Undoubtedly the fundamental change in the Shi'a jurisprudence was born by the onset of the first fully-fledged Shi'a dynasty of Iran in 1501 by the Safavids. This was the first time in the Shi'a world that the actual political ruler of the time also claimed the highest religious authority. Here the jurists such as al-Muhaqqiq al-Karāki (d. 1530 or 1534), and al-Shahid al-Thāni (d. 1558) under the patronage of the Safavid Shāhs, significantly extended the works of the previous scholars by allocating numerous rights and prerogatives of the only legitimate ruler, i.e. the Imam, to the qualified *mojtaheds*. This was accomplished mainly thanks to the previously elaborated notions of *ejtehād*, which at the first part of the Safavid dynasty happened to coincide with the office of the sultan himself<sup>241</sup>. These efforts were primarily aimed at devolving legitimacy to the temporal rulers of the time to manage the daily affairs of the Islamic community. On the other hand the jurists by officially assuming the role of the *ololamr*, started to assume the executive power of interpreting the Shari'a and enforcing the religious punishments under the Quranic commandment of "Commanding the good and forbidding the evil"<sup>242</sup>.

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<sup>240</sup> Ibid

<sup>241</sup> Ibid pp.83, 84

<sup>242</sup> The Quran 9:112

Nevertheless it would appear that even within the Safavid era one could identify three main periods concerning the political relations of the *Olamā* with the temporal rulers. The initial rulers of the Safavid dynasty felt a strong necessity to involve the religious authorities in their daily management of state affairs, to the point where they actively invited the prominent religious figures from the Arabic speaking regions to their capital to help promote the newly founded state religion and faith, the previously mentioned Sheikh Al-Karāki, a theologian from Lebanon, was amongst these state sponsored scholars<sup>243</sup>. At the second stage, such as during the Shah Abbās rule, the monarch, which was by then enjoying a significant spiritual power and authority, did not feel the previous urge to involve the religious leaders in the political affairs and even actively tried to curb their influence and power<sup>244</sup>. And finally towards the end of the Safavid era when the central government was not enjoying the same power and moral credentials as before, the reliance on the religious authorities made its return into the statecraft and politics to the point that the rulers actually depended on the *Olamā* in the daily running of their affairs<sup>245</sup>. This interdependence between the moral legitimacy of the central ruling system and its relation to the extent of involvement of the religious authorities in political affairs is a fundamental point which, as I will expound below, was accentuated during the Qājār period.

### **III. The Qājār Period and Political Authority of the Faqihs**

The Qājār period (1785-1925) seems to have been a very critical chapter in Iran's history as far as the interactions between the religious and secular powers are concerned. This era also witnessed radical changes at a global level with the onset of the French revolution in which all feudal, aristocratic and religious privileges of the ruling tyrant and the religious institutions were severely undermined<sup>246</sup>. In particular the ideologues of the French Revolution such as Leon Gambetta (1838-1882), whose ideology served as an inspirational model throughout the world for the centuries that followed, clearly identified the ecclesiastic power as the main retrograde source of social oppression

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<sup>243</sup> Halm, H. pp.79-85

<sup>244</sup> Mirahmadi, M. As cited in Zibākalām, S. (1998) *Sonnat va Modernite*, Tehran, Rowzane Pub. p.101.

<sup>245</sup> Ibid

<sup>246</sup> See for instance Nicolet, C. *ibid* pp.59-81.

particularly through their close links with the tyrannical monarchy that the revolution vehemently denounced<sup>247</sup>. The monarchic and ecclesiastic powers both were deemed as authorities whose legitimacy did not depend on the will of the people and claimed supernatural sources of legitimacy, which were at odds with the foundations of the sovereignty and liberty that the new system was promoting<sup>248</sup>. At a regional level one can see the appearance of the regional powers of Russia and the presence of the British forces which significantly impacted the geo-political layout of the region. Notwithstanding, whilst the world around seemed to have embarked on colossal waves of radical change and modernist overhaul, one fails to identify significant trends towards breaking away from the prevailing forces of tradition in Iran<sup>249</sup>. The *ancien régime* of Qājārs in Iran was still strongly holding onto the reins of power although challenged by numerous external threats such as humiliating defeats in the wars with imperial Russia and the British occupation of southern Iran, coupled with numerous internal challenges such as the rise of Bābism. All these ongoing circumstances had a profound impact on the socio-political conscience of the nation<sup>250</sup>. Nonetheless while the Qājār rule in Iran is synonymous with corruption and cultural and social impasse, one could still notice important radical changes in Iranian society due to the ever increasing contact with the West and frequent travels of the Qājār elites along with their close observation of western socio-political achievements<sup>251</sup>. In particular during the Nasir al-Din Shāh period (1848-1896), one could observe an astonishing move towards modernisation of the state's bureaucratic infrastructure and various other public and social services, which Amānat has identified as the beginning of modern monarchic absolutism in Iran<sup>252</sup>. Nevertheless with the exception of the initial decade of Aqā Mohammad Khān's rule (1742–1797) and later the Nāser al-Din Shāh period, it would not be incorrect to define the greatest part of the Qājār period as that characterised by an extremely fragile and impotent central government in constant need of reaffirming its own legitimacy, as well as being under a perpetual external threat to their sovereignty and territorial integrity.

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<sup>247</sup> See the famous quote by Leon Gambetta: “Le cléricalisme, voilà l'ennemi” as elaborated by Nicolet, C. *ibid* pp.59-81.

<sup>248</sup> Nicolet, *Ibid*

<sup>249</sup> Kasravi, A. (1940). *Tarikh-e Mašruteh-ye Iran*. Negāh Publications, Tehran, (1940) p.15

<sup>250</sup> See Zibākalām, S. (1998) Ch.3

<sup>251</sup> See for instance Maraši, A. (2008), *Nationalizing Iran*, University of Washington Press. 2008.

<sup>252</sup> Amanat, A. (1997) *Pivot of the Universe: Nasir al-Din Šah Qājār and the Iranian Monarchy 1831-1896*. University of California Press 1997. p.xiv.



Hence the question of legitimacy of rule seems to have been more accentuated as compared to the Safavid era for instance, in which some of the rulers were actually spiritual leaders of their tribes whose rule was constantly referred to as “the shadow of God on earth” (*zel Allāh*)<sup>253</sup>. Consequently one notices a very close collaboration and reliance on the religious authority by the actual temporal rulers, at least at the initial stages of the Qājār dynasty, to the extent that authors such as Zibākalām regard the religious authority as one of the main pillars of Qājār’s political power in Iran<sup>254</sup>.

From a comparative viewpoint, one could easily identify parallel experiences throughout the world history of socio-political developments which demonstrate a similar type of relationship. Indeed the European history of the political progress has also registered similar interactions between the forces of secular sovereignty, including those based on a popular mandate, and the religious forces of traditionalism. As it was argued previously, the very emergence of the modern republican doctrine of state could be regarded as a result of a direct refutation of these metaphysical sources of legitimacy that fall beyond and above the human reason.

In any case in the presence of an organized sacred institution, one could often notice a significant growth and enhancement in the religious authority when the central governments have been weak or divided<sup>255</sup>. Iranian experience also follows this general tendency and various elements of disunity within the country together with some international forces of oppression, which helped to keep the central government weak and incapable of upholding social justice; hence the only alternative sources of political sovereignty to this inefficient state administration apparatus were sought in the existing network of social capital around the local loyalties and authorities<sup>256</sup>.

Here one could clearly witness the spectacular prevalence of the *Osuli* School of Shi‘ism to devolve all prerogatives of the Hidden Imam to the *faqih* of the time with

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<sup>253</sup> See Zibākalām, S. (1998) Ch.3

<sup>254</sup> Ibid p.113.

<sup>255</sup> See for instance: Machiavelli, N. (2000) *Discorsi* or Nicolet”, C. 1982, “l’idée Republicaine en France” 1789-1924, Gallimard pub. Ch.1

<sup>256</sup> Sachedina p.235

considerable consequences for the Shi‘a political theology<sup>257</sup>. This steady trend of political engagement by the Shi‘a jurists was also a result of their increasing wealth and prestige due to being the sole agents for the collection of religious taxes and endowments, which gave the class of clergy an unprecedented social status and significant financial resources<sup>258</sup>. This social standing and consequent involvement in worldly affairs including the socio-political issues of the community, is clearly reflected in the discourse perused by scholars such as Sheikh Ja‘far al-Kabir Kashif al-Ghita (d.1813), Sheikh Muhammad Hassan al-Najafi (d. 1849), Vahid Behbahani (d. 1803) and Sheikh Murtaza al-Ansari (d. 1864). These scholars embarked on a relentless endeavour to lay the foundations of the new Shi‘a doctrine of government by gradually granting the complete deputyship (*vali al-amr*) of the Hidden Imam to the *faqih*s of the time. Najafi’s assumption of the position of *marja‘ aqlid* - i.e. the most learned among the *mojtaheds* whose religious rulings had to be followed by all Shi‘a followers, gave the *mojtahed*’s position an unprecedented status within the Imamate school of theology<sup>259</sup>. This was accompanied by proposing a set of criteria to qualify for this position based on personal qualities including piety, knowledge, sound character and so on. The inclusion of other practices of public approval, namely *taqlid* and other manifestations of public approval such as the payment of religious taxes and endowments, further reinforced the social position of the specific social class of the *Olamā*<sup>260</sup>. Ansari also went on to acquire significant social recognition both in religious and popular circles to the point where he was declared as the “seal of the *mojtaheds*”<sup>261</sup>. His open-ended arguments on *Velāyat* and in particular the institutionalization of *ejtehād*, set the cornerstones and practical tools for ensuing expansions by his students and the subsequent generations<sup>262</sup>. In the upcoming chapters I will discuss the fundamental impacts such notions had on the republican principles of sovereignty and their implications on the concepts of domination and dependence.

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<sup>257</sup> Hoseinzādeh, M. (2010) *Esām-e Siāsi dar Iran* Qom, Mofid University Press p.53

<sup>258</sup> Halm, H. pp.98-101

<sup>259</sup> Sachedina, A. A. pp.21-23

<sup>260</sup> Momen, M. (1985), *An Introduction to Shi‘i Islam*, New Haven CT, Yale University Press 1985 p.140

<sup>261</sup> Sachedina, p.22

<sup>262</sup> Ibid pp.22-24

One interesting observation made by Halm is that the implicit endorsement of the temporal rule by the Olamā was only viable as long as the Shāh acted in accordance with Shari‘a law or at least appeared to be pious<sup>263</sup>. Hence the claims of an “implicit concordat” that some authors have advanced, does not seem to be entirely accurate at least from an epistemological point of view<sup>264</sup>. Consequently a further development of the principles of the judiciary prerogatives by Ansāri and his followers into different categories of legal administration brought about even more social power for the *mojtaheds* and extended their jurisdiction to any matter where there was even a remote possibility of being in line with the Hidden Imam’s authority<sup>265</sup>. Thus during this time the religious authority was enjoying a significant power and influence, which could easily overspill into political activism in an era characterised by the previously outlined elements of the weakness of the central government<sup>266</sup>. It is evident that the field of legal administration (*qazā*) had the potential to become the most fundamental drive for the growing political involvement of the religious authorities by vesting them as the “protectors of the people against the unjust conduct of those in power”<sup>267</sup>. Therefore, as one sees throughout the centuries that followed this further development elevated the position of the *mojtaheds* to a higher level of leadership (*riyāsat*) which turned them into natural delegates to manage daily affairs of the *avām* (laity).

One can not overlook the extensive employment of the principles of *ejtehād* within the relevant literature aimed at extending the authority of the jurists to assume all Imam’s prerogatives with significant potential to extend to the political authority. This resulted in a momentous redefinition of various principles of *Velāyat* to actually include temporal political authority<sup>268</sup>. Indeed here one can see a significant move from the fundamental notion of the *Velāyat al-qazā* (legal jurisdiction) into the *Velāya al-‘āmah* (general deputyship) of Imam in all matters<sup>269</sup>. From there it was easy to imagine the realisation of the full potential of powerful notions of *ejtehād*, *taqlid* and *niyābat*.

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<sup>263</sup> Halm, H. p.105

<sup>264</sup> For a discussion of this notion see: Arjomand, S. (1987) *The Shadow of God and the Hidden Imam*, Chicago, University of Chicago Press, p.230-231

<sup>265</sup> Momen, M. p.187

<sup>266</sup> Arjomand, S. (1988) p.14

<sup>267</sup> Sachedina, A. A. p.235

<sup>268</sup> Ibid p.221

<sup>269</sup> Ibid

Indeed the failure of the secular rulers to administer justice provided the theoretical justification for the now all-powerful office of *marj'a taqlid* to argue for assumption of the actual political power in the vest of the *sultan al-ādel* (just ruler) to replace the corrupt secular rulers<sup>270</sup>. As Amānat reiterates the centralisation of power achieved by the *mojtahedin* in this period was not just as a result of the personal qualifications or *allāmiyyat*, it was more a notion of *riyāsat* endorsed by public acclamation and through the payment of religious taxes<sup>271</sup>. Furthermore this in turn helped to intensify and strengthen the authority of the Olamā rooted in a substantial amount of rudimentary popular mandate. Hence one should not underestimate the role of the *moqalled* (follower/imitator) in legitimization of both *dini* (religious) and consequently *donyavi* (temporal) authority of the Olamā. In any case one would struggle to identify any clear procedure of consulting popular consent and any active and efficient supervision organs by the same *moqalled* aimed at providing any transparent means of monitoring the actual process of the administration of power by the Olamā.

Thus to summarize various political implications of this traditionalist strand of the Shi'a political theology, I could highlight numerous salient convictions that the proponents of this fundamentally *Osuli* school of theology endorsed. The most important aspect of this doctrine which eventually prevailed in the Islamic Revolution of 1979, was the idea that Islam already adequately provided all the necessary laws and regulations and it is the role and prerogative of the *mojtaheds* to extract and interpret already existing laws of Shari'a<sup>272</sup>. Unsurprisingly this had fundamental implications not only on the very act of legislation but also on the authority and role of the people in being the source of such constitutional legitimacy. Furthermore as I will discuss below, the principles of liberty and equality proposed by the proponents of the constitutionalism in Iran were regarded, by these scholars, to go against the explicit rulings of the Shari'a in which not all subjects of the Islamic state are considered equal, based on religious, gender and some other social considerations<sup>273</sup>.

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<sup>270</sup> Sachedina, A. A. pp.235, 236

<sup>271</sup> See Amanat, A. (1988) In Between the Madrasa and the Marketplace: the Designation of Clerical Leadership in Modern Shi'ism in Arjomand, S. (1988)

<sup>272</sup> Hoseinzādeh, M. ibid p.80

<sup>273</sup> Ibid p.81

This specific understanding of the role and authority of the *mujtaheds* - which was perceived to include all purviews of the Hidden Imam, considered all political arrangements of the hitherto Islamic community as lacking complete legitimacy and as the result of mere *zarurat* (necessity). This doctrine eventually led to an actual call for the establishment of a legitimate political order headed by the religious authorities as the ones envisaged by the influential group of Fadā‘iān-e Eslām which had fundamental impacts on the political doctrines of Khomeini<sup>274</sup>.

Moreover this political authority of Olamā in the *Fiqāhati Islam* which was deemed to be both collective and impersonal<sup>275</sup> underwent further extension as the Shi‘a leaders were subjected to a new wave of intellectual assault arriving from external sources of the political culture. This not only included the constitutionalism but also other liberal ideologies and most importantly leftist and nationalist philosophies with significant socio-political implications on all aspects of the Shi‘a political theology. This cultural onslaught of both external ideologies and a revival of the ancient Iranian identity and the response of the *mujtahedin* to it - with their implications on the notions of the political sovereignty, will be the subject of my next analysis.

#### **IV. Constitutional Revolution Modernism**

To claim that one of the major social upheavals in Iran towards the end of the 19<sup>th</sup> century was built on two main grievances is not misleading. The first cause was directly connected with the mercantile and economic issues and the second element could be traced to the social calls for reforms in the educational and judiciary systems<sup>276</sup>. An additional factor could be identified in the close interactions between the external powers and the self-consciousness generated due to greater exchanges and sometimes hostile interventions of foreign powers within Iran. Indeed the so-called “print capitalism” which started centuries before in Europe was creating existential transformations across Europe itself with the results of its technological achievements through Enlightenment and industrial revolutions felt across the peripheries of these core

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<sup>274</sup> Ibid pp.168, 177

<sup>275</sup> Arjomand, S. (1988) p.2

<sup>276</sup> Various authors such as Kasravi, Arjomand and Enāyat have provided detailed analysis of all these roots of the Constitutional Revolution.

empires<sup>277</sup>. Although Iran was relatively distant from the epicentre of these socio-cultural upheavals, it could not remain indifferent even to the tiniest waves of these cultural onslaughts which managed to penetrate into its conservative society.

Certain intellectuals including Abd al-Rahim Talebof (1834-1911), Mirza Fath Ali Ākhondzādeh (1812-1878), Yusuf Khān Mostashār Aldowleh (1823-1895), Mirzā Hosein Khān Sepahsālār (1828-1881) and Mirza Malkum Khān (1833-1908) went out of their way to adopt and spread these new ideas coming from the west. They regarded them as the main engines of change and the ultimate remedy for the disastrous situation that the Iranian society found itself in<sup>278</sup>. These pioneers made desperate efforts to either fundamentally reject the religious ideology as the main cause of all Iranian malaise as was the case with Akhondzādeh, or try to reconcile the religious doctrine with western notions and even to claim that most western ideas of freedom and democracy were actually taken from the Islamic concepts accredited by the Quran and *sunnat*, as was the case with Mostashār Aldowleh<sup>279</sup>. After years of serving as an Iranian diplomat in Russia and Europe, Mostashār Aldowleh made his first attempt to formulate a comprehensive comparison between the western, and in particular, the French codes of law with the Iranian *Shar‘i* system of laws and identified the major following differences:

The French “code” is made through a process of consultation and agreement between the ruling system and the people and not based on one individual’s will.

The French code is comprehensive of all practical laws which are provided in a simple language understandable even for common French citizens, unlike the religious law which prove hard to decipher even for the religious authorities.

The French law is about the affairs of this world and applies to all French citizens regardless of their religions or beliefs<sup>280</sup>.

There are numerous interesting arguments put forward by this influential article. Whilst one could readily identify a clear attempt at separating the spiritual and secular aspects of an ideal constitution, an explicit reference to the egalitarian concepts advanced as the basis of a universal legal system applicable to all citizens regardless of their religious

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<sup>277</sup> See for instance Maraši, A. (2008), *Nationalizing Iran*, Seattle, University of Washington Press. Ch.1

<sup>278</sup> Moaddel, M. (2005), *Islamic Modernism, Nationalism and Fundamentalism*, Chicago, University of Chicago Press. p.178

<sup>279</sup> See for instance Mostashār Aldowleh, Y. Yek Kalameh as cited in Ha‘eri, A. (2002) *Tašayyo‘ va Mašrutiyat dar Iran* Tehran: Sepehr Pub Ch 1.

<sup>280</sup> Ibid 33

and social status, could also be identified. Furthermore one can also appreciate the acknowledgment of the simplicity and transparency of a legal system which is easily understandable without ambiguity and space for different interpretations, such as those required by the religious dogma making up a great portion of the prerogatives of the *mojtaheds*. This is yet another major characteristic of a constitution which is made by and could apply to, every single individual in all their mundane affairs and social interactions in a clear and unambiguous manner. It is also intriguing to see how he goes into detail in order to praise the superiority of the French Code, even though it is not obvious what is the exact counterpart of comparison he is referring to? As understood by the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, Iran did not have any officially formulated body of legal legislature, besides the traditional religious sources. Even as far as the existing corpus of the legal structure was concerned, these were managed by the *mojtahedin* with a great amount of autonomy and largely based on their individual interpretations of an open-ended collection of traditions in the Shari‘a jurisprudence<sup>281</sup>. Hence the very basic question that one might have after reading Mostashār Aldowleh’s articles would concern the appropriateness of using a comparative method in his analysis, both qualitatively, regarding the nature of comparison, and also quantitatively concerning the amount of local “codes” in the Iranian legal system comparable to the French constitutional articles.

Similar reflections are proffered by the previously mentioned Malkum Khan, again as a result of his observations of the French legal system. He engenders an interesting linguistic effort to distinguish the fields of law (*qānun*) with the religious based legal concepts (*urf*). He proceeds to declare that the principal function of “law” would be to provide for public welfare and citizen’s equality<sup>282</sup>.

A closer look at Mostashār Aldowleh and Malkum Khān’s statements reveals some more interesting aspects of their pioneering analysis. Whilst their works were undoubtedly amongst the first real attempts to study and unravel the secrets of the western constitutional systems and hence should be evaluated as such, one could easily identify some apparent shortcomings which cast a shadow of doubt on the true

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<sup>281</sup> Bayat, M. (1991), *Iran’s First Revolution*, New York, Oxford University Press, p.21

<sup>282</sup> Abrahamian, A. (1982) *Iran Between Two Revolutions*, N.J. Princeton University Press, pp. 65-66

understanding of the western system of government by the forerunners of the Iranian constitutional revolution. This is an important theoretical deficiency which as I will demonstrate further below continues to haunt the political ideologues of Iran even in the modern era. Although in these studies the priority seems to have been given to the study of a body of legislation of a western country, one fails to identify a clear distinction made between a “code” and the real underpinning factors that actually do generate such a code. In other words, it is obvious that this legal system has not been created in a vacuum and is the result of many other socio-political factors, the principles of the sovereignty of people and parliamentarianism being one of them. Most importantly there does not seem to be any clear distinction between the connotations of these terms denoting the body of laws and those referring to the actual constitutional arrangements of a country. Conversely even in the analysis of this body of laws, it would prove extremely difficult to identify adequate attention being paid to the various forces involved not only in a legislation process but also in the supervision and most fundamentally, the execution of these codes, what one might otherwise label as the separation and independence of the political powers. Even when one examines the reference to the egalitarian treatments of the citizens in the eyes of the western legal system, a more elaborate treatment of the subject is expected which could be extended not only to the followers of the different religious faiths, but also to the minority rights and gender equality which were, at least partially, covered by the French code of the time. And finally the fundamental discussion on civil systems including the legal and educational ones, political parties and freedom of expression are all left out. These obviously all form the basic structure of the French code - even from the time of France’s first republic which was firmly grounded in the philosophical doctrines of the ideological fathers of the French Revolution including Montesquieu, Rousseau, Bodin, Voltaire, Mably and Condorcet, to name but a few<sup>283</sup>.

It is reasonable to argue that this significant shortcoming in the ideas put forward by the Iranian reformists might well be due to the authors’ extreme caution and meticulous endeavours to demonstrate the compatibility of the western constitution with the Shari‘a to avoid causing too much resistance or even a direct confrontation. Coincidentally one

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<sup>283</sup> For a comprehensive treatment of the ideologies underlying the French Revolution see Nicolet, C. *ibid* pp.59-81.



could see similar shortcomings in the works of the other prominent authors of the time who likewise tried to demonstrate the compatibility of the western constitutionalism with the religious doctrine, who all seem to be failing to advance a coherent argument based on a consistent body of evidence and logic.

One could safely exclude Ākhondzādeh from this category who seems to have proposed a more coherent analysis of western political thought and strived to provide the roots of its radical difference with the Islamic political thought. Unlike most others he never made ostensive efforts to prove the compatibility of the western legal systems with Shari‘a law and openly criticized Islam as the main reason of the Iranian backwardness due to its existential incompatibility with the occidental legal systems and some fundamental aspects of the citizens basic rights<sup>284</sup>. Ākhondzādeh himself underlined the influence of some western intellectuals such as France’s Ernest Renan in his works which were a combination of secular anthropological notions of the ethnicities and most importantly his strong criticism of the religious ideology with his famous declaration that Islam is “the heaviest chain that humanity has ever borne”<sup>285</sup>. In his major book dealing with this argument called *Maktubāt*, Ākhondzādeh directly points the finger of blame at the religious doctrine for being the source of various social injustices such as the treatment of women, especially shown in forced marriages. The radical solution he offers is the total eradication of all aspects of Islamic laws and culture. He further extends the argument by proposing substituting the Arabic writing system used in Iran with either the Latin or Cyrillic script as a way of purifying the Iranian social conscience, from what he calls, “Arabic customs”, a philosophy which was most notably adopted by the Kemalist ideology of a secularist Turkish political establishment<sup>286</sup>.

Furthermore some acute analysis can be found of certain characteristics of the western political system by other intellectuals such as Mirzā Abdul Rahim Tālbof (1834-1911) who provided a detailed observation on the concept of freedom which demonstrates his impressive power of observation and evaluation. In his seminal work

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<sup>284</sup> Bayat, M. pp.80-81, 145

<sup>285</sup> Ibid p.82

<sup>286</sup> See Ākhondzadeh, F. *Maktubāt-e Kamāl Al-Dowleh*. pp.120-161.

called *Masāel Al-Hayāt*, he describes six types of freedom in a western society<sup>287</sup>. The first type is what he calls “freedom of existence” meaning everyone is free to do whatever they wish as long as their freedom does not violate another individual’s freedom. This is reminiscent of the famous quote which also underpins the main theme of John Stuart Mill's *On Liberty* which reads: “Your right to swing your arms, ends just where the other man's nose begins”<sup>288</sup>. Other types of freedom in Tālbof’s analysis include: freedom of expression, belief, assembly, choice of profession, personal pursuit and press<sup>289</sup>.

Despite all this detailed analysis and impressive interpretation of some of the western political ideology’s intellectual products, as I expounded before, few seem to have provided a comprehensive study of the very foundation of the western political doctrine. They seem to have mainly dedicated their analysis to the eventual fruits and “aftermath” of these systems. Whereas as I briefly mentioned before there are momentous scholastic, Renaissance and Enlightenment intellectual heritages in the field of the political philosophy underpinning the modern western constitutional systems which need to be studied in order to provide a full appreciation of the nature of the western systems of the political authority. These include constitutional, juridical and individual rights which I briefly referred to in Chapter 1 and will analyse in detail in the forthcoming chapters.

Other prominent intellectuals of the time including Hassan Taqizādeh (1878-1970) and Mirzā Hossein Khān Sepahsālār (1826-1881) largely fall into either of the above two intellectual camps. On the one hand those seeking to adapt a new modernist discourse of constitutionalism to Islam by trying to provide examples from the Quran and *sunnat* to prove a similarity or to attempt to demonstrate that these were taken from Islamic cultural heritage. On the other hand there is indeed a modernist group who acknowledged a radical incompatibility of the Shi‘a doctrine with the western notions of democracy, parliamentarianism and individual rights and either demand a total separation of the *dini* from *donyavi* affairs, such as Tālbof, or a total elimination of the religious culture from Iranian society, the solution advocated by Ākhondzādeh.

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<sup>287</sup> Tālbof, A. *Masāel Al-Hayāt* pp.184-189.

<sup>288</sup> See Mill, J. S. (1991) *On Liberty*, Oxford, Oxford University Press

<sup>289</sup> *Ibid*, Tālbof

Unsurprisingly these new waves of violent intellectual assaults inevitably challenged the old social orders based on local and religious loyalties together with the traditional economic arrangements which formed the cornerstone of those entities. It is evident that this trend directly impacted the interests and the influence of one specific social class, namely the Olamā. This encounter can be observed in many other so-called “peripheral” societies exposed to western economic and consequently socio-political hegemonic influences. Reactions to these cultural onslaughts in the various peripheries of these new socio-economic power centres were very different from one country to the next. Moaddel’s comparative study in this area is very instructive<sup>290</sup>. In Turkey under a similar threat it was deemed appropriate to devolve a part of the authority to some type of ministers who shared the burden of decisions and attempted to launch some processes of reform. In India it was deemed more appropriate to enact the imposed British political and economic agenda. Whereas in Egypt Muhammad Ali (1769-1840) tried to persuade the Olamā to share the process of reform and modernisation, an attempt that was later tried as well by the Pahlavi dynasty. However, the reaction of the Qājār monarchy did not embrace any of these trends wholeheartedly hence possibly explaining the reason for all the impasse and stalemate shown in every direction<sup>291</sup>.

## **V. Theologians’ Response to Constitutionalism**

It should be underlined that the Olamā’s response to these all-encompassing waves of modernism was not a unanimous rejection. As I will argue below there were indeed significant divergences in the understanding of the role of the Shari‘a in the political sovereignty of the state. In some cases without an active support of some prominent *mojtaheds* of the era, one might not have been able to even think of such a radical upheaval as the Tobacco Protest (1891-1892) and most importantly the Iranian Constitutional Revolution<sup>292</sup>. Nevertheless as Lahiji amongst others has shown, Olamā’s initial support for the constitutional revolution mainly arose from their partial understanding of the real implications of such transformations as none of them seemed

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<sup>290</sup> Moaddel, M. *ibid*

<sup>291</sup> Moaddel, M. p.174

<sup>292</sup> Katouzian, H. (2003) , p.27

to have any profound comprehension of the true message of constitutionalism, the rule of law and a parliamentary system of government<sup>293</sup>.

This becomes clearer upon closer examination of the statements and declarations of the religious leaders released during the Constitutional Revolution. Furthermore the few supporters of the various new movements for change seem to have been dragged into political action due to the great popularity for such ideals and the fear of losing their own popular support and prestige<sup>294</sup>. In fact some authors believe that it was indeed this contest for popularity and the urge to attract the much desired support of the laity that shaped the political orientation of the Olamā<sup>295</sup>. In spite of this some prominent members of the Olamā indeed recognised the existential threats of various aspects of western modernism and tried to contrast its diversified means and modes of propagation by issuing religious edicts. This happened against the use of the rail road, for instance, or the outright condemnation of other social developments and economical advancements which they identified as the vehicles for the spread of western modernism<sup>296</sup>.

As there is a significant body of research and study dedicated to the role of the religious authorities in the Iranian Constitutional Revolution; I could quite safely avoid providing a detailed analysis of this subject here. Nonetheless it would be instructive to briefly consider the actual understanding of the constitutional fundamentals by the religious leaders, as this would adequately demonstrate their exact position *vis-à-vis* such new concepts of parliamentarianism, popular sovereignty and the rule of law, all fundamental to the republican doctrine of state subject to this study. Two main representatives of the principal schools of the political theology within the religious camp could be identified with Sheikh Mohammad Hosein Nā‘ini (1859-1937) as a pro-constitutionalism figure and Sheikh Fazlollāh Nuri (1842-1909) as the religious mentor of the opposition group to such ideas. The point on which most authors agree is that the majority of religious authorities, at least initially, saw constitutionalism as the least

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<sup>293</sup> Lahiji, A.K. in Arjomand, S. (1988) Ch.6

<sup>294</sup> Ibid.

<sup>295</sup> See Amanat, A. in Arjomand, S. (1988) p. 122

<sup>296</sup> See for instance Algar, H. (1969) *Religion and State in Iran, 1785-1906: The Role of the Olamā in the Qājār Period* Berkeley and Los Angeles: University of California Press pp.268 & 277.

harmful of two possible systems of government in Iran, the other being the endemic tyranny embodied in an absolutist monarchy where the will of one individual was above any sacred or secular laws and collective concerns<sup>297</sup>. Nā‘ini saw the possibility of power sharing as a way of reducing the corruption and oppression on the people in a period when the actual materialization of the rule of the infallible Imam was not possible<sup>298</sup>. Therefore the underlying perception one gets from his statements is that one is still facing a crisis of legitimacy, as any government not headed by a divinely appointed authority would be considered a usurper of the divine right of sovereignty regardless<sup>299</sup>. Thus the question here has shifted towards how to address the necessities of the time and provide the best “possible” solution to “protect the core of Islam” in an era where the Occultation of the last Imam made the realization of the divine rule on earth materially impossible<sup>300</sup>.

Nā‘ini’s crucial contribution to this literature was that - unlike Mostashār Aldowleh, he belonged to the class of clergy. Therefore his acute analysis could have a much deeper impact on the ongoing argument of the compatibility of the religious doctrine with the temporal contractual proposals of the constitutional system in a society proved to be more responsive to, and under extensive influence of, the religious authorities. Indeed one could safely claim that he was one of the main forerunners of the analysis of the theory of tyranny within the Shi‘a political philosophy. He even went so far as to declare the religious tyranny as being much worse and more destructive than a temporal tyranny, as it would be easier for the former to legitimize its claims in the vestments of religious dogma and infiltrate to a deeper level of the individual’s conscience<sup>301</sup>. Whereas a “political tyrant” cannot easily legitimate his claims, hence it would be easier to cast off, in an era where the “eyes and ears of the people are open”<sup>302</sup>. In his seminal work called *Tanbih al-Ommah Wa Tanzih al-Mella* - published approximately a year after the destruction of the first *Majles* (parliament) by Mohammad Ali Shah in 1908, Nā‘ini divides the government into two different types: *Tamlekiyyah* (tyrannical

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<sup>297</sup> See for instance Ha‘eri, A. (1977), Sheikh Fazl-Allāh Nuri’s Refutation of the Idea of Constitutionalism, *Middle Eastern Studies*, Vol 13, No. 3, October 1977, pp.327-339

<sup>298</sup> Zibākalām, S. (1998) pp.406-407

<sup>299</sup> Hoseinzādeh, M. p. 61

<sup>300</sup> Zibākalām, S. (1998) p.409

<sup>301</sup> Ha‘eri, A. (2002). p.249

<sup>302</sup> Ibid. p.249-251.

absolutist system), and *Wilāyatiyyah* (a constitutional government)<sup>303</sup>. In a tyrannical government the ruler considers the public as its own personal property whom he can treat as he wishes without any protection for life and private property. People in such a system are slaves, oppressed and servants whom the government can treat as animals and use for its own pleasure as they so desire. The existence of such a system, Nā‘ini claims, is based on two fundamental elements, the first being the ignorance of the people of their basic rights and the monarch’s basic duties, and the second being the absence of any structure of accountability and “checks”, to use Machiavellian terminology, on the ruling class’ deeds<sup>304</sup>.

This is a truly fascinating attempt along the lines of those made by Rifa‘a al-Tahtawi (1801-1873) and in particular Abd Alrahmān Al-Kawakebi (1855-1902) who clearly influenced Nā‘ini’s understanding of the fundamental attributes of the western political notions, particularly as defined within the republican systems<sup>305</sup>. The fundamental difference is that Nā‘ini was clearly not proposing a fully pronounced western system of individual rights, as some authors such as Ha‘eri seem to be claiming<sup>306</sup>, and indeed at certain points his argumentation concerning the individual civil liberties and duties seem to have been left unfinished. It is evident that with all Nā‘ini’s fascinating, and in some ways pioneering efforts to conciliate the Shi‘a’s political thoughts with the western concepts of individual space and social contracts, one is still faced with a significant deficiency and inconsistency put forth even in his most fundamental arguments. He does mention the need for a written constitution which explicitly defines the role and the framework of government and the necessity of imposing limits on the scope and extent of its power together with a publically elected parliament which prevents the encroachment of power and does not turn “authority into ownership”<sup>307</sup>. Nevertheless readers of Nā‘ini’s work may impatiently expect the pronouncement of an exact structure of power, in particular the scope and boundaries of his concept of individual space and the amount and nature of the personal awareness needed to establish such a

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<sup>303</sup> Nā‘ini, M. (1909) *Tanbih al-ommah wa Tanzih al-Mella* Baghdad as found online at: [ahlolbait.com](http://ahlolbait.com) p.5-11

<sup>304</sup> Ibid

<sup>305</sup> See for instance Ha‘eri, A. (2002) pp.221-223, 256

<sup>306</sup> Ibid p.220 here Ha‘eri goes as far as claiming that Nā‘ini’s ideas were somehow in line with Montesquieu and Rousseau.

<sup>307</sup> Ha‘eri, A. (2002) pp.259-263

system, an expectation which does not seem to have been satisfactorily addressed. Most importantly there is no exact definition of the means and modes of creating and maintaining such a political system and obviously no mention of various institutions and authorities to maintain such an order. These institutions, as I expounded in Chapter 1, form the foundations of a constitutional system which goes to the heart of any republican system of government as was intended. One possible explanation might be that his readers may have held too high expectations from a religious figure whose formal training had little to no relevance to the actual political requirement of a modern state. Nonetheless there are certain aspects of his doctrine, which if not inimical, are certainly great restraints on the basic foundations of a parliamentary system. Certainly Nā'ini could not be regarded as a revolutionary figure in the sense of inciting to full social action aimed at the establishment of a desired political system. Indeed his principal objective seems to be the preservation of the Islamic *ommat* particularly in the face of foreign threats to Muslim lands and the grandeur of Islam<sup>308</sup>. In other words how to protect the Shari'a best in the face of the ever-growing internal threats - such as those posed by various religious sects including the Bābis, and the external threats, mainly from salient foreign influence. Therefore here again the final objective and *raison d'être* of any man-made social construction appears to be to uphold and protect the Shari'a and to expand the divine rule in the era of Occultation where the rule of a divinely appointed power, which is the sole legitimate holder of political authority, is not possible due to practical impossibilities.

Indeed, even the parliamentary elements that Nā'ini endorses are permanently subject to a watchful control of a religious group of supervisors which ensure that no law could be ratified which is not entirely compatible with Shari'a. This would effectively result in a constitutional theocracy in which the role and authority of the religious leaders and indeed the Shari'a precepts itself, would be prone to various possibilities of arbitrary interpretations due to the extremely flexible religious reading of the principles of political sovereignty. This could in turn be contrasted with the basic fundamentals of western political thought built around notions of common good to promote individual fulfilment in their worldly pursuits. On the other hand any constitutional system should

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<sup>308</sup> Zibākalām, S. (1998) p.409

hypothetically be able to legislate in the areas which are not entirely compatible with the religious doctrine; hence the existence of an unelected, or not democratically and transparently elected and accountable body of *mojtaheds* would existentially go against the very spirit of the parliamentary republicanism. As I demonstrated in Chapter 1 in a constitutional system, and ideally a republican structure, the role and scope of every single institution should be precisely defined by law itself and the framework of the operation of such an entity should be constantly checked and balanced by other civil bodies to avoid the possibility of the encroachment of power. Obviously all these agencies need to be democratically elected and inclusively open to all members of the public for participation and scrutiny.

I could also identify numerous fundamental concepts to which Nā'ini and other religious theoreticians of the Constitutional Revolution do not seem to have been able to provide adequate answers. Amongst such basic constitutional rights are: the freedom of expression, minority rights, gender equality and equality of the citizen rights in general. Nā'ini even advances a claim that the relation of the rulers to its people is like the relation of the shepherds to their flocks which is yet another conceptual inconsistency with his emphasis on the protection of individuals' rights that was discussed previously<sup>309</sup>. If one compares this with the republican fundamental belief in the human rational capabilities that should serve as the foundation of the political sovereignty, it is not difficult to appreciate the immense ideological gap separating these worldviews.

Thus it appears that these all make up various desperate attempts by all religious proponents of constitutionalism towards providing theological justification for a parliamentary system of rights which obviously fall far short of addressing basic fundamental concepts of liberty by subjecting them to a permanent supervision of an unelected and unaccountable non-transparent religious body. It goes without saying that other explicitly sanctioned religious formulations such as those regarding the genders and the rights and duties of non-Muslim citizens of the Islamic state could not even be treated by such ideologies leading to various levels of domination that I will examine in the forthcoming chapters.

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<sup>309</sup> Ha'eri, A. (2002) p.261



Even the assertions by other prominent figures of the Iranian Constitutional Revolution such as Seyyed Mohammad Tabātabāi (1843-1920) and Seyyed Abdollāh Behbahāni (d.1910) and even the pragmatic Mohammad Kāzem Khorāsāni (1839-1911)<sup>310</sup> who most notably warned against the vicissitudes and risks of political governance, all seem to have overlooked or even misunderstood the prominence of the basic civil elements of the constitutional systems or have treated them in a very superficial and incoherent manner. Khorāsāni in particular, in his notorious dialogue with Nāʿini on the Islamic authority and request for creating an Islamic government, expounds in details the numerous harms the creation of a government headed by religious authorities could cause and the preference for the separation of religious authority from the temporal rule<sup>311</sup>. Nevertheless here again he takes it for granted that the Olamā would play the role of supervision and active opposition which entitles them to hold the main social controlling apparatus to ensure that all the products of such a government are in full compliance with the Shariʿa law. This should be in place mainly to protect the faith in a better fashion due to the “impurities and untruthfulness” inherent to the practice of political administration. Khorāsāni Further argues that if religious authorities assume the temporal power, this on the one hand could pave the way to sanction and legitimise such capital sins inherent to the political practice and on the other, to point the finger of blame at the religion itself if the provisions do not yield the desired ends<sup>312</sup>. This is the essence of the doctrine echoed by many contemporary theologians within the Shiʿa world such as Ayatollah Al-Sistani (b. 1930) and others which I will analyse further below.

One could seamlessly observe that a more coherent analysis of the constitutional theocracy, both conceptually and epistemologically was the one proffered by Sheikh Fazlollāh Nuri who could be regarded as the ideological mentor of the group of *mojtahedin*, who put up a strong opposition to the constitutionalist ideas. A close examination of his ideas has been of great importance to my current study as these significantly influenced such currents of conservative political theology as the Fadāʿiān

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<sup>310</sup> Richard, Y. (1983), “Le Rôle du Clergé: Tendances Contradictoires du Chiʿisme Iranien Contemporain”, Archives de Sciences Sociales des Religions 28e Année, No. 55.1 (Jan-Mar, 1983), p.9

<sup>311</sup> Printed Library Article on the dialogues between Khorāsāni and Nāʿini on the Islamic government

<sup>312</sup> Ibid

Islam and consequently Ayatollah Khomeini himself. Nuri went as far as condemning the constitutionalism by publically denouncing its anti-Islamic implications and unconcealed incompatibilities with the Shari‘a. He did this particularly in the field of legislation, even by wielding a certain amount of emotionalism and appeal to popular sentiments based on his radical interpretation of the Islamic doctrine<sup>313</sup>. Evidently authors studying Nuri’s role with hindsight have underlined various other factors such as his direct financial interests and connection with certain social groups notably the Bāzār or his principal concern to win the contest of popularity against two other major mojtaheds of the time, namely Behbahāni and Tabātabāi<sup>314</sup>. Notwithstanding, what is interesting for my analysis here is his entrenched resistance to the idea of parliament and constitutional concepts embodied through a detailed reasoning based on the religious scripture and even *ejtehād*. It comes as no surprise to observe that his major concern was that the Constitutional Revolution introduced the principles based on the will of the people taking precedence over the will of God. Nuri’s main objection to a constitutional system was that a parliament would promote the creation of three kinds of *bed‘at* (negative innovations) in the Islamic nation: The first one being the very act of legislation, which is first and foremost considered unnecessary with the existence of the Quran and *sunnat* which have all sufficiently provided the whole legal framework for human society only to be extracted by the qualified *mojtaheds*<sup>315</sup>. The second problem, in Nuri’s opinion, was the act of coercing people to follow a legislation which was not divinely inspired and consequently even punishing them for not complying with such man-made laws<sup>316</sup>. He even challenged the very concept of representation in parliament which in his view is an absurd concept as one chooses a representative to perform a specific task - such as purchasing a property, whereas in the case of parliament the object of representation is undefined and the task of law-making is on the shoulders of the *mojtahedin* to extract the already existing laws from the sacred texts<sup>317</sup>. Furthermore as regarding other issues overtly contradicting the Shari‘a - such as gender equality and the rights of minority groups and so on - Nuri had a much easier task to discredit the

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<sup>313</sup> Zibākalām, S. (1998) pp.385, 386

<sup>314</sup> Ha‘eri and Zibākalām are examples of such authors in the previously mentioned works.

<sup>315</sup> Similar ideas were put forward by Khomeini as I will expound further below

<sup>316</sup> Hairī, A. (1985) p.278.

<sup>317</sup> Ibid 285.

proposals with explicit reference to the religious dogma in which these ideas have been clearly treated.

## **VI. The Pahlavi Era**

After the downfall of the Qājār dynasty, this strand of the political theology, most interestingly, vigorously fought against the attempts to establish a republican system and vehemently rejected its principles due to the numerous reasons treated above. Hence Reza Shah's (1878-1944) reinstatement of the monarchy has actually been partially attributed to the considerable pressure of the Olamā fervently arguing against a republican order based on the fundamental principles of popular sovereignty<sup>318</sup>. This theoretical endorsement of a centralised authoritarian Leviathan is a feature that one could seamlessly trace throughout the entire political discourse of the conservative political theologians with significant implications on the layout of the political power in the form of praetorian authoritarianism, as I will demonstrate in the upcoming chapters.

On the one hand the Pahlavi period was in many respects the actual beginnings of cultural modernism in Iran<sup>319</sup>. Also noted is the rise of various state institutions and a centralised government apparatus which was certainly a significant departure from the Qājār era in which the country was divided in many tribal sections with local authorities which were *de facto* autonomous<sup>320</sup>. Undoubtedly the main victims of such a centralisation of power were not only the local tribal Xāns (local chieftains) but also other traditional forces of influence existentially inimical to most values of modernity. Hence one sees the start of a period in which all these local forces were either completely eradicated and substituted by modern state services, or side-lined with a drastic reduction of their power and influence<sup>321</sup>. The hostility towards religious power in Iran was based on various factors which were not only due to the Olamā's traditional entitlement to administer justice and education - which were now under titanic efforts of modernisation, but most importantly because the roots of Iranian backwardness were claimed to be linked to the arrival of the Arab Muslim culture in the Iranian plateau.

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<sup>318</sup> See for instance Hoseinzādeh, M. p.111

<sup>319</sup> Maraši, A. p.88

<sup>320</sup> *ibid*

<sup>321</sup> See for instance my interview with Abolhasan Banisadr and the discussion on the removal of the pillars of power in Iranian society by the Pahlavi Dynasty.

Such a hostile climate predictably alienated many of the younger generation of *mojtaheds* particularly those as politically driven as Ayatollah Khomeini who strongly felt the exclusion and resented the silence and submissive attitude, not to mention the implicit endorsement of the temporal rule, by the major religious authorities<sup>322</sup>. His harsh criticism of the Shah for his anti-Islamic policies and championing the grievances of the *bāzāri* who by then were also subject to the fundamental reforms in taxation and regulations - and the *mostaz‘afin* (dispossessed) further enhanced his position as the ideal candidate to assume the religious leadership of the community of the faithful<sup>323</sup>. As I will discuss in the coming chapters, these social concepts made up the main pillars of Khomeini’s socio-political program which were actively pursued and implemented throughout the political agenda of the Islamic Republic. His uncompromising stance against the Shah Mohammadreza Pahlavi’s (1919-1980) numerous attempts towards the western style modernisation of the country - such as the so-called “White Revolution” of 1963, brought him to a frontal clash with Pahlavi’s regime which eventually resulted in his exile<sup>324</sup>. Once in France with the help of Iranian intelligentsia like Banisadr (b. 1933), - who by then had recognized Khomeini’s strong popular appeal, he carefully formulated his idea for an Islamic state while carefully being ambivalent on many secular notions such as popular sovereignty and respect for individual freedom<sup>325</sup>. Indeed it was not until he had the firm reins of power in his hands that he seriously advanced his most prominent concept of *Velāyat-e Faqih* based on his original treatise called *Velāyat-e Faqih* (or the *Islamic Government*) first published in Najaf in 1970<sup>326</sup>. Undoubtedly this had radical consequences not only for the Iranian Revolution of 1979, but also on the very political doctrine of the Shari‘a, which as some scholars have pointed out, could be regarded as nothing less than an ideological revolution in Shi‘ism<sup>327</sup>.

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<sup>322</sup> Algar, H. (1969) *ibid*

<sup>323</sup> See for instance the short biography of Ayatollah Khomeini by Algar, H. p.9 at: <http://www.scribd.com/doc/23341471/Islamic-Government-Governance-of-the-Jurist-Ayatollah-Khomeini>

<sup>324</sup> *Ibid* p.10

<sup>325</sup> See my personal interview with Abolhasan Banisadr, the first Iranian President of the Islamic Republic in the Appendix

<sup>326</sup> A translation by Hamid Algar can be found online at: <http://www.scribd.com/doc/23341471/Islamic-Government-Governance-of-the-Jurist-Ayatollah-Khomeini>

<sup>327</sup> Arjomand, S. (1988) Ch.8

To be sure, this concept had already been pronounced by the likes of Mohammadreza Golpāyegani (1898-1993) amongst others, a middle statue cleric of the time, who promoted the mandate of the jurist based on a semantic interpretation of the word *hokumat*<sup>328</sup> which could have either a juridical sense relative to the administration of justice or a political sense meaning to rule<sup>329</sup>. Amānat notices that this was also an attempt to institutionalize the so far loosely defined notion of *marja'iyat* which was directly dependent upon the endorsement of the laity through such practices as *taqlid* and the payment of endowments. Hence he retains that the “Ayatollah Khomeini’s thesis of the guardianship of the jurist is an innovation as much as a revolt against the authority of a secular ruler as it is against the hegemony of the emulator”<sup>330</sup>.

In spite of this one could find clear line of normative political philosophy which could be traced back at least to the Nuri and Fadā'iān Islam political theology who were among the early proponents of such a comprehensive political mandate of the religious jurists. In line with these convictions, other prominent figures most notably the moderate Ayatollah Mohammad Kazem Shari'atmadari (1905-1986), while rejecting the principles of *Velāyat-e Faqih*, unambiguously declared that the notion of “Render unto Caesar the things that are Caesar's, and unto God the things that are God's” is exclusively valid for the Christian world as such separation of the *raison d'état* from the *raison de foi* has no place in Islam<sup>331</sup>. Other non-religious leaders of the liberal Shi'a political discourse such as Mehdi Bāzargān (1907-1995) also endorsed such inseparability of the religion and politics in Islam affirming that Islam is indeed a political religion<sup>332</sup>. In spite of this Khomeini could undoubtedly be credited with pioneering the move from the religious notions of the state to the actual politicization of theological doctrines going as far as making the establishment of the Islamic political order a religious duty of all believers<sup>333</sup>.

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<sup>328</sup> As is the case with the English word “ruling”

<sup>329</sup> Arjomand, S. (2009) *After Khomeini* New York: Oxford University Press pp.21-22

<sup>330</sup> Amānat, A. (1988) *Between the Madrasa and the Market: the Designation of Clerical Leadership in Modern Shi'ism*. In Arjomand, S. (1988) *Authority and Political Culture in Shi'ism* New York, State University of New York Press p.124

<sup>331</sup> Hoseinzādeh, M. p.164

<sup>332</sup> *Ibid* p.198

<sup>333</sup> *Ibid* p.231

It is interesting to note that comparatively this ideological revolution, as compared to other prominent currents within the wider Islamic world such as the Wahhabism in the Arabian peninsula, conceived the figure of *valiy-e faqih* to assume a full political authority rather than endorsing the actual secular rulers which was till then the *de facto* norm within the majority of Shi'a and Sunni schools of political theology<sup>334</sup>. The spectacular interpretation here was not just the fact that this type of government was viewed to be the best possible option compared to other temporal systems for being both compatible with the Shari'a and less oppressive, rather it was the very attempt of upholding an innate right to govern for the supreme jurist by the extension of the authority of the Prophet and Imams<sup>335</sup>. This was a truly novel extension to the scope and authority of the Olamā under the new interpretation of *Velāyat al-hokm* (authority to rule) as "no Shi'a jurist before him ever extended the very limited application of legal *Velāyat* to include public affairs, let alone the assumption of political power"<sup>336</sup>. This extension indeed devolved all prerogatives of the Imams to the *mojtaheds* which in practical terms signalled the end of various conceptual significance of the Occultation of Imams<sup>337</sup>. Again as Amānat has observed the use of the word *Faqih* instead of *mojtahed* or *marja'* is interesting as this seems to have been formulated to include Khomeini himself whose juristic qualifications were certainly not as high as many other Olamā of his time<sup>338</sup>. Furthermore the crucial implication of such claims was the centralisation of both *dini* and *donyavi* powers under a single figure of *Valiy-e Faqih*. Indeed the sporadic voices within the Shi'a doctrine that treated this argument, always intended it as a "collective rule" of the jurists and not the concentration of the religio-legal and body politics in a single figure of supreme leader<sup>339</sup>. Whereas here one sees a radical extension of the authority of a religious leader based on the notion of *marja'iyat-e taqlid* to have *velāyat* even over other major religious authorities, regardless of their juridical qualifications and public stand.

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<sup>334</sup> See for instance March, A. *ibid*

<sup>335</sup> More on *Velāyat-e Faqih* will follow in Ch.4 and 5

<sup>336</sup> Amanat, A. "From *Ijtihad* to *Wilāyat-e Faqih*: The Revolution of the Shiite Legal Authority to Political Power" in Amānat, A. and Griffel, F. p.131.

<sup>337</sup> Hoseinzādeh, M. p.167

<sup>338</sup> *Ibid*

<sup>339</sup> Arjomand, S. (1988) p.191, 196.

It is not hard to notice a very gradual introduction of this line of argumentation by Khomeini who might have been initially cautious in introducing such a radical notion even to the religious establishments<sup>340</sup>. Indeed in his first major book *Kashf al-Asrar* (1943) He even indirectly endorsed the monarchy and only called for the observance of religion by the state and refutation of the Western values<sup>341</sup>, in modern terminology one might call this a “reformist” approach. Whereas by the early 1970s, he utterly rejected the legitimacy of the *saltanat* equating it with the despotic system which was introduced into the Islamic world through the Umayyad adoption of the Iranian pre-Islamic and Roman “pagan” systems<sup>342</sup>. He then goes on to fully pronounce his new notion of the *Velāyat-e Faqih* which he equates with the embodiment of “those in authority” (*ololamr*) in the Quran, concluding that it has the same religious and temporal legitimacy as God and the Prophet<sup>343</sup>. This significant extension bestowed upon the Shi‘a clergy the actual right to enter politics and even to assume such titles as the “supreme leader” or even the Imam itself with even potentials to claim a divine mandate.

This radical interpretation of the Shi‘a doctrine of power could well be observed in other contexts of the region particularly in Mesopotamia where at certain stages one can even notice the actualization of a complete domination of the clergy on all socio-political affairs of their communities. The example of Mohammad Hasan Najafi (d. 1849) is a clear instance in which a religious authority has a *de facto* and *de jour* mandate to administer the entire social affairs of his community<sup>344</sup>. Another Shi‘a cleric Mohammad Taqi al-Shirazi (d. 1920) went even as far as raising an army to combat the British in Mesopotamia<sup>345</sup> noticeably by drawing upon the very notion of *jahād* found in this specific tradition of the Shi‘a political discourse. Thus although the position of Khomeini is widely regarded as unprecedented and revolutionary in many respects throughout the history of the Shi‘a political narrative, one could still encounter numerous instances of such endorsements of the complete socio-political mandates within the wider Shi‘a community although in smaller regional scales. Indeed it not

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<sup>340</sup> Axworthy, M. (2013) *Revolutionary Iran* UK Penguin Books pp 157-158

<sup>341</sup> Abrahamian, E. (1993) p.21.

<sup>342</sup> Ibid 24

<sup>343</sup> See Khomeini, R. (1993) Collection of speeches in Najaf. Tehran: Markaze Našre āsāre Emam Khomeini

<sup>344</sup> Louer, L. (2012), *Shi‘ism and Politics in the Middle East*, New York, Columbia University Press, p.9

<sup>345</sup> Ibid 10

difficult to encounter similar precedence in the works of other theologians such as Mohammad Baqer al-Sadr for instance in his prominent treatise *Preliminary Legal Notes on the Project of Constitution*<sup>346</sup>. All these would undoubtedly highlight the potential and indeed the actual extension of such basic religious purviews to include all socio-political affairs of the community of the faithful. Hence it might not be an overstatement to conclude that the lack of any tangible processes of the so called interiorization and privatization of religion in the Shi'a political ideology might well be at the heart of such potentials for comprehensive dominations in all spheres of the civic life<sup>347</sup>.

## VII. Shi'a Leviathan

A brief comparison with the western schools of thought and in particular the Machiavellian "prince" or the Hobbesian "leviathan" would readily reveal that this divinely endorsed authority of the Shi'a political discourse would entail an even deeper level of allegiance and dependence. The concept of government in this ideology seems to be firmly grounded not only on the necessity of establishing peace to avoid a "violent death" by protecting the individual's life and property, but most importantly to create the proper setting for the attainment of a higher good that is the salvation and eternal beatitude<sup>348</sup>. Even though both regard the temporal government as a necessity of living in a human society, one readily notices here that in Islam there is a serious question of legitimacy which does not seem to have ever been entirely settled. This seems to be a prevalent characteristic of all classical and modern schools of *siyāsa shar'īyya* (Islamic political theology)<sup>349</sup>. Indeed a closer examination of all Islamic schools of political theology readily reveals a fundamental absence of all principles of human sovereignty underpinning any contractual societal agreements. In the case of the Western ancient sovereign, the subjects delegate their power, often spontaneously, at least initially, in order to be able to live in social harmony and protect their lives and properties sometimes extending to an endorsement of principles of individual liberties, even though

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<sup>346</sup> Axworthy pp. 161-162

<sup>347</sup> For an interesting discussion of the notions of interiorization and privatization of religion see: Janson, Y. (2010) "Secularism and Security: France, Islam, and Europe", in Cady, L.E. & Shakman Hurd, E. (2010), *Comparative Secularisms in a Global Age*, New York, Palgrave Macmillan Pub. Ch.4

<sup>348</sup> See for instance Gauchet, M. *ibid* Ch.2

<sup>349</sup> March, A. *ibid*



this might well be the ancient definition of the liberty as we know<sup>350</sup>. In contrast in this radical Imamate doctrine of government one could safely claim that people do not possess any sovereignty in the first place to alienate and delegate to the omnipotent ruler to obtain peace and protection. Furthermore the limited notion of *bey'at* (approval) based on a vague notion of religious acclamation would certainly fail to satisfy many republican criteria for public consultation and transparency.

Most importantly it appears that this radical interpretation of the political theology does not endorse in any levels of the checks and balances on the administration of power as the central feature of the *Velāyat-e Faqih*, or even the more restricted concept of the assembly of supervising theologians', are perceived to be the overarching authorities which effectively supervises all state legislative and coercive forces. Even the legislative function of the parliament is defined as a simple planning organization as all the laws are already believed to have been provided by the Shari'a<sup>351</sup>.

In addition throughout this research I failed to isolate any authentic Shi'a sources endorsing the individual right to sovereignty, which could lead to the conclusion that in such an existentially different system the knowledge to determine a just ruler only belongs to God and by extension to an specific social class of religious scholars, or at best to the right type of *ommat*. Such authority would then sacralise the secular authority by appointing or endorsing a precise system of authority as worthy of obedience to lead the way and show the path of salvation to the oblivious masses<sup>352</sup>. To conclude this point one could say that undoubtedly part of the notion of sovereignty could be shared with a leviathan, the holder of a sword who protects the community and establishes the peace. Nevertheless even the figure of a temporal "sultan" arising from practical necessities, would not be given the comprehensive legitimacy to manage the secular affairs of the Islamic community. Indeed the prevailing strategy within the Shi'a school of thought *vis-à-vis* the temporal rulers, seems to have been the adoption of the previously mentioned *taqiyya* (precautionary dissimulation) which by no means could

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<sup>350</sup>See for instance: Constant, B. (2010) *De la Liberté des Anciens Comparée à Celle des Modernes* Paris, Mille et une Nuits Pub.

<sup>351</sup> Hoseinzādeh, M. p.229

<sup>352</sup> Enayat, H. p.5

be interpreted as their total - and in some cases not even partial - endorsement of the temporal rule.

Most notably it is interesting striking to see the juxtaposition of these political narratives to the western achievements in the field of the humanities which were all denounced as corrupt and stranded which needed to be fought and eradicated from the Islamic societies<sup>353</sup>. This might well explain, as I will argue in the Chapter related to the republican education, the meticulous supervisions and suppression of most socio-political discourses of the western philosophy throughout the social sciences' textbooks while demonstrating great inclinations to accept other achievements of the western culture in the fields of science and technology. As a curious result, as some scholars have noted, the main secular proponents of this strand of the political theology were from among the educated elites with scientific background rather than humanities<sup>354</sup>.

It comes to no surprise to observe that even the reformist strand of the Shi'a political theology while adopting certain terminology from the western schools of the political philosophy such as "people" as compared to *ommat* or ambiguously endorsing such notions as the rule of law and sovereignty of people, never seem to have systematically evaluated all implications of such notions and their very compatibility with the precepts of the radical theories of a religious state that it was advocating. This has unsurprisingly led to several inconsistencies and inherent contradictions which gave rise to numerous concurrent interpretations of the same religious principles of the political theology not only in Iran but also in the wider Islamic world which I will briefly survey here below.

More interestingly it is instructive to notice that a prevailing trend within the modernist and more recently reformist strand of the Shi'a political theology were mainly concerned with material well-being of the Islamic community and the need to acquire the western technology and science to that end without complying with the actual philosophical underpinnings of such achievements in particular in the field of the political philosophy. Such predominant narratives could seamlessly be identified not only in the pioneering political discourses of the Seyyed Jamāloddin al-Afqani (1838-

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<sup>353</sup> Hoseinzādeh, M. p.274

<sup>354</sup> Ibid

1897), but also throughout the more recent reformists' pronouncements by the likes of Hashemi Rafsanjani (b. 1934).

## VIII. Contemporary Shi'a Modernism

It is worthwhile observing that within the contemporary theoreticians of the Shi'a ideology, in particular in the recent years, there has been a great opening towards the previously mentioned concepts of the Shi'a modernism<sup>355</sup>. Interestingly this trend follows a similar experience that the republican ideologues and their religious interlocutors witnessed throughout the history of the evolution of the republican ideology<sup>356</sup>. One interesting example is the utter rejection of the doctrine of the *Velāyat-e Faqih* by the prominent scholar Mahdi Ha'eri<sup>357</sup>. Ha'eri is among the political philosophers within the religious camp who advocated a complete separation of the religious and political authority by claiming that these two fields are existentially separate and the government is totally outside the purview of religion<sup>358</sup>. To this end, he not only challenges Khomeini's semantic extension of the word *hokm* to include the actual governing connotations, but also provides a detailed study of the religious scripture to conclude that the notion of *Velāyat-e Faqih* has no religious basis and justifications<sup>359</sup>. More interestingly he continues in details to provide a new interpretation for such concepts as "state of nature" and "social contract" and tries to provide new interpretations of such notions within the socio-political context of Shi'ism. The bottom line claim is that the government is an artificial entity which is bound to be contingent and in constant mutation due to the ever-changing requirements of social life, hence it is predestined to be considered independent from the immutable divine law<sup>360</sup>. It is not difficult to draw clear parallels to the Florentine civic humanist ideologies at the heart of the modern republican political philosophy. Ha'eri's claims, even though not unprecedented, certainly provide a significant contribution to the overall narratives of the political philosophy within Shi'ism.

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<sup>355</sup> Previously cited article by Mohammad Baqer al-Sadr could also be regarded as one such works

<sup>356</sup> It would suffice to mention the simple distinction between the "religion extérieure" and "religion intérieur" that the French republicans defined to implement a total separation of the two fields of politics and religion. For details see Gauchet, M. *ibid*

<sup>357</sup> Akhavi, Sh. (2007) "Shiite theories of Social Contract" in Amanat, A. and Griffel, F. (Eds.) p.145

<sup>358</sup> *Ibid*

<sup>359</sup> *Ibid*

<sup>360</sup> *Ibid* 150.

Another interesting claim in this regard has been advanced by Abolhasan Banisadr the first Iranian President and one of the main theoreticians of the original principles of the Islamic Republic. In an exclusive debate we had for this research, he illustrated his views by identifying human “independence and freedom” to materialize only in an absence of “*Velāyat*” among individuals: that is the absence of any “power” relation between them. He then traced the roots of these principles to the Quranic teachings as the main advocate of individual freedom<sup>361</sup>. These innovative affirmations could be regarded as yet another important endeavour towards demonstrating the compatibility and even the pioneering role of religious dogma with the basic republican concepts illustrated in Chapter 1. Nevertheless in Banisadr’s view the realisation of such a “perfect” system with a total absence of *Velāyat* is possible only in paradise as illustrated by the Quran, which regardless does not prevent one from moving in that direction in a Habermasian pursuit of the ideal objectives<sup>362</sup>.

A more conservative line of argument was pursued by Mohammad Khatami (b. 1943) another former Iranian President who, while acknowledging the centrality of the Leadership Office within the framework of the Iranian Constitution, insistently promoted the importance of the rule of law and that every institution should be firmly compliant with the guidelines set forward in the Iranian Constitution. This included every seat of power within the Iranian political system as it was claimed that the major historical malaise of Iranian society has resulted from the exemption (evasion) and hostility towards the state laws (*Qānun gorizi va qānun setizi*)<sup>363</sup>. I will elaborate more on this subject when scrutinizing the Office of the *Velāyat-e Faqih* and its extra-constitutional prerogatives in the relative chapter.

More recently, in line with these affirmations, other important concepts have been advanced by the main scholars of the so-called Green Movement<sup>364</sup> such as Mohsen

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<sup>361</sup> See the appendix for a transcript of our interview

<sup>362</sup> Banisadr, A. (2012). *Totalitarianism*, Paris, Islamic Republic Publications, p.7. also see the Appendix for a complete transcript of the interview I conducted on 13<sup>th</sup> November 2012.

<sup>363</sup> Khatami M. (2001). *Mardom Sālāri*”, Tehran, Tarh-e No pub. pp.51-52

<sup>364</sup> Green movement refers to a series of public unrests and violent street clashes following the Iranian 2009 presidential election during which the reformists camp headed by the presidential candidates Mir Hosein Musavi and Karrubi staged significant national protests which were harshly repressed by the

Kadivar (b. 1959) - a theoretician within the framework of religious ideology, who has tried to propose an alternative Islamic governance by questioning once more the very validity of the notion of *Velāyat-e Faqih* within the Imami jurisprudence<sup>365</sup>. Kadivar as a prominent student of Ayatollah Hussein-Ali Montazeri (1922-2009), further claims that the Islamic state should be based on popular consent and approbation and that: “if a government is not accepted by the people, even if its laws are in congruence with Shari‘a it lacks legitimacy”<sup>366</sup>. Furthermore he distinguishes two different interpretations of the Islamic laws which he labels as the traditional and modernist understandings of the Shari‘a law, the latter being in complete agreement with the universal articles of human rights, although less developed than it, due to its historical and cultural predicaments<sup>367</sup>. Kadivar underlines that there are divergent understandings of the role of the *Valiye Faqih* within the Shi‘a school of thought, endorsing the current which subordinates this seat of power to the legal and constitutional structures of the Islamic state<sup>368</sup>.

Another interesting observation is the line of argumentation which questions the very validity or even centrality of religious ideology in the Iranian contemporary body politics. In fact some authors have argued that most of the actual political guidelines and state’s socio-economic orientation are actually being dictated by necessities of the moment driven by other propagandistic and populist agendas rather than by the apparent facade of the religious doctrine<sup>369</sup>. Whilst there could be no doubt on the validity of such claims, one should not overlook the centrality of the religious ideology for the qualification and justification of such principles within the Iranian contemporary political discourse. Although ideologies could be used for populist ends, which indeed have been the case, the importance of the religious argumentation and theological reasoning could not be discarded in a system where the entire state machine is heavily reliant on a certain interpretation of the religious ideology and its various manifestations

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authorities, this resulted in more radicalization of the protestors’ demands to the point of questioning the very legitimacy of the Islamic Republic’s foundations.

<sup>365</sup> Takeyh, R. (2009), *Guardians of the Revolution*, Oxford, Oxford University Press, p.184

<sup>366</sup> Kadivar, M. as cited in Takeyh, R. (2009) p.184

<sup>367</sup> Kadivar, M (2009), *Haqqonnās, Eslām va Hoquq-e Bashār*, Teheran, Kavir Pub. pp.123-148

<sup>368</sup> Kadivar, M. (2000) *Bahā-ye Āzādī*, Nei publications, pp.202-203

<sup>369</sup> See for instance Abrahamian, (1993) E. ibid

and symbologies<sup>370</sup>. In other words, one could argue that here the religion is again being used as the same “social glue” or even the “opium of the people” as postulated by the fathers of the modern western political thought. However, the crucial difference which one could seamlessly perceive in this context has been a systematic shift beyond this “social necessity” to actually build a vision of the state and a political order based on the appropriated Divine Will. Furthermore this specific vision of authority seems to be employing various religious justifications to sacralise the political power and monopolize and legitimize the use of violence to suppress other dissenting ideologies with specific Quranic and Shi‘a discourse and the relative terminologies such as *mohārabah* (fighting against God)<sup>371</sup>. In addition even other parallel or competing ideologies underlying the Islamic Republic, such as those by philosophers including Ahmad Fardid (1909-1994), Jalal al-Ahmad (1923-1969) and Ali Shariati (1933-1977) were all predominantly concerned with a Shi‘a Imamate religious narratives<sup>372</sup>, as the main source of normativity, which once again underlines the importance and centrality of such concepts in the formation of the world’s first Islamic Republic.

I need to underline here that as far as the Islamic and in particular the Shi‘a political theology is concerned I tend to disagree with such scholars as Ran Hirschl who claims that the politicization and constitutionalization of religion would inevitably lead to a significant demarcation and even containment of the religious ideology which would be bound to act within the limits of the constitutional authority, similar to the limits on the democratic authority itself imposed by the constitution<sup>373</sup>. It is evident that restraining the religious dogma to abide by the rules of the constitution could play a significant role in limiting the scope and authority of such a powerful social source of allegiance and authority in particular its radical and fundamentalist interpretations. Nevertheless the official endorsement of a single version of the ultimate truth and the enshrinement of such absolute claims of authenticity within a constitution would inevitably lead to the

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<sup>370</sup> See for instance Aghaie, K. S. (2004), *The Martyrs of Karbala*, Washington DC, University of Washington Press, pp.131-153

<sup>371</sup> See for instance Ehteshami, A, & Zweiri M. (2009), *Iran and the Rise of Neoconservatives*, London, I.B. Taurus, 2009. p.20.

<sup>372</sup> Parham, R and Taubmann, M. (2009) *Histoire Secrete de la Revolution Iranienne*, pub. Paris, Denoel, pp.171-195

<sup>373</sup> See Hirschl, Ran (2010), *Constitutional Theocracy*, Cambridge Massachusetts, Harvard University Press, p.13

exclusion of other concurrent sources of legitimacy including those based on “we the people”. This would be further intensified by officially allocating a significant portion of the state’s resources to the promotion and establishment of the elected religious directives and dogma which in some cases becomes “the” source of law and authority. Hence the very fact of moving from a theological discourse of a religion into a veritable “political act” of such an exclusive dogma, would undeniably provide that ideology with significant political means, other than the already existing social ones, to advance its hegemonic domination, as the Iranian experience has clearly shown. Hence any comparison between an unalterable, exclusive religious source of sovereignty with claims to absolute truthfulness and endorsement of pervasive prescriptions to predominantly favour a certain community of subjects, would be existentially different from a manmade negotiable, alterable, contingent and inclusive source of authority based on human reason and political activity rooted in the inalienable civil and political rights.

This by itself would suffice to conclude that there is indeed a significant current of thought within the Islamic dogma, with strong political ambitions, that occasionally surge in various social contexts of the region as soon as it finds the space for overt manifestations through the popular uprisings seen in recent years, for instance. The Shi‘a version of this strong current of ideology is precisely the subject of this study which as I argued previously, and will demonstrate in details in the upcoming chapters, has resulted in a political layout which has not always been based on an inflexible transcendental religious ideology. Indeed all the institutions of the Islamic Republic, have sometimes proven to be flexible enough to be capable of addressing, even partially, the pressing bureaucratic requirements of a modern state apparatus. Thus one could readily identify numerous compromises and even outright adoptions of many ideas previously rejected on religious grounds, based on the redefined theological concepts such as the principle of *maslahat* (public interest), and many other secular juridical principles<sup>374</sup>. These all reinforce the modernist aspects of a constitution whose republican notions were originally taken from France’s Fifth Republic Constitution of

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<sup>374</sup> This is a very important notion that will be discussed in detail in the Chapter related to the Islamic Republic’s institutions.

1958 under the initial influence of such secular figures of the revolution as Mehdi Bāzargān, Abolhasan Banisadr and other modernist ideologues.

Moreover it is interesting to see a strong return to such discourses by laymen moving towards an actual process of secularization of the Shi'a political doctrine across the entire Shi'a world, from Lebanon to Iraq, Bahrain and Iran. Veritably a clear example would be Iraq which regardless of the fact that it has been one of the main cradles of Shi'a political ideology, is witnessing an astonishing trend towards the separation between the political authority in charge of the country's government and social administration and a high ranking clergy, actively refraining from any direct interference in political processes. All signs lead one to the conclusion that the Shi'a political model promoted by the Iranian state clergy seems to be falling out of interest within the wider Shi'a political discourse prompting some scholars to even advance the notion of Sunnification of Shi'a political ideology<sup>375</sup>. Hence the major political parties across the Islamic world, such as the Iranian *Nehzat-e Azadi*, the Iraqi *al-Da'wa* and *SIIC*, Lebanese *Amal*, and numerous religious authorities and intellectual laymen within these circles seem to be voicing their convictions towards at least a relative separation between the political and the religious authorities to limit the interference of the clergy in the field which is deemed out of their area of intellectual purviews<sup>376</sup>.

Thus one should not undermine significant attempts by numerous exponents of different schools of thought within the Islamic theology, who were even supportive of temporal rule and some went even further by endorsing the creation of a constitutional system, as shown above. This is apparent in particular within the circles of the non-clerical members of these currents, such as the Iranian *Shariati*, *Banisadr*, *Bāzargān* and Iraqi counterparts like *Nuri Almāleki* (b. 1950) who even went as far as assuming full political responsibility enjoying an explicit endorsement by the grand *Ayatollāh Sistani*. Notwithstanding an apparent conceptual inconsistency could still be recognized in the works of more recent proponents of the Islamic democracy such as *Abdolkarim Soroush* (b. 1945), *Mohsen Kadivar* and even *Ayatollah Montazeri* who do not seem to have been able to provide an adequate and final answer to these competing sources of the political

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<sup>375</sup> Louer, L. p.129

<sup>376</sup> *Ibid* p.133



legitimacy in Islam either<sup>377</sup>. Others such as Mojtehed Shabestari (b. 1936) like Abdolkarim Soroush, even talked of the incomprehensiveness of the principles of *fiqh* and the need for updating and modernising these doctrines which are deemed to be contingent and based on the necessities of the time.

At a wider Islamic world level similar ideas have been put forward by Yusuf Al-Qaradawi and Mohammad al-Mahfuz who although significantly undermining the role of the clergy within the Islamic political theology, sustain that an Islamic democratic state should still declare Islam to be the official religion of the state and that no parliamentary law would be passed against the Shari‘a<sup>378</sup>. In Qaradawi’s view the resulting system would still be a democratic one as here only “some of the options available to the demos” have been removed and the actual process of decision-making is open and representative<sup>379</sup>. Hence for Qaradawi the democracy is a structure that could, and indeed should, be deployed within the Islamic system steeped in an inherent transcendental values and absolute truth<sup>380</sup>.

Once more I need to underline the importance of such works as those by Kadivar and the Tunisian scholar Rashid al-Ghannushi<sup>381</sup> (b. 1941) who made significant efforts to distinguish the various modernist and traditionalist approaches within the Islamic political discourse trying to promote a more spiritual version of the religious doctrines by significantly reducing the role of the Shari‘a in the changeable social circumstances<sup>382</sup>. The *Spiritual Islam* model proposed by Kadivar, for instance, is nothing short of a radical reformation within the Shi‘a political discourse that goes far beyond the previously discussed solutions provided by Nā‘ini and Tabātabā‘i for example, based on a simple distinction between constant and adaptable Shari‘a principles. Interestingly this closely resembles some secular processes within the republican doctrine particularly in the French school of republicanism to relegate the

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<sup>377</sup> See for instance Montazeri, H. (2008) *Hokumate Dini va Hoquqe Ensān*, Tehran: Arqavan Dānesh Pub p.34.

<sup>378</sup> See for instance Hunter, S. (2008) *Reformist Voices of Islam Mediating Islam and Modernity* New York: M.E. Sharp Pub. pp.127-128 and Louer, L. p.128

<sup>379</sup> Feldman, N. (2007) in Amānat, A. and Griffel, F. (eds.) p.117.

<sup>380</sup> Ibid

<sup>381</sup> Rashid al-Ghannushi’s doctrine of vicegerency and the caliphate of man is an interesting example of one

<sup>382</sup> See for instance Kadivar, M (2009), pp. 30-33

religion to an “interior” space by initially demoting it to a “state religion” from being a “religious state”<sup>383</sup>.

Most interestingly prominent figures of the same dominant doctrine of the state of Iran in particular secular theoreticians such as Banisadr, seem to be unambiguously moving in the direction of relegating the religion to a private space by emphasizing the need for the “separation of power and faith” in the public domain<sup>384</sup>. Indeed Banisadr’s acute analysis of the structure of power and its potentials for degenerating into despotism rooted in the endorsement of any ideologies including the religious ones, appears truly impressive and pertinent once numerous historical and local instance of such constant threats of the state’s ideological *imperium* is considered<sup>385</sup>. Nevertheless one still needs to see whether such fundamental reform tendencies could seriously take root within the dominant religious establishment who have currently monopolised all socio-political means of the Islamic Republic. Hence whether the rationalization of the separation of secular and religious fields is enough to provide a comprehensive political doctrine or at least produce unequivocal narratives for the “privatization” and “interiorization” of the faith in order to pave the way for the pronouncement of such ideas, is yet to be shown within the Islamic political discourse.

Thus as the current state of affairs stands in Iran, the political system continues to be stoutly rooted, in this specific interpretation of the Shi‘a dogma, which has had a radical impact on its entire socio-political apparatus *vis-à-vis* the republican doctrine of state, which are still claimed to underpin the structural governance of the Islamic Republic.

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<sup>383</sup> Gauchet, M. *ibid*

<sup>384</sup> See Appendix II

<sup>385</sup> *ibid*

## IX. Conclusion

All observations lead to the conclusion that the crucial predicament throughout the history of the political philosophy within the Islamic community has been, and continues to be, the question of the legitimacy of the temporal rule. Indeed some authors such as Zibākalām even trace this as far back as the third Islamic Caliph Othman and the fourth Imam Ali, which faced fundamental social unrest and challenges to their rule due to the lack of a charismatic temporal and religious authority comparable to the one embodied by the Prophet himself<sup>386</sup>. On the other hand some have even questioned the legitimacy of the principles of government arising from human reason and its various manifestations such as the parliamentarianism for being at the heart of the crisis of legitimacy in Islam after the Prophet's death by selecting the Khalifs based on human reason and assembly rather than the explicit divine mandates<sup>387</sup>.

Nevertheless as discussed previously due to practical necessities of the time one could notice a certain level of acceptance and even collaboration between the religious authorities and *de facto* rulers of their time. An obvious contemporary example cited could be the emblematic one of Iraq mentioned above, where the so-called *effendies* (the laymen within the religious schools of thought) seem to have arrived at a certain acceptance of the division of authority between the temporal and religious fields. Regardless of this, as many scholars have underlined, the presence of the clergy in the centre of the structure of power has always been and continues to be a defining feature of the Shi'a Islam<sup>388</sup>. For instance a significant part of the doctrine of state in the wider Shi'a community such as those advocated by the so-called Shirāzies and the al-Sadr families<sup>389</sup> had already computed significant steps towards the politicization of the Shi'a ideology long before Khomeini, endorsing even stronger universal claims for their theories of Islamic governance<sup>390</sup>.

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<sup>386</sup> Zibākalām, S. (1998) *Mā Cegune mā šodim?* Tehran, rowzaneh Pub. Tehran. p.289

<sup>387</sup> Hoseinzādeh, M. p.81

<sup>388</sup> Louer, L. p.5

<sup>389</sup> There are two major families within the Shi'a history inheriting significant religious and even political authority in the towns of Najaf, Karbala and Lebanon. Some members of these families ideas have been discussed previously.

<sup>390</sup> Louer, L. pp.12, 52-53

Moreover while certain rationalistic strands of the Shi‘a proved to be more inclusive and sympathetic towards the non-religious sources of political power and in particular a popular basis of sovereignty, this seems to have been mainly due to considering them as the least harmful out of multiple worse options available to the Shi‘a community at the time of Occultation and never extended beyond the community of the faithful. As a result they still fall short of providing any significant contribution to the fundamental question of the theoretical legitimacy of the temporal rule based on an inclusive popular mandate.

The overall observation to make here is that while in Sunni Islam the central political discourse seems to have been centred around such terms as *xelāfat* (succession), *ejmā* (consensus) and *bey‘at* (approval, acclamation), in Shi‘a the key political discourse has been built upon such notions as Imamate, *Velāyat* and *esmat* which as shown, have historically had a fundamental impact on the concept of legitimacy of the temporal rule<sup>391</sup>. Moreover it became apparent that certain modern ideologues of the Shi‘a school on some occasions appeared to have actually endorsed the legitimacy of the secular rule, as we saw above. Nevertheless these prevalently tended to demonstrate a very limited understanding of the various aspects and implications of the sovereignty of people, let alone a comprehensive system of the political reposed on the civic humanist values as the republican one.

Thus it appears that the Shi‘a discourse on the political authority, predominantly concerned with the question of the legitimacy, has shown a great disinterest for all other elements of popular sovereignty entailing the protection of individuals against the *imperium* and *dominium* as required by the republican principles of governance. To be sure, as argued in Chapter 1, the modern republican principle of individual rights would fundamentally be based on inherent values which are independent and indeed often incompatible with even the constant core of the religious principles, and sometimes there would be no option to choose between two competing systems of canons each providing profoundly different interpretations of the issues at hand. To reiterate some of the examples mentioned above, I could add that the basic republican principles - such as

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<sup>391</sup> Enayat, H. p.6

gender equality, the rights of minorities, private space, separation of powers and of course the very legitimacy of the mandate of the secular rules, do not seem to have ever found their exact collocation within the Shi'a political discourse. This has convinced some authors like Arjomand to come to the outright conclusion that:

A Shari'a derived Islamic state cannot be a modern constitutional state without serious contradictions. There is no way to modernise the traditional system of the two powers by exempting one of them as sacrosanct<sup>392</sup>.

In addition there seems to be even less treatment of the necessary institutions by the Shi'a modernists to uphold such a system of values in their proposed religious governance. Furthermore as argued above, the fundamental notion of the separation of power based on the basic rule of checks and balances does not seem to have any place in a system centred around an unelected supervisory institution which monitors and even rejects any popularly ratified laws and regulation if deemed incompatible with the ruling of the sacred scripture. More interestingly the provisions of a supervising authority to decide on the boundary between the politics and ethics, or scopes of the textual sources of law and the secular ones seem to be leaving ample space for interpretations which could constitute another potential thrust for domination.

The basic rights of selecting rulers, the methods of selection and most importantly the right to participate, contest or even to remove an errant sovereign, do not seem to have been a central preoccupation of the majority of these theoreticians of the political theocracy. As discussed above in recent years some scholars like Banisadr and Kadivar seem to be moving towards treating such aspects of the political theology - which are yet to prove comprehensive if at all consistent or viable, with the religious dogma<sup>393</sup>. In other words, the mere separation of the religious and political authorities advocated by these ideologues, does not automatically provide adequate conceptual credentials for the legitimacy of the state apparatus on the one hand, and the objective validity of the principles of popular sovereignty of such a political order on the other. Both religious circles and most importantly the secular schools of the political within the Shi'a world need to come to a clear understanding of the basic principles of legitimacy based on

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<sup>392</sup> Arjomand, S.A. (2007) "Shari'a and Constitution in Iran" in Amanat, A. and Griffel, F. p.164.

<sup>393</sup> See the Appendix II for a complete transcript of my interview with Banisadr

popular mandates, or otherwise the resulting system could well be a tyranny claiming sources of authority which might not necessarily repose or be compliant with the principles of individual sovereignty.

In practical terms, as shown previously, the dominant Shi‘a ideology of recent decades - possibly also adding certain currents of the Sunni world to this conclusion, has been far from adopting such a neutral stance regarding the political authority, which has resulted in theoretically challenging entities such as the Islamic Republic or various other religiously grounded political movements of the region<sup>394</sup>. Despite the historical fact that most scholars of the Shi‘a doctrine actually chose the path of political indifferentism<sup>395</sup>, one could identify an enormous ever-present potential for such direct involvement arising from immense social power that the dominant Osuli school of Shi‘a has provided for the *Olamā*, in the course of centuries of constant mutations and developments. The previously discussed concepts of *ejtehād*, *taqlid*, *marja‘iyyat* and most importantly the exclusive rights on the administration of justice and collection of religious taxes had obviously elevated the *Olamā* to become the natural pretenders to assume the all encompassing socio-political authorities of the Islamic state. Hence the current which came to dominate the centuries of religious debates was unsurprisingly this politically active brand of the Shi‘a Islamism who had all the necessary means to justify its appropriation of all prerogatives of the Imams also based on a the popular endorsement, not only in the form of public acclamation but also the actual devolvement of financial resources and support.

Notwithstanding, as I will expound in the upcoming chapters, while one expects the natural outcome of Islamic Republic’s political doctrine to be a total denial of the social contract and all republican elements in the regime’s political discourse, one could readily identify the existence of various institutions and practices that vest at least part of the sovereignty in the nation<sup>396</sup>. This might indeed be inevitable result of “secularizing religious law by sacralising the political”, but could also be interpreted as the

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<sup>394</sup> These include the Saudi Arabian Wahhabism or Salafism and the Egyptian Muslim Brotherhood for instance.

<sup>395</sup> Momen, M. pp.193-194

<sup>396</sup> Akhavi, Sh. (2007) *ibid* p.154

consequences of the practical necessities of the time due to conceptual deficiencies inherent to the Shari‘a law to address all problems of a 21<sup>st</sup> century nation. In any case this has resulted in an extremely complex network of power and resource management based on revolutionary ideologies, nationalist propaganda, and of course sometimes incompatible socio-political requirements of the moment all justified through a vigorous narrative of the theocratic governance. Such a system which, while sharing many aspects of third world movements, in particular the Latin American populist ones<sup>397</sup>, has some unique features due to its religious matrix and divine claims.

I should reiterate once more that the principal scope here is not to critically analyse the actual religious truth or validity of the principles of this dominant school of the political theology but to study the implications of such an ideology on the political theory underpinning the state structures subject to this analysis. More precisely the consequences of such an accumulation of an unbalanced authority in the political repositories of power with significant social and financial resources is what I aim to scrutinize in the light of the republican non-domination principles. Hence the fact that certain members of this dominating ideological strata might at times chose to refrain from exercising the acquired power, or even went down the path of political aloofness<sup>398</sup> - in the style of the ancient republican paradigm of the kindly master, does not automatically render their sanctioned ideology compatible with the basic principles of individual liberty and sovereignty inherent to the republican doctrines. It is banal to reaffirm that the strand that actually came to dominate the Iranian political scenery did in fact chose to advance a comprehensive version of the Shi‘a political theology.

In the forthcoming chapters I will carry out a detailed analysis of the various implications of such religio-political doctrines on the formation of a state which also advances republican credentials and claims to be feeding upon the principles of public sovereignty. To commence with a practical and epistemological examination of my case study, I will initially endeavour to take a closer look at these inherent divergences and compromises between the religious jurisprudence and the republican ideology. I will do this by analysing various components of republicanism within the context of the Iranian

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<sup>397</sup> Abrahamian, E. (1993) p.3

<sup>398</sup> Momen, M. pp.193-194

Islamic system, in order to provide an analytic evaluation of their republican credentials and their adaptability to this specific version of the dominant Islamic Shari'a. My enquiry would inevitably depart by scrutinising the current Constitution of the Islamic Republic which by itself could be considered as the direct result of a long process of sacralisation of the political sovereignty with explicit influence of a religious ethos that has since characterised the essence of the Iranian political creed.



# Chapter 3 - Republican Constitution

## I. Introduction

In Chapter 1, I argued that the main purpose of the republican governance would be to prevent two types of domination. On the one hand the state should organize its forces to inhibit all types of private domination and at the same time guard against the state itself becoming a dominant force in the citizen's lives. As I expounded there the republican protections towards both forms of domination was also achieved through the provisions of a fundamental constitutional form of non-domination which will be the main theme of the current chapter. Hence in this section I will provide a thorough overview of various implications of these basic republican principles and other theological concepts that were laid out in Chapter 2 to scrutinise their direct reflections and manifestations specifically pertaining to the Fundamental Law of the Islamic Republic.

In Chapter 1, I discussed the difference between the republican use of the term “constitution” in such phrases as “mixed constitutions” and “constitutional division of power”. I referred more to a conceptual notion - in the sense of political principles of the government endorsed by the republican system, rather than what is usually understood by the term constitution as an official legal document containing basic principles of sovereignty, individual rights, liberties and other relevant concepts. Traditionally, numerous distinctions have been made between various types of constitution which include monarchical and republican, parliamentary and presidential, and flexible and inflexible constitutions<sup>399</sup>. Regardless of these historical inclinations to classify the constitutions as such, it is evident that a significant amount of these socio-political principles are normally captured in a specific written formal document. These manuals then serve as the cornerstone of various modern day political systems and are the locus where not only the doctrines of sovereignty and rights are defined but also where the actual form of the various parts of government and their relations to the people are laid out<sup>400</sup>. Hence a closer study of each country's constitution would be very

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<sup>399</sup> Parpworth, N. (2012), *Constitutional and Administrative Law*, London, Oxford University Press. pp.6-

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<sup>400</sup> Ibid p.3

revealing towards a better understanding of the state's convictions on the modality of the arrangement of power and the safeguards to guarantee the survival and continuity of certain repositories of social values. The importance and centrality of such legal provisions have been one of the main themes of the political narratives spanning from ancient times and - as I demonstrated in the first two chapters, have given rise to fundamentally or partially opposing schools of thought. On the one hand there are certain secular schools which accord the ultimate source of power and authority to the people, as in a republican system and on the other the religious systems with their claims of Divine sovereignty as seen in Chapter 2. These tend to attribute the ultimate authority to God which could eventually be extended to human agents, in this case exclusive circle of religious theologians or alternatively to the protectors of the faith in the form of sultans and monarchs. In modern day societies the extent and the legitimacy of such powers has been at the heart of all secular and divine narratives on the exercise of power in the state. At any rate the very existence of an inclusive constitution in any society could be regarded as an important step towards the realization of the basic republican concepts, such as the separation of power, the equality before law and in general the protection of the citizen's rights and duties subject to such a system.

Thus it is paramount that for a government to be capable of advancing any republican legitimacy, one should assume that a proper legal foundation of rights is in place or at least the fundamental notion of legal sovereignty is observed throughout the establishment and administration of such a system. Thus the building block of every country's political arrangement is its universal embodiment of such an outline of the structure of power and rights, as reflected in its national constitution. This is usually where the basic guidelines are drawn to lay down the foundations of various organisations and structures to preserve and promote certain values and convictions deemed to be central to the world view underlying a certain political vision. Evidently in some cases this might well be an unwritten document based on established traditions and customs as is the case with countries like the United Kingdom<sup>401</sup> for instance. Otherwise in the majority of cases it is a well-defined body of guidelines, which ought to be hardly alterable and resilient enough in time, to serve as the basis for all subsequent

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<sup>401</sup> Parpworth, N. pp.11

developments of the civil society. Nevertheless one could find a great variety of constitutional formats with different degrees of flexibility, such as the North Korean Constitution, which seems to be easier to amend and modify than many others, but which regardless is proclaimed to be the cornerstone of their “republican” system<sup>402</sup>. In any case there are universal functions which one could observe in a great majority of the world’s constitutions, such as being general by not entering into details, or being enforceable, clear, free of internal contradictions and most importantly being superior to all other legal provisions and directives in the country<sup>403</sup>. In order to safeguard these basic purposes of a national constitution, various provisions and institutions need to be tirelessly at work to interpret any possible obscurities and make sure the entire political system is compliant with such provisions and, if need be, provide for the possibility of amending the constitution in certain exceptional situations that might arise out of unforeseen circumstances.

For the sake of simplicity one could claim that the main role of any constitution is on the one hand to manage the structure of power in a society and on the other to protect and promote individual’s rights. This would provide a clear framework to study these two aspects of any constitution and try to pinpoint the main concerns of the authors of such a document.

## **II. Constitutional Background**

Throughout Iran’s history one could identify various royal acts and directives aimed at designing the socio-political order deemed essential to the correct functioning of various social structures, but it was not until the early years of the 20<sup>th</sup> century that the country adopted what one could unequivocally define as a modern national constitution<sup>404</sup>. However, a closer scrutiny of various discourse, correspondences and public articles by different proponents of the first Iranian constitution and parliamentary systems reveals that each contributing source had a fundamentally different understanding of the epistemological nature of the concept of constitutionalism, as discussed in Chapter 2.

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<sup>402</sup> See the Constitution of North Korea in particular the “Supreme People’s Assembly” Chapter VI, particularly Article 91.

<sup>403</sup> Madani, J. 1997 *Kolliāte Hoquqe Asāsi*, Tehran, Paidar pub. pp.39

<sup>404</sup> Deraxše, J. (2012) in Xāje Sarvari, Q. (2012) *Sīāsat va Hokumat dar Jomhuri-e Eslāmi*, Tehran Imam Sādeq Pub. 2012 pp. 71-75

Nevertheless these struggles resulted in the drafting of the first Iranian Constitution in 1906<sup>405</sup>. The final result was a five chapter constitution with 51 articles together with a detailed Preamble in 107 sections which was signed by the King in December 1906. A closer examination of the first Iranian Constitution, which was predominantly based on the western legal sources, particularly French and Belgian constitutional law on the one hand and alternatively certain Islamic Shari‘a principles on the other<sup>406</sup>, shows that this was a groundbreaking achievement in the direction of establishing a system based on the rule of law and a relatively restrained system of political sovereignty in which the monarch was forced to make significant concessions with respect to the basic rights of the citizens. Indeed it is argued that through this process for the first time in Iran’s entire history the people of the country acquired the actual legal status of citizens and significant restrictions were imposed on the scope and extent of the king’s hitherto unlimited power<sup>407</sup>.

In spite of this substantial achievement one could readily notice various shortcomings in this initial document of early 20<sup>th</sup> century. First and foremost one would struggle to find a coherent order in the drawing of various sections of the constitution and a great portion of the content seems to have been dedicated to the actual running of the parliament. Most importantly various articles seem to be in clear contradiction to each other, for example Article 26 on the national sovereignty seems to be at odds with Articles 35 to 55 in which the rights of the monarchy are laid out. One also fails to identify any clear guidelines regarding the basic constitutional notions as the separation of power and independence of these sources of authority. In Article 27 for example, both legislative and executive powers are subjected to the king, whereas Article 28 emphasizes the need for a clear separation of powers. Furthermore there seems to be some confusion regarding the roles and scope of the authority of both national parliament and the senate<sup>408</sup>. Nonetheless the Iranian constitutional monarchy witnessed numerous changes and amendments to the text of the constitution in particular during the

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<sup>405</sup> Azghandi, A. (2003) *Tahavvolate Siasi va Ejtemai Iran*, Tehran, Samt pub. Vol.1 pp.99

<sup>406</sup> Rahimi, M. (1978) *Qānun-e Asāsi-e Iran* Tehran: Amir Kabir Pub. p.94

<sup>407</sup> Deraxše, J. Ibid

<sup>408</sup> for instance Articles 15 to 21 state that the legislation in all matters falls under the jurisdiction of the national parliament whereas Article 23 to 25 entrusts certain legislative powers, such as the right to make national concessions and agreements or foreign borrowings and even the establishing of companies exclusively to the senate.

Mohammad Reza Pahlavi era which were mainly aimed at including more secular notions, such as the new provisions on the choice and place of work of the court judges in Articles 81 and 82, and conversely to pave the way for the succession within the Pahlavi dynasty<sup>409</sup>. In particular this period witnessed the institution of modern government structures based on the European patterns and in particular fundamental transformation of the judiciary system, traditionally under the strict control of the clergy and tribal leaders, towards secular national judiciary institutions<sup>410</sup>.

Following the Iranian Revolution in 1979 a new constitution was drafted to embody the doctrinal convictions of the new religious elites. The initial text was prepared over 5 months and put to popular vote, although this timescale does not reflect the considerable amount of time Ayatollah Khomeini had dedicated to the formulation of his personal theory on the nature of an Islamic state. Veritably, as I briefly discussed in Chapter 2, various elements of the Iranian Constitution could easily be traced back to Khomeini's original treatise on the Islamic Government<sup>411</sup>. In fact a brief reflection on both texts reveals that Khomeini had been significantly consistent, although sometimes willingly ambiguous, in his fundamental convictions on the Islamic government. In spite of being a rudimentary article, *the Islamic Government* - originally a collection of 19 lectures, was an attempt to elucidate his exclusive concepts of the government entirely legitimized through a spiritual and religious qualification reserved for prophets, Imams and by extension to the clergy<sup>412</sup>. Therefore the limited circle of the clerical class was regarded as the only true guardian of the "Islamic order" who could prevent any "innovation" in the Shari'a law, "keep the people on the righteous path of Islam", fight against the oppressors and protect the oppressed throughout the world to establish social justice<sup>413</sup> and eliminate the western encroachment and influence on Islamic land<sup>414</sup>. Moreover the unquestionable capacity of the Shari'a to address all human societies' modern day needs is eloquently outlined by Khomeini as below:

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<sup>409</sup> Esfad, M. and Mohseni, F. (2000) *Hoquq-e Asāsi Jomhoori-e Eslāmi-e Iran*, Tehran, Alhoda pub. pp.9

<sup>410</sup> Amin, H. (2003) *Tārix-e Hoquq-e Iran*, Tehran, Dāyeratolma'āref Iran Šenāsi pub. pp.31.

<sup>411</sup> Khomeini, R. Islamic Government in Algar, H. (1981). *Islam and Revolution*, Tehran, Mizan Press.

<sup>412</sup> Ibid pp. 42.

<sup>413</sup> Ibid pp. 54.

<sup>414</sup> Ibid

A complete guideline for government and administration, together with necessary laws, lies ready before for you. If the administration of the country calls for taxes, Islam has made the necessary provision; and if laws are needed, Islam has established them all. ... Everything is ready and waiting..... The Islamic Laws were laid down for the purpose of creating a state and administering the political, economic and cultural affairs of society<sup>415</sup>.

Thus it comes to no surprise to notice that the Iranian Constitution closely reflects Khomeini's ideas on the necessity of establishing a government firmly rooted in the Islamic Shari'a which would in turn be placed under a direct control and supervision of the guardianship of the jurist. This stemmed from the conviction that all non-Islamic systems of government were considered to be instances of *Kofr* (disbelief) and *Taqut* (tyranny) and it is "our duty to remove them from the lives of Muslim society (all traces of *kofr*) and destroy them"<sup>416</sup>. In short, as Hamid Algar expounds, the main themes of the *Islamic Government's* book is to subordinate the political power to Islamic goals and precepts, and to define the duty of the religious scholars to establish such a government and to assume the legislative, executive and judiciary powers within it<sup>417</sup>. Khomeini appears to go even further than that by actually denying the very necessity of a legislative power by underlining that "in Islam the legislative power and the competence to establish laws exclusively belongs to God Almighty"<sup>418</sup>. Thus he concludes that in an Islamic government "a simple planning body should take the place of the legislative assembly...Who draws up programmes for different ministers in the light of the ordinances of Islam"<sup>419</sup>.

As it will be demonstrated below most of these radical views were incorporated into the Islamic Republic of Iran's Constitution with profound implications not only on a political level but also at all stages of the cultural and social life of the nation and beyond. Although numerous constitutional notions introduced both under the strong presence of the secular elements within the revolutionary forces and also as an inevitable result of the moderate ideological elements within the Shi'a school of the political theology<sup>420</sup>, the ideology that eventually prevailed throughout the Constitution, proved

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<sup>415</sup> Khomeini, R. *ibid* in Algar, H. (1981) pp.43

<sup>416</sup> *Ibid* pp.48

<sup>417</sup> Algar, H. (1981) pp.25.

<sup>418</sup> *Ibid*. pp.55

<sup>419</sup> *Ibid* pp.56

<sup>420</sup> See for instance the treatise by Mohammad Baqer al-Sadr and cited by Axworthy in previous Chapter

to be this very same narrow and exclusive interpretations of Khomeini of the mandate of the jurists and the constitutional role and rights of the people in the Islamic Republic.

The electoral law was thus drafted by a restricted group of predominantly religious scholars that was to be called the “Assembly of Experts” during June and July of 1979. Elections were also held at the same time to choose 73 members of parliament to represent different regions and religious minorities of the country<sup>421</sup>. This eventually led to the formulation of the Iranian Constitution in twelve chapters and 175 articles which were put to a public vote in November 1979. The Constitution has since been amended once in April 1989 following a formal request by Ayatollah Khomeini detailing the sections to be reviewed and the reviewing committee who were to carry out the amendments<sup>422</sup>.

### **III. Constitutional Preamble**

#### **a. Constitutional Stylistics**

A closer scrutiny of the Iranian Constitution reveals that it does, to some degree, follow the same standard format of all western-style national constitutions. That is, it starts with the customary Preamble followed by the main body of the constitution which is divided into different sections detailing the authors’ convictions on the sources of legitimacy, form of the government, individual rights and duties, modalities of the division of power and other relevant institutions and centres of social-political administration.

The Preamble - which is not an indispensable part of the constitution and could be left out, as is the case for instance with the Constitution of the Italian Republic, could prove to be very articulate at illustrating the world view of the ideologues of the constitution and the very nature of the expected political system arising from such convictions.

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<sup>421</sup> Madani, J. (1991) *Hoquq-e Asāsi va Nahādihāye Siāsi Jomhuri Eslāmi-e Iran*, Tehran, Hamrāh pub. pp.39

<sup>422</sup> Hašemi, M. (1994) *Hoquq-e Asāsi Jomhuri Eslāmi-e Iran*. Tehran, Šahid Behešti University pub. pp.31

In support of this argument I will provide a very brief comparison with two other political systems both claiming to uphold republican credentials, namely the French and the North Korean ones. The comparison with the French Constitution is very interesting as both “republics” supersede respective monarchic systems through shattering revolutions followed by significant internal and external conflicts. Unsurprisingly both constitutions deplore the tyrannies of the *Ancien Régimes*; for instance the French Preamble of October 1946 glorifies the “victory achieved by the free peoples over the regimes that had sought to enslave and degrade humanity”<sup>423</sup>. Similarly the Preamble to the Iranian Constitution denounces the tyrannies of the monarchic regime and glorifies the Ayatollah Khomeini’s role in guiding the nation towards the victory and against the conspiracies of the US “puppet regime” of Pahlavi. The Preamble continues by providing a detailed description of the various stages of the Iranian Revolution and the asserted wisdom, resoluteness and unshakable determination of Ayatollah Khomeini who “grasped the necessity of following the line of the true religious and Islamic movement” and the role of the clergy in public awakening and uprisings<sup>424</sup>. In this regard the Iranian Preamble closely resembles the Preamble of the North Korean Constitution. Here too one could encounter a detailed description of the foresight and individual virtues of “the great leader” Kim Il Sung who was reportedly:

.. a genius in ideology and theory, a master of leadership, an ever-victorious iron-willed brilliant commander, a great revolutionary and a great man....who wisely led various stages of social revolution and construction to strengthen and develop the Republic into a social country centered on the masses..”<sup>425</sup>.

The Preamble to the Iranian Constitution appears to be more a recollection of the events that lead up to the revolution by illustrating detailed stories with colourful representation of the atrocities and the chaos reigning before the revolution and even citing the exact dates of certain events. Sensational superlatives have been employed to describe the sufferings, the deceits, the tyrannies, the bloodshed and eventually the victory with an underlying implication of a groundbreaking achievement with the promise of repercussions not only inside Iran but also for all the oppressed people of the world.

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<sup>423</sup> Official versions of the French Preamble of 1946 are available in English and can be found on the French *conseil constitutionnel* website at: <http://www.conseil-constitutionnel.fr/>

<sup>424</sup> Preamble to the Islamic Republic Constitution. p.1

<sup>425</sup> Preamble to the Constitution of North Korea in 1972 as found at:  
[http://en.wikisource.org/wiki/Constitution\\_of\\_North\\_Korea\\_\(1972\)#Source](http://en.wikisource.org/wiki/Constitution_of_North_Korea_(1972)#Source)



From a purely stylistic point of view interesting observations can be made. As mentioned previously all three nations drafted their constitutions and implemented the amendments following significant internal conflicts and foreign aggressions, hence the very act of drafting a constitution after considerable struggles have been highlighted as significant achievement *per se* and persistently reflected throughout these documents. The French Preamble dedicates only the opening sentence to this “accomplished” achievement. Interestingly, the Iranian and the Korean Preambles prevalently use verbs in the past tense to underline the results that both nations have attained to date and glorify the actions undertaken by their respective leaders and nations to get to this prominent stage of liberty, independence and human development:

The great idea of Comrade Kim Il Sung and the great achievements made under his leadership are the lasting treasures of the Korean Revolution and the basic guarantee for the prosperity of the Democratic People’s Republic of Korea.<sup>426</sup>”

and:

The Islamic Government is designed on a basis of "religious guardianship" as put forward by Imam Khomeini at the height of the intense emotion and strangulation (felt) under the despotic regime. This created a specific motivation and new field of progression for the Muslim people; and opened up the true path for the religious fight of Islam.<sup>427</sup>

The French Preamble of 1946 is much shorter than the Iranian one and by contrast uses short predicative sentences with a forward looking style designed to establish what “should” be the basic guarantees of the upcoming constitution. This gives the reader the feeling that a significant amount of the task is yet to be accomplished in order to fulfil the basic convictions of the republic. This simple yet informative style could be a great source of insight towards predicting what type of system could be expected to emerge from such declarations. The republican ideas of contestatory citizenry, checks and balances, striving constantly to keep the values pertinent and alive and most importantly the need to direct all the resources of the state towards the fulfilment, development and safeguarding of the republican values, could all be affected by style and the approach that these fundamental documents adopt.

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<sup>426</sup> Ibid

<sup>427</sup> Preamble to the Islamic Republic Constitution as found at:  
<http://www.iranchamber.com/government/laws/constitution.php>

Thus the adopted style seems to have significant repercussions on the content and the message the text would convey. If a significant part of the liberty is already achieved what need would there be to have the republican contestatory citizens to keep a watchful eye on the potentially dominating elements of the political authority or society in general? Also if the foundations of the political sovereignty are claimed to have been laid upon the already perfect and faultless religious sources, or alternatively on the personal virtues of an individual's super-human visionary abilities, what need would there be to have any public forums and open debates on the fundamental principles of such an order? Unless, these are foreseen to treat the secondary issues of the day-to-day running of social affairs without allowing for any fundamental questioning of the legitimizing sources of power administration. As I will demonstrate these contradictions lead to a significant amount of redundancy and inconsistency which would cast a great shadow of doubt over the very basic republican convictions of the Islamic Republic.

## **b. Legitimizing the Constitution**

Beyond all the revolutionary rhetoric, the similarities of the above cited constitutions rest primarily at the formal level as the content of all these documents could not be more different. It is paramount that the "new" constitution needs to qualify its credentials, in other words: what is the purpose of drafting a new corpus of normative guidelines? What also should be addressed are questions like: what makes these newly founded systems superior to the previous orders and what are the guarantees that these will not be more despotic than the previous ones? This quest for legitimacy which substantiates the distinctive identification marker for any political system has been addressed by the French Preamble by elucidating references to the Declaration of Human Rights of 1789 and other charters and secular sources which repose the source of sovereignty in the hands of the people. Indeed here one sees numerous references to the republican nature of the political system and a list of the provisions to be taken to ensure that the essential republican values are upheld and promoted.

Similar notions could be perceived from the North Korean Constitution with its emphasis on the socialist values of people's sovereignty. In fact the country is qualified as "the Democratic People's Republic" and one sees an exaltation of the restoration of the "national sovereignty" and the creation of a republic "centred on masses". The

famous sentence of the late leader, Kim Il Sung is also presented stating: “The people are my God”, this statement further underlines the virtues of a leader who “always mixed with the people and devoted his entire life for them”. This renders a great part of the text into a eulogy of the semi-divine figure of Kim Il Sung who provided the constitution for the Korean people. Indeed the constitution is called “the Kim Il Sung constitution” who is glorified as the eternal president of the Republic!

Most remarkably the Iranian Preamble and the first section of the constitution cite the religious sources of the Quran and Shari‘a as the basic cornerstones of the constitution and the place of sovereignty is accordingly deemed to be with God almighty. Numerous lines are dedicated to citing Quranic verses and constant religious arguments are put forward to underline the Islamic foundation of the constitution that follows. Indeed all the revolutionary struggles are interpreted as a struggle to establish the “law of Islam”. Unsurprisingly the title of the Preamble to the Iranian Constitution is a Quranic verse which reads:

We have sent Our apostles with veritable signs and brought down with them scriptures and the scales of justice, so that men might conduct themselves with justice.<sup>428</sup>

The emphasis on the Islamic principles of the Iranian Constitution could be fully appreciated by the fact that the word “Islam” or “Islamic” is repeated 50 times throughout the three pages of the Preamble, together with various other religious references and arguments. Indeed the overall impression one gets when reading the Iranian Preamble to the Constitution, is that this is going to be a document entirely or at least primarily designed to uphold Islamic values as interpreted by the ideologues of the Islamic Republic. Any social, political, economic and military arguments are subjected to this prevailing religious theme.

In the section related to the Islamic government, although a Marxist style rejection of the class or group domination is upheld, it is claimed that the political authority would be reserved only for devout men of religion:

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<sup>428</sup> Quran verses: 57:25-27

In creating the political structures and foundations for organizing society on the basis of acceptance of religion, devout men have the responsibility for government and administration of the country: “The earth will be inherited by my pious followers”. (Quran: 21:105 )

Obviously the devout men of religion within the Iranian socio-political context are interpreted to mainly include the *Olamā* and closely related religious circles which by themselves make up a certain social class which at times proves to be very exclusive to certain currents of thought within the same congregation<sup>429</sup>. This could in turn pose a conceptual challenge to the classless society which at times seems to have been endorsed herein. It is important to underline that there is no attempt here to extend these affirmations to include the hereditary system of privileges which one expects to be the case in a monarchy, rather a more Communist style system of guilds or social groups sharing common values would make closer candidates with comparable exclusive structures. In an arguably Marxist style an ideological leader at the summit of this political system can be found who shall be “a security against the deviation of all organisations from their genuine Islamic responsibilities”. Moreover as far as the economy is concerned, one encounters a similar line of argument with an open attack on “materialistic” schools of economy in which it is claimed that the economy is an end to itself which would lead to “destruction, corruption and decay”. Whilst the economy in Islam is presented as a system which is not an end-goal within itself, rather it is an instrument to provide for a human’s journey towards (spiritual) development. Strikingly one could identify very similar arguments put forward by most constitutions following the Marxist ideology, the Cuban Constitution being a very eloquent example of this<sup>430</sup>.

As I demonstrated in Chapter 2 this world vision of politics and the economy is only one of the several competing currents of thought within - not only the Islamic world view, but also the same Shi‘a school of thought. Most importantly the abstract notions of “human development”, “moral perfection”, the “journey towards God” and to

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<sup>429</sup> This concept closely resembles the Christian world’s idea of the *congregatio divinatorum*, a closely formulated space for the devote men of God.

<sup>430</sup> In the Preamble to the Cuban Constitution we read: “...that all the regimes based on the exploitation of man by man cause the humiliation of the exploited and the degradation of the human nature of the exploiters; that only under socialism and communism, when man has been freed from all forms of exploitation – slavery, servitude and capitalism – can full dignity of the human being be attained...” the full text of the Constitution can be found at: [http://www.cubanet.org/ref/dis/const\\_92\\_e.htm](http://www.cubanet.org/ref/dis/const_92_e.htm)

“emulate God’s morality” are extremely fluid and spacious arguments hardly quantifiable to capture and regulate unequivocally in any “non-divine” ideological repository. This has resulted in many *ipso facto* ambiguities and inconsistencies arising from the fundamentally different interpretations of such notions that will form the subject of my analysis in the final part of this chapter.

### **c. Foreign Dominance and the notion of Peace**

One of the striking features of the Preamble to the Iranian Constitution is its constant reference to the role of foreign influence, its meddling in Iranian’s affairs and the importance of liberating the nation from external dominance. In fact for someone not acquainted with Iran’s contemporary history, they would get the impression that it was actually a colonized or at least directly dominated country at the hands of the international hegemonic powers before being delivered to freedom by the Islamic Revolution. Evidently this is the very characteristic of the so-called third-world nationalizing states which gained their independence and national sovereignty against the ancient world “empires”. This rhetoric becomes more remarkable when one considers the case of Iran as the country that has largely avoided a direct colonial experience like most comparable nations in the developing world. No doubt there has been significant foreign competition for a greater political and consequently economic influence over Iran, in particular by Great Britain and Russia, but this has never translated into such things as direct national awakenings and the wars of independence against these hegemonic powers. Hence this historical record renders the great emphasis of the Preamble on national independence to sound at times somewhat overstated.

Identical expressions of liberty are being addressed in the preamble to the North Korean Constitution, here again the “anti-Japanese revolutionary” struggle is being highlighted and the emergence of a new era of independence is being announced which would make “an imperishable contribution to the cause of human independence”.

Yet again in the Iranian Preamble one constantly encounters the recollections of “international imperialism’s role”, particularly the United States and its “international oppressive and arrogant world policies” which the Islamic regime intends to fight in and

outside the country<sup>431</sup>. Hence the Islamic Republic's mission is declared to be the unification of all Muslims and indeed beyond this to liberate all oppressed people of the world!

The Constitution...was a movement for the victory of all the oppressed over the arrogant, provides a basis for the continuation of that revolution both inside and outside the country. It particularly tries to do this in developing international relations with other Islamic movements and peoples, so as to prepare the way towards a united single world community...<sup>432</sup>

Thus it is claimed that: "A new chapter opened up in its own way for popular revolutions in the world". Interestingly these militant declarations sound so radical that one could barely find any comparable notions in any formal constitutions around the world. Even in the revolutionary communist Korean Preamble one could notice the emphasis placed on the contribution made to the "world peace and for friendship among the peoples"<sup>433</sup>.

In fact the utter repudiation of all the non-Islamic doctrines in the Preamble to the Iranian Constitution - which defines them as corrupt and decaying, would in theory leave no space for any peaceful coexistence of diverse ideologies. Although the text falls short of any direct threat or proclamation of hostility, it could well inspire various ideological conflicts which would be difficult to settle in the light of this inflexible doctrinal conviction arising from specific interpretations of the religious doctrine. Furthermore, the republican non-domination concept, as discussed in Chapter 1, is strongly extended to international relations, as well and in particular the possibility of negotiating and in certain cases renouncing, to a certain degree, the arrival at a mid-way compromise to accommodate contrasting viewpoints. Whereas the moral mission that the Islamic regime has set for itself to inspire and liberate all the oppressed nations of the world and to create "one single Islamic nation" seems to be at open conflict with the non-domination and mutual respect for the diversity and pluralism of the international intellectual heritage which is an integral part of the republican ideology. Such proclamations based on the convictions of transcendental truth inherent to the religious

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<sup>431</sup> Iranian Constitution Preamble *ibid*

<sup>432</sup> *Ibid*

<sup>433</sup> Similarly the revolutionary Cuban Constitution claims that its mission is limited to the internal affairs of Cuba while trying to enhance "proletarian internationalism, on the fraternal friendship, aid, co-operation and solidarity of the people of the world, especially those of Latin America and the Caribbean".

dogma would indeed prove to be at odds with the basic republican rational, contingent and most importantly negotiable principles. Consequently the obvious question at this stage would be how such an international union for the oppressed would materialize in a voluntary manner without recourse to any form of domination?

Similar ideas are reflected in the paragraph related to the role of the military within the system of the Islamic Republic. This very eloquent paragraph shows the importance of religion and ideology in the formation of the military apparatus and underlines and indeed declares that the role of the Iranian military forces would not be limited to the safeguarding of national frontiers, but it is also most importantly extended to include the mission of expanding the rule of God on earth and performing the ideological fight in the form of *jahād* for the divine cause<sup>434</sup>. As mentioned above this is yet another ideological conviction which could hardly be compatible with the republican respect for the diversity of opinion and the strive to resolve the points of disaccord through dialogue which would often entail making significant concessions to promote principles of international peaceful coexistence amongst nations without having to resort to military settlement of ideological differences. It appears extremely difficult to conciliate the fundamental republican tolerance and the core ideas of openness and inclusivity with such threats of preparing an organized structure of the armed forces, whose main function would be to establish the presumed law of God at a global level. This great emphasis on the intention to export the Iranian political and in particular religious agenda abroad, could indeed constitute a very challenging argument that could potentially be exploited against any global attempts towards the promotion of peace and appreciation of pluralism and diversity. As expostulated before, these are integral to the multi-layered nature of the human civilization, fully appreciated by the republican fundamental principles based on the human reason. To provide another comparative analysis I could cite the clear safeguards against this danger within the French Constitution which is based on this basic republican conviction:

The French Republic, faithful to its traditions, shall conform to the rules of international public law. It shall undertake no war aimed at conquest, nor shall it ever employ force against the freedom of any people.

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<sup>434</sup> Iranian Constitution Preamble *ibid*

## **d. Women in the Constitutional Preamble**

Another important concept treated in the Preamble to the Iranian Constitution is the role of women within it. Here it asserts that women have been the main victims of oppression by tyrannical forces therefore benefitting the most by the restoration of human rights brought about by the construction of a progressive Islamic social structure. Nevertheless I can highlight a marked reference to the concept of family, as if the reinstatement of the rights of women is closely linked to the role she is expected to play within the family union. Thus I could not find any consideration for the individual rights of women outside the traditional religious and cultural values attached to the sanctity of the family. Hence this appears to be more of a derivative privilege by extension rather than a normative individual right; that is to say it is accorded on a functional basis and not a fundamental intrinsic right of humanity.

In the Preamble's next paragraph this concept is extended further by underlining the idea of "motherhood" by claiming that the status of working women had been reduced to that of mere "objects" and "instruments of work" by "being drawn away from the family unit". The inevitable impression one gets regarding these declarations is that potentially one of the major causes of the oppression of women has actually been their participation in the working environment instead of being devoted to the sacred task of "the development and growth of mankind" achieved by the assumption of the responsibilities of motherhood. A brief look at the treatment of the same argument by the French Constitution is again instructive here. Indeed this is the first argument treated in the 1946 Preamble to the French Constitution which demonstrates the great importance accorded to this subject highlighted in the unambiguous declaration: "The law guarantees women equal rights to those of men in all spheres"<sup>435</sup>.

Thus as far as gender equality is concerned, in the Preamble to the Iranian Constitution there does not seem to be any concession made to women who fall outside the family union and who do not fulfil the all-important responsibilities of motherhood as required by the Islamic Shari'a. This could potentially provide another source of domination in which women's role is reduced to the auxiliary role of raising children

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<sup>435</sup> French Constitution Preamble available online at : <http://www.assemblee-nationale.fr/english/>



and marginalized from the direct participation in social and political life. Although this might not be the automatic consequence of such proclamations, one could certainly claim that the paragraph on women's rights in the Preamble would certainly provide no significant republican guarantees towards "empowering" the women by protecting their fundamental human rights and promoting the fundamental non-domination rule of the republican doctrine against the private *dominium* of inter-personal relations.

### **e. Liberties in the Constitutional Preamble**

Throughout the Preamble to the Iranian Constitution one could also identify numerous references to various notions of liberty. There are also references to the republican character of the new political system and the freedom that the Iranian people have achieved by ridding themselves of the monarchic system:

Having regard to the intrinsic nature of this great movement, the Constitution guarantees to oppose any kind of despotism, intellectual, social, and as regards monopoly economics, and to struggle for freedom from the despotic system, and to entrust men's destiny to their own hands<sup>436</sup>

Despite these affirmations, it would appear that the entire human society has been divided into two main classes of the oppressed and the oppressors. The latter seems to be a term referring to both internal despotic regimes and also international hegemonic powers. Hence the achieved liberty seems to be reduced to, on the one hand, liberty from foreign oppression and dominance and on the other liberty from internal tyrants who are in turn agents to their "international masters".

Veritably this treatment of liberty would at best partially fulfil the *imperium* notion of republican liberty while containing a significant omission of the individual spaces of societal expressions of liberty i.e. freedom from *dominium*. Again as shown in Chapter 1, the fundamental concept of the republican liberty with this sphere of *dominium* would largely account for such individual liberties as the freedom in the inter-personal relations, gender equality, equal access to public services and resources, labour rights and in general the absence of any dominating situation in all individual domains of social life. The famous republican eye-ball test<sup>437</sup> that was discussed previously is not

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<sup>436</sup> Ibid Iranian Constitution Preamble

<sup>437</sup> See Chapter 1

only in relation with the state, but also at the personal level amongst various members of society regardless of gender, wealth, religious and other idiosyncratic backgrounds. I will be providing a more detailed treatment of this argument in the forthcoming sections related to the analysis of the actual content of the Constitution.

Another important point here would be that the Iranian Preamble of the constitution, like the North Korean one - by reducing the notion of freedom to the liberty from foreign dominance and the absence of the internal despots, seems to become complaisant with the fact that a significant amount of these social objectives are thought to have already been accomplished. Thus there should be no need for the constant public participation and watchful scrutiny of the political processes as significant gains are claimed to have been made in attaining such objectives. In any case freedom is never claimed to be a self-standing principle with intrinsic values attached to it. Again if one considers the French Preamble to illustrate this point, it appears to be attributing an epistemological value to the concept of liberty as a value and an end in its own right. Obviously this is not only with respect to the foreign aggression and domination, which was also the case in France, since the initial Preamble was drafted in 1946 a few years after the end of the German occupation of the French territories. Nevertheless in the French Preamble there are clear distinctions of individual rights and freedom by including various articles of the Universal Declaration of Human Rights and by explicitly putting forward provisions to uphold such values.

To put it another way: one could observe that the Iranian Preamble seems to be providing an inadequate treatment of the concept of “freedom from” and hardly any reference to the notion of “freedom to” and the empowerment to provide equal access to the resources which is what should be expected in any system claiming to have republican credentials. Thus it should be highlighted here that in the Preamble to the Iranian Constitution the emphasis seems to be on the liberty from the internal and external forces of domination but not much details provided on “what to be done”, not even general references to ways to generate, preserve and promote liberty through “positive” means of achieving freedom.

I will discuss the paragraphs related to the judiciary systems and the executive powers in the next sections, but beforehand a last section of the Preamble to the constitution deserves further analysis as it treats the very important argument of public media, which was part of the republican principles declared in Chapter 1. This principle could constitute a very fundamental republican means of access and participation in the civic spheres of the republic. In the Preamble to the Iranian Constitution it is declared that the various means of mass communication should be employed “to spread the Islamic culture” through benefitting from “a healthy encounter of different opinions and strictly avoiding the broadcasting of destructive and anti-Islamic features”<sup>438</sup>. At this stage it is not clarified what kind of expressions could be regarded as “destructive” to the Islamic Republic and who would determine the religious viability of the programmes. Nevertheless this lays the foundation for the possibility and even the need for profound control and monitoring of the means of mass communication by the state which could potentially be inimical to various articles of the republican ideology. As mentioned in Chapter 1, one of the fundamental elements of the *respublica* since ancient times, has been to guarantee an equitable access to public forums for all citizens of the republic. Therefore, at certain levels this would constitute the main channel of participation to give individual opinions a voice and in particular make the minority groups’ arguments known to a wider public which would otherwise be silenced through the prevailing tyranny of the majority. There is a danger here which could materialize even within the democratic systems in particular those with a liberal matrix. To further clarify, most of the republican ideas would not have even had the chance to come into existence if this vital element of public forums was not fully established and operational. In particular people with different opinions from the dominant ideology should be guaranteed an adequate access to various public means of communication in order to feel themselves free from marginalization in a community which would otherwise prove to not pay enough attention to their concerns and grievances<sup>439</sup>. Hence this particular paragraph of the Preamble could provide dangerous potential for the suppression of different republican elements of social participation and oversight. Indeed it is not hard to envisage a system degenerating into a tyranny where the means of mass communication

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<sup>438</sup> Iranian Constitution Preamble *ibid*

<sup>439</sup> See for instance Pettit, P. (2008) *Republican Freedom: Three Axioms, Four Theorems*, as in Laborde, C. and Maynor J. (2008), pp. 102-125

and information are deprived of their essential role for staging open public debates related to all levels of social administration; and to denounce various shortcomings of the system if need be, without being banished with the accusation of conducting “destructive behaviour”.

Now let us turn our attention to the actual text of the Constitution to see how various fundamental principles of the republic have been formulated there.

#### **IV. Islamic Republic Constitution**

For the sake of simplicity and in line with the general layout of the constitution, I shall consider three main constitutional themes for the current study, namely: the treatment of the individual rights and liberties, the leadership, and the separation of power into legislative, executive and judiciary systems. The rest of this chapter will be dedicated to the first of these three, i.e. the reflection of different aspects of individual rights and liberties in the Iranian Constitution and its compatibility with the basic republican principles laid out in Chapter 1.

It is evident that the main function of any national constitution could be said to be centred on the protection and promotion of its citizen’s basic rights and liberties. In Chapter 1, I discussed numerous traditions within the republican school of thought to safeguard this essential cornerstone of the republican ideology, which, unlike the ancient Greek notions of democracy for instance, could be extended to the majority of the population regardless of their ethnic and social background. As I argued previously this idea was at the heart of the arguments put forward by Cicero, one of the republican thought’s earliest theoreticians, who by defining the natural right of social participation and political engagement, initiated a tradition whose culmination could be traced to the French and American charters and declarations of human rights.

A closer look at the first constitution of Iran adopted in 1906 shows that Articles 8 to 25 were directly dedicated to this issue capturing a significant part of the Universal Declaration of Human Rights. In spite of this some articles such as Articles 18, 20 and 21 set out the limits of education, public communication, publication, assemblies and public gatherings as not being harmful to the principles of Islam or explicitly banned by

the Shari‘a<sup>440</sup>. This initial constitution was subject to various modifications and revisions until the Islamic revolution of 1979 embarked upon the task of drafting a new constitution directly based on the principles of Islam as interpreted by the founders of the Islamic Republic. Here again the citizen’s rights have been endorsed in various articles in particular Articles 19 to 42 are entirely dedicated to the individual’s liberties under the title “Rights of the People”. Prior to this part the initial section on “General Principles” also treats this argument, in particular Article 2, section 6 stresses the “dignity and value of man and his freedom coupled with responsibility before God”<sup>441</sup>. Furthermore in the same article in Section C: (the Islamic Republic is a system based on) “the negation of all forms of oppression, both the infliction and submission to it, and of dominance, both its imposition and its acceptance”. This very eloquent article is very pertinent to this study based on the republican notion of non-domination. It is evident that these two sections of Article 2 clearly set out a solid basis for potential subsequent developments of republican principles. Notwithstanding a clear reference to the religious boundaries of freedom based on “responsibility before God” should be highlighted as I will expound further below<sup>442</sup>.

## **a. Constitutional Mass Communication and Education**

The third Article of the Iranian Constitution is very broad and addresses various issues which are further developed throughout the next chapters of the Constitution. These numerous principles of individual liberties constitute a very useful outline which I will use as my point of departure to trace and analyse all relevant articles throughout the Constitution and attempt to elucidate how these have been passed down in the form of legal provisions and public laws within the Iranian legislative system.

Section 2 of Article 3 declares that one of the functions of the Islamic Republic is to “raise the level of public awareness in all areas, through the proper use of the press, mass media and other means”. This section is fully developed in Article 24 of the constitution which reads: “Publications and the press have freedom of expression except

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<sup>440</sup> See supplement I on the Iranian Constitution of 1906.

<sup>441</sup> The Iranian Constitution with modification of 1989, *Islamic Republic Official Gazette*.

<sup>442</sup> Preamble to the Iranian Constitution *ibid*

when it is detrimental to the fundamental principles of Islam or the rights of the public. The details of this exception will be specified by law". The concept of freedom of press and expression in general in the constitution of 1906 is also referenced particularly in Articles 13 and 20 of the constitutional supplements. As demonstrated previously this could be regarded as the cornerstone of all the government's republican doctrine through providing public forums and open circles of debate. This would inevitably constitute the primary source of informing the ruling body of the needs and requirements of the citizens, particularly those in a weaker social position, minority groups and those with different social, cultural and political convictions whose voices would otherwise be unheard without the provision of adequate tribunes for the expression of their convictions. Therefore the importance of the media and means of mass communication becomes clear in a system that intends to open public spaces of debate and scrutiny to monitor all elements of power in the society. As I argued in Chapter 1 this includes all aspects of legislation as well as all elements of legal execution and political sovereignty in the state.

In our fully specialized world based on the division of labour the role of professional news gathering agencies and their unrestricted access to all potential sources of public interest would constitute the basic republican instruments for promoting transparency and accountability. Evidently then the notion of mass communication would not be limited to certain specialized agencies; rather it should be open and inclusive to all members of society based on the republican principles governing the existence of popular forums. It goes without saying that what we are concerned with here is not the existence of a total unrestricted and unregulated freedom in all domains of public concern. As I argued in Chapter 1 this is exactly what distinguishes the liberal concept of liberty as the total absence of interference and the republican interpretation of freedom as non-domination in which not all interferences are regarded as inimical to liberty<sup>443</sup>.

As already discussed the Iranian Constitution expounds that the limits imposed on freedom of press and public expression are determined by law. A brief survey of the

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<sup>443</sup> For further details see Ch.1.

relevant legal provisions reveals interesting aspects of these guidelines within the Islamic republican system in an attempt to study whether these provisions respect the relevant republican principles. The Press Law dated March 1986 with the additional April 2000 supplement clearly sets out the guidelines regulating the press' activity in Iran. The mission of the authorized press is stated here including duties to: "increase the public awareness, fight against the imperialist cultures of waste, luxury and lust and emphasize the culture of no to west and no to east"<sup>444</sup>. Importantly one can notice the prescriptive instructions that purport "all newspapers need to participate in the realization of at least one of the above objectives and not be in contradiction with others"<sup>445</sup>. In particular the supplement of April 2000 more clearly delineates the boundaries of the activities of the press with unambiguous emphasis on the fact that it should strictly avoid publishing material which is:

Detrimental to the principles of Islam and against Islamic laws, and public morality....should refrain from incitement to take action against the interests of the Islamic Republic....should strictly avoid levelling false accusations against the leader....the personalities, organisations and institutions of the Islamic Republic....or offending the religious authorities even though this might be in the form of publishing their picture or their caricatures"<sup>446</sup>.

These and numerous other legal provisions are set out in detailed guidelines provided by the legislators of Iran to safeguard the principal convictions of the Islamic Republic. It is possible to observe that the foreseen punishment for such violations as "to insult Islam and its sacred principles" is actually the same capital punishment as that reserved for heresy and the negation of religious fundamentals<sup>447</sup>.

Therefore, it is easy to recognize various pitfalls in the Iranian Constitution and the relative legislations regarding the freedom of press and public means of communication. Undoubtedly as shown above there is a very interesting potential for freedom of expression within the Iranian Constitution but a closer scrutiny reveals that these are all

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<sup>444</sup> This has been one of the main slogans of the Islamic Republic which in an attempt to differentiate its ideology from the Western ideologies and the Eastern Bloc doctrines adopted this slogan of "no to East and no to West "

<sup>445</sup> Islamic Republic Official Press, Press Law March 1986 with the added supplement of April 2000.

<sup>446</sup> Ibid

<sup>447</sup> Ibid Article 26

subjected to various restrictions and supervising organisations<sup>448</sup> which would provide efficient means to any members of the ruling authorities to suppress or severely restrict *ad arbitrium* various modalities of free expression of thought within the Islamic Republic.

Furthermore all relevant articles seem to have been very broadly drafted and vaguely worded to the point that they could easily be interpreted to waive even the most basic public rights in this domain. The concept of insult or “false accusation” is so broad and the punishments so severe that undoubtedly this would lead to significant amounts of auto-censorship or the previously discussed “anticipated sanctions” to avoid various harsh consequences of publicly denouncing anything. Obviously there are numerous subjects of public interest which deal with the correct functioning and accountability of those holding public offices that should be under constant scrutiny by the public organs. Now if the criticism or public denunciation of a perceived shortcoming of any “personalities, organisations and public institutions” could constitute a potential for false claims, this could easily result in numerous punishments laid out by these regulations, not least because free access to information and source verification are never guaranteed in the relevant legal framework. In addition the restrictions on publishing any material deemed harmful to the “interests of the Islamic Republic” would leave very little room for any act of public expression at all, let alone those following the Republican freedom and basic principles of non-domination.

Most importantly, as shown in Chapter 1, the famous republican eye-ball test - which guarantees the possibility of criticizing any authorities in a republican system by looking them straight in the eye and expressing a view or concern without fear of consequences, could have no place in such a restricted system. Here one could obviously observe several sources of authority, including the seat of leadership and religious figures which are placed above criticism and accountability, even though to the contrary, there are

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<sup>448</sup> All newspapers and other mass communication material, along with all media and public entertainment creations need to be verified and authorized by the Islamic Republic’s Islamic Culture and Guidance ministry.



other sections of the constitution which clearly guarantees these basic rights and apparently puts all members of the public on the same footing of common standing<sup>449</sup>.

Returning to Article 3 of the constitution one could note Sections 3 and 4 which endorses the necessity for providing free education and physical training to all members of society. These sections are further developed in Article 30 with similar guidelines instructing the government to provide everyone with free elementary and higher education to “the point of national independence”. As shown previously in Chapter 1, public education is one of the basic principles of republicanism which has been underlined from ancient times as illustrated by examples from the fathers of republicanism such as Cicero, Machiavelli and Condorcet. This is in line with the Universal Declaration of Human Rights particularly Article 26 and also the international covenant on economic, social and cultural rights<sup>450</sup>.

It has to be recognized that the Islamic Republic has dedicated a significant amount of resources into realising these article’s objectives. Nevertheless a great amount of work has yet to be done in particular concerning the content of the educational material. I will expound more on this subject in the chapter dedicated to the republican citizens but as far as the constitutional provisions and their direct outcomes on the state policies and regulations are concerned I could highlight numerous aspects of these fundamental guidelines. It appears that momentous efforts have been undertaken towards giving the educational system a specific direction such as limiting the education of the natural science. This direction is particularly apparent when these teachings are deemed contrary to the principles of Islam which has resulted in a direct manipulation of teaching curricula both at primary, secondary and higher education to censor ideologies considered hostile to the principles upheld by the Islamic regime<sup>451</sup>. This was a process that was initiated right after the Islamic Revolution particularly through the so-called

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<sup>449</sup> Articles 19 and 20 for instance.

<sup>450</sup> See Article 26 of the Universal Declaration of Human Rights, Article 26 Sections 1 and 2 in particular and 13 of the international covenant on economic, social and cultural rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Both available on the UN website at: <http://www.un.org/en/documents/udhr/index.shtml#a26>  
<http://www2.ohchr.org/english/law/cescr.htm>

<sup>451</sup> An interesting article by the Iranian opposition group “Jonbeš-e Rāh-e Sabz” is very eloquent on the recent provisions in line with these policies: <http://www.rahesabz.net/story/52565/>

“Cultural Revolution” of 1980 to 1983, during which time a complete revision and purging of teaching material and academic staff took place in an attempt to re-write new syllabi and educational curricula based on the Shari‘a<sup>452</sup>. A recent example of this would be the suppression of the teaching material on the scientific basis of evolutionary biology or the teaching ban on western philosophers such as Jurgen Habermas or even the former authorities of the Islamic Republic such as ex-presidents Akbar Hashemi Rafsanjani or Mohammad Khatami whose books and articles are severely restricted<sup>453</sup>.

To better manage the flow of information, and to filter and channel the sources of public education and information, the Islamic Republic has instated a dedicated ministry called the Ministry of Culture and Islamic Guidance. This Ministry regulates any material destined for mass publication and all sources of information and education. These meticulous controls, selections, filtering and eventual punishments have resulted in significant amounts of invigilation, direct manipulation and even self-censorship which is sometimes based on the so-called principle of prior restraint, namely censorship before actual expression has even taken place in the public domain<sup>454</sup>. As various observations and reports have shown<sup>455</sup> this could and indeed has generated a significant amount of the anticipated reaction to avoid potential coercion or alternatively withholding of benefits<sup>456</sup>.

Therefore once again I could notice that although this article and relevant legal provisions have endorsed the necessity of providing an inclusive system of free national education, various manipulations, censorship, filtering and the threat of possible punishments have *ipso facto* reduced the scope and usefulness of such an important principle of republican doctrine. Put another way there is a certain amount of publicly available free education for all, but the contents of this education do not reflect the basic requirements of the republican system in which the citizens need to be empowered to

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<sup>452</sup> See for instance Mojab, S. (2004) “State university power struggle at times of revolution and war in Iran”. *International Higher Education*. at:

<http://www.utoronto.ca/wwdl/publications/english/War&Universities.pdf>

<sup>453</sup> A sample list of some of the forbidden books by the Islamic Republic can be found at:

[http://www.docstoc.com/docs/111640185/List\\_of\\_books\\_banned\\_in\\_Iran](http://www.docstoc.com/docs/111640185/List_of_books_banned_in_Iran)

<sup>454</sup> See the United Nations report on the Human Rights situation in Iran, particularly section 53 at:

[http://www.iranrights.org/english/attachments/doc\\_3804.pdf](http://www.iranrights.org/english/attachments/doc_3804.pdf)

<sup>455</sup> Ibid

<sup>456</sup> Laborde & Maynor *ibid*

make informed choices based on all available options and potentials. Therefore one appears to be facing a strictly guided system of education here, providing a limited source of information and learning which could easily degenerate into a closed oppressive system of values pertaining to one specific source of cultural hegemony<sup>457</sup>. Thus as I argued in Chapter 1, one of the primary sources of domination is the supply of incorrect or incomplete information or limiting the choice by removing all possible available options. This could eventually lead to dominance as a result of the failure to intellectually empower the citizens to make informed choices. All the constitutional evidence that I analysed pointed in the direction that this could be largely the case with the Islamic Republic's policies on mass communication and public education. I will further scrutinise this subject with detailed on the ground data in the section dedicated to the role of the contestatory citizenry in the Islamic Republic.

## **b. Constitutional Individual Liberties**

Moving to Sections 6 and 7 of Article 3 of the Iranian Constitution one encounters very important provisions regarding the necessity of “eliminating all forms of despotism and autocracy and all attempts to monopolize power” and also “guaranteeing the political and social freedom within the framework of the law”.

These two sections together with relevant articles constitute the main normative repository for the protection of the citizen's basic rights. An in-depth survey of the constitution demonstrates that these concepts are further developed directly in 9 articles throughout the constitution with numerous other articles indirectly related to these principles. The first article directly treating these principles is Article 19 of Chapter 3 under the title: “Rights of the People”. This article endorses the conviction that “...all people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; and colour and race and language do not bestow any privilege”. This is a very fundamental affirmation in line with the Universal Declaration of Human Rights in particular Articles 1, 2 and 4 which guarantee the rights and freedom for all “without distinction of any kind...” with Article 4 which explicitly forbids slavery and servitude.

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<sup>457</sup> Detailed analysis of various mechanisms of Cultural Hegemony can be found in Antonio Gramsci's seminal works notably in Gramsci, A. (1992). *Prison Notebooks*. New York City: Columbia University Press.

It is worth mentioning that Iran is also a signatory of various international covenants and treaties upholding these principles which effectively makes the country a proactive member of international charters on non-discrimination and the fight against racism and apartheid<sup>458</sup>. The same notion had also been underlined in Article 8 of the first Iranian Constitution of 1906. On a side note I could underline that here there seems to be an interesting historical background on this principle dating back to the 6<sup>th</sup> century BC in the Iranian history in the cuneiform cylinder made under the order of the Persian King Cyrus, in which it is believed that he explicitly forbade slavery and servitude which was in line with and indeed a necessity of a pluralistic world empire composed of numerous ethnicities, cultures and religions<sup>459</sup>.

Despite this impressive track record of the Iranian state, both before and after the Islamic Revolution, one could still notice many shortcomings and in some cases discrimination and deprivation which could at least be partially attributed to ethnic and religious factors. Foreign observers and Human Rights' organisations have repeatedly accused the Islamic Republic of wide spread discriminatory practices and laws in Iran based on ethnic, religious, gender-based or other distinctive features, to which the Iranian government has not appeared to be very responsive<sup>460</sup>. Notwithstanding as far as various sources of discrimination are concerned, the Islamic Republic seems to have a relatively sound legal and legislative basis, largely in agreement with the democratic ones, hence and in that sense compliant with the republican principles of providing equal social opportunities to all members of the republic. Nevertheless in practice various

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<sup>458</sup> These include: The International Convention on the Elimination of All Forms of Racial Discrimination. This has been adopted, opened for signature and ratification by General Assembly resolution 2106, 21 December 1965 and the International Convention on the Suppression and Punishment of the Crime of Apartheid, New York, 30 November 1973.

<sup>459</sup> There is a certain amount of disagreement concerning the interpretations of the actual content of the Cyrus Cylinder, nevertheless numerous sources and historic records, including religious texts like the Bible's Old Testament, demonstrate a great level of social tolerance and openness by the Persian monarch towards the different ethnic groups, religions and cultures enabling one to seamlessly highlight the uniqueness of such policies throughout the ancient world. See for instance Masroori, C. (1999) "Cyrus II and the Political Utility of Religious Toleration". In Laursen, J. C. (Ed.) *Religious toleration: the variety of rites from Cyrus to Defoe*, New York, St. Martin's Press.

<sup>460</sup> One such condemnation is the United Nation's draft resolution on November 2006, explicitly expressing "serious concern about the human rights situation in Iran". Further details of this resolution can be found on the United Nation website at: <http://www.un.org/News/Press/docs/2006/gashc3876.doc.htm> A more recent report can be found at: <http://www.iranhrdc.org/english/human-rights-documents/united-nations-reports/un-reports/1000000081-report-of-the-secretary-general-on-the-situation-of-human-rights-in-the-islamic-republic-of-iran-3-20-2012.html>

research and observations have demonstrated that there has been a very marginal implementation of such principles on the ground, and that there are significant margins of improvement particularly concerning republican freedom in the form of non-domination in all areas of private and public concern.

The second constitutional article directly related to Sections 6 and 7 of Article 3 is the very comprehensive Article 20 of the Iranian Constitution. It reads: “All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social and cultural rights in conformity with the Islamic Criteria”. This is further detailed in:

Article 21 on women’s rights;

Article 23 on individuals’ beliefs;

Article 25 on the prohibition of inspection in private communications;

Article 26 on the freedom of political and professional associations;

Article 27 on the right to hold public gatherings and marches;

Article 32 on the prohibition of illegal arrests and detainments; and other articles related to the freedom of occupations, residence and so on.

All these fundamental Articles provide a significant amount of constitutional guarantees to uphold various principles of individual liberties protected under the republican guidelines against the danger of the *imperium* of the state which could easily degenerate into an arbitrary power if not adequately restrained and regulated. A closer analysis of each one of these articles and their developments within the normative frameworks is needed here to see how these constitutional guidelines have been reflected in the ordinary laws of the Islamic Republic.

Let’s contemplate first on the general provisions on the protection of private space by taking a closer look at Article 22 and 23. Article 22 states that “the dignity, life, property, rights, residence and occupation of individuals is protected from violation, except in cases sanctioned by law”. Thereafter Article 23 guarantees the right to hold personal beliefs by clearly stating that: “the investigation of individuals’ beliefs is

forbidden; no one may be molested or questioned for holding a certain belief”. These Articles are clear reflections of the relevant principles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights<sup>461</sup>.

It is unsurprising that the limits of these freedoms are declared to be set by relevant legal provisions; a brief consideration of a selection of these legislations would be very instructive here. The property rights have been endorsed in many relevant legislations<sup>462</sup> which seem to be in exact compatibility with the international laws and conventions and republican social norms. Other provisions such as the Article 2 of Iran’s Code of Criminal Procedure which states that “the police cannot detain suspects for more than 24 hours and has to immediately refer the case to the appropriate juridical sources” also satisfies the minimum requirements for the protection of individual’s rights in a republic<sup>463</sup>. Nevertheless I found instances of incompatibility and in some cases outright contradiction of the existing legal framework, in particular the Islamic Penal Code, with the previously stated republican principles. For instance Article 207 of the same body of legislation states that: “when a Muslim is murdered the assassin will be put to death and the assistant to the crime will be condemned to 3 to 15 years of imprisonment”. Regardless of any considerations concerning suitability of capital punishment, one could notice that this protection is provided only for “Muslims” here which is in clear contrast with the previously discussed non-discrimination principles of the republican system based on religious belonging in this case<sup>464</sup>.

Article 23 appears to cause even more complication and controversy. As seen above the article guarantees the individual’s right to hold any belief, but makes no reference to the actual “expression” of those beliefs. In fact throughout my research on this argument I failed to identify any articles that explicitly and unambiguously guaranteed

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<sup>461</sup>See Articles 3, 5, 6, 9 and 12 of the Universal Declaration of Human Rights and Articles 6, 9 and 12 of the International Covenant on Civil and Political Rights accessible on the United Nation’s website at: <http://www2.ohchr.org/english/law/ccpr.htm>. More recently the United Nation’s Secretary General Ban Ki-Moon on an official visit to Tehran expressed the United Nation’s “serious concerns” about the human rights situation in Iran as reported by the Associated Press on 29 August: at <http://www.abcnews4.com/story/19404793/un-chief-to-discuss-syria-with-iranian-leaders>

<sup>462</sup> See for instance Articles 30, 92, 132, 301, 311, 329 and 331 of the Islamic Republic’s Civil Code and also Civil Liability laws of March 1960, also Article 9 of the Islamic Penal Code.

<sup>463</sup> See for instance Articles 22 - 25 and 96 -103 of the Iranian Code of Criminal Procedure.

<sup>464</sup> This article has recently been reinterpreted by the Maslahat Council, see Chapter 5 for details

the freedom of expression for individuals. The provisions reserved for the means of mass communication were discussed previously, nevertheless it is interesting to observe that these could not be automatically extended to the expression of personal beliefs and convictions at individual levels. Individual beliefs could include all intellectual convictions in the domains of religion, culture, politics and so on which in theory should be protected by this Article. It goes without saying that the ideas should be expressed to come to be recognized as such in the public domain, but there are various means of expression which go beyond oral and written acknowledgment of convictions. Such expressions of belief could include wearing a cross around your neck for instance or a symbol denoting Atheism or any known organisation or association, - as long as this does not directly offend others and transgress limits of liberty as set out by republican principles of liberty.

Thus it would appear that this great omission concerning the freedom of expression in the text of the constitutional article would cause a significant vacuum which could potentially give rise to various arbitrary suppressions of individual freedom in the absence of any unambiguous normative guarantee in this matter. Various authors have tried, on the one hand, to interpret the article to cover actual expressions of personal belief by logical extension, and on the other, to affirm that it only guarantees the holding of personal beliefs and not the actual act of expression, which demonstrates the great ambiguity and potential for misinterpretation that exists in this article<sup>465</sup>. A brief comparison with the relevant articles of the International Covenant of Civil and Political Rights<sup>466</sup> and the Universal Declaration of Human Rights would elucidate this point which reads:

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<sup>465</sup> For a detailed discussion of this argument see Izanloo, M, (2003). *Azadi-e Baian dar Hoquq-e Asasi Iran*. in *Azadi-e Andiše va Baian*, Tehran University Press, 2003. Also Katouzian, N. (1998) *Mabāni-e Hoquq-e Omumi*, Tehran , Gostar Pub.

<sup>466</sup> Article 19 of the International Covenant of Civil and Political Rights:

1. Everyone shall have the right to hold opinions without interference;
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice;
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order, or of public health or morals.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Only such an unambiguous declaration could provide any chance of protecting basic rights of individuals which would otherwise be trampled upon and waived in an arbitrary manner due to incongruent interpretations.

One final observation that I could make regarding the safeguarding of individual beliefs would involve the protection of religious beliefs in the Iranian Constitution. Article 13 acknowledges that Zoroastrianism, Judaism and Christianity are the only recognized religious minorities. Therefore there are no guarantees of freedom for followers of any other faiths to practice their religion or to include their religious principles in any official social contexts and forms. This is not only in contrast with the Universal Declaration of Human Rights (Article 2 in particular), but also in clear contradiction to the affirmation of “all people of Iran” in Article 19 of the same constitution which declares “equal rights” for all. This proves to be yet another shortcoming which could have serious consequences on the safeguards of the individual’s rights which could easily be discounted by the *imperium* of the Islamic Republic state, which as I will expound in Chapter 6 seems to have indeed been the case.

### **c. Constitutional Gender Equality**

As I argued in Chapter 1, the prevention of *dominium* in private relations and the empowerment of individuals in a weaker social position to promote their interests and concerns, constitutes one of the main functions of a republican government, which unlike the liberal counterpart does not limit its actions to a mere non-interference stage. One of these areas of potential domination is the historical setbacks arising from inequality of the sexes in socio-cultural domains with possible reflections in the legislative provisions. Hence as argued previously, this area is of special concern to the theoreticians of republican thought due to its significant potential for violation of republican liberties. Thus in my domain of study, a closer analysis of Articles 20 and 21 - in particular as far as the “equal protection of man and woman before the law” is concerned, would be very instructive here.



This is a very problematic area for any legislation founded on the so-called “Western Religions” including the Islamic Shari‘a. Unsurprisingly the Iranian legal framework does not and could not reflect the provision of the above constitutional principles due to strict religious guidelines in this field<sup>467</sup>. A brief survey of the Iranian legislations in this regard reveals a significant body of discriminatory laws aimed at privileging the male domination in various socio-cultural and private domains. Article 1133 of the Civil Code for instance reserves the right to divorce for men only and provides further simplification in cases where the wife suffers from certain types of illnesses; whereas the wife does not enjoy equivalent rights even in the case of certain serious ailments of the husband. Article 1130 of the same Code defines the rare cases where the wife could actually file for divorce, this include such instances as when she can prove to have been subject to “continuous and unbearable physical beating and mistreatment”. Thus it is unambiguously implied that when the physical mistreatment could be said to be “tolerable”, there will be no grounds for a wife initiated requested for the dissolutions of the marriage with regards to these legal provisions; and even in this specific case the wife is usually required to waive all her legal and financial rights ensued by the marital bonds. In various articles of the Islamic Penal Code it is affirmed that the testimony of women has either no legal value or half the witness value given to that of men, or that monetary compensation paid in the event of causing unintentional death would be half the amount paid to women as that to men<sup>468</sup>. The striking sections of the Islamic Penal Code are certainly the parts related to the rights of the husband to commit manslaughter if he happens to discover his adulterous wife with another man. It is confirmed that he is entitled to murder both there and then whereas the wife is not afforded such a right or even to that of causing minor bodily harm<sup>469</sup>.

There are numerous other discriminatory legislations which are at utter contradiction with the provisions of Article 20 and various international charters and covenants. For instance the occupational access of women has been restricted in certain fields such as

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<sup>467</sup> This is indeed the case due to numerous religious guidelines in particular the explicit instructions in Quran such as those in Al-Nisa verse precisely requiring total obedience and subordination of women to Men in all life matter see for instance Quran, Al-Nisa:34

<sup>468</sup> See Articles 117, 119, 128, 137, 170, 189, 199, 237, 273, 424 and 483 of the Islamic Penal Code of Iran.

<sup>469</sup> Article 302 of the newly released 2013 Islamic Penal Code of Iran reaffirms this right in section e (ث).

the military or indeed to work as a judge in the national courts of justice, which is reflected in the relevant laws regarding the qualifying criteria to seek employment with such organisations<sup>470</sup>. Furthermore in certain cases the husband is entitled to restrict the wife's access to certain professions or even working altogether considered "detrimental to the interests of the family or his own or the wife's dignity"<sup>471</sup>. In contrast I could present various examples of the actual protection of women's rights particularly regarding their rights to maintenance, protection from physical violence, legislations against physical abuse and prostitution together with some provisions for work environment entitlements and various provisions for social and economical assistance<sup>472</sup>. Despite this, the majority of these laws, in particularly Article 21 of the constitution - which in theory should serve as the basis for protection and promotion of basic women's rights, seem to have adopted a protectionist approach towards the safeguarding of the already underprivileged position of women, rather than actually empowering them to gain equal social rights<sup>473</sup>. Furthermore the emphasis seems to have shifted towards the protection of the family and motherhood, with significant consequences on women's individual rights, which do not seem to have been derived from their own basic principles of human rights independent from the role they ought to play in a religious, family-oriented society.

All these discriminatory legal frameworks would point to the conclusion that the Islamic Republic has not been successful in enacting various international charters or even some of its own constitutional provisions which it had officially proclaimed<sup>474</sup>. As far as my area of study is concerned this is a considerable deviation from the basic republican principle of non-domination. It appears that very little has been done to empower women in the Islamic Republic who seem to be shackled by centuries of discriminating socio-cultural beliefs and convictions. On the contrary all evidence

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<sup>470</sup> Article 32 regulating the employment in the armed forces of 1987 and the article regulating the preconditions for the selection of judges dated 1982 both restrict women's access to these positions exclusively on gender considerations.

<sup>471</sup> Article 117 of the Islamic Republic Civil Code.

<sup>472</sup> See for instance Articles 1085 of the Civil Code and Article 76 of the Labour Law and Article 642 of the Islamic Penal Code.

<sup>473</sup> In Section 2 and 3 of Article 21 dedicated to the protection of women's rights we read amongst others: "the government must ensure the protection of mothers, particularly during pregnancy and childbearing and to... establish competent courts to protect and preserve family..."

<sup>474</sup> See for instance the United Nation's special report on Iran at:

[http://www.iranrights.org/english/attachments/doc\\_3804.pdf](http://www.iranrights.org/english/attachments/doc_3804.pdf)

points in the direction that in practice they have actively been restricted and discriminated against in a system where the only “dignifying” role for women seems to be in the capacity of motherhood. If one adds to this a significant amount of juvenile marriages for underage women, the resulting image would unequivocally represent a considerable amount of actual domination in private spheres<sup>475</sup>. To mention yet another instance of such a prevailing individual *dominium* I could cite Article 1041 of the civil code which acknowledges that while the legal marriage age for girls is set to be 13 years, the marriage of infants below this age would still be permitted if the father or the grandfather of such an underage individual gets a favourable verdict from a civil judge<sup>476</sup>.

One specific recurrent expression throughout the Iranian Civil Code on family laws, based on the previously mentioned Quranic verse, is the term *tamkin* (obedience) which provides significant grounds for the subjugation of women to the *dominium* of their husband in all daily life matters. Hence unsurprisingly the ordinary laws of the Islamic Republic driven from these dominatory constitutional and legal provisions prove to be providing significant grounds for the violation of the individual liberty and independence. No need to underline the fact that by enacting such a legalized system of discrimination *ipso facto* half of the entire population would automatically fall outside the basic provisions of a republican doctrine of legal protection and equality before law. This constitutes a precise instance of living under the *potestate domini* of another dominatory force in the personal and private spheres of society.

#### **d. Constitutional Political Parties and Associations**

Other arguments treated in Article 3 of the constitution that I have used so far as my basic point of departure for the analysis of the fundamental individual rights in the Iranian Constitution, are the guarantees for the protection of individual rights to participate or form political and social parties and associations. Articles 26 and 27

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<sup>475</sup> See for instance an article on this matter at:  
<http://www.telegraph.co.uk/news/worldnews/middleeast/iran/9500484/Alarm-as-hundreds-of-children-under-age-of-10-married-in-Iran.html>

<sup>476</sup> Article 1041 of the Iranian Civil Code

attempt to further develop these principles and delineate the framework of these liberties in the society. Article 26 in particular declares:

The formation of parties, societies, political or professional associations, as well as religious societies, whether Islamic or pertaining to one of the recognized religious minorities is permitted provided they do not violate the principles of independence, freedom, national unity, the criteria of Islam or the foundations of the Islamic Republic....

Various aspects of this Article deserve further analysis. First of all one can notice that for the religious parties and associations, only the officially recognized religions are authorized to have their own associations, which as I discussed previously, seems to be extremely discriminatory to the followers of other creeds and faiths. Secondly and most importantly the clear “red line” set out here for the activities of the political parties is declared to be the fact that they should not violate the basic principles of the Islamic Republic. This becomes clearer in Article 27 where the freedom of peaceful public gathering and marches is guaranteed provided that they are not “detrimental to the principles of Islam”. One can notice that this is a recurrent limit set for most articles concerning the protection of the basic principles of individual liberties and all their social and political means and modes of public participation. As seen previously, this is a very broad principle that could be interpreted in various ways. Most strikingly I discovered that the Council of the Guardians of the Islamic Republic - who is constitutionally the only authorized source of providing interpretation and clarification of the ambiguities in the constitution, at least on one occasion, had refrained from providing any clarification to this phrase following the official enquiries by the government authorities<sup>477</sup>. Unsurprisingly the ordinary laws of the Islamic Republic dominated by the conservative legislative factions have interpreted this to implement restrictive provisions both on the formation of political parties and even on peaceful public gatherings and associations, to the point where currently there is no single fully independent political party authorized within the framework of the Islamic Republic<sup>478</sup>. I will return to this argument in the last chapter dedicated to the republican contestatory citizenry of the Islamic Republic.

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<sup>477</sup> *Collections of the Opinions of the Council of the Guardian*. Research Centre of the Council of the Guardians pub. 2002 p.373

<sup>478</sup> See for instance the research published on the only existing Iranian Parties which were both part of the former “Islamic Republic Party” at: [http://us-iran.org/sites/default/files/webform/userarticle-submissions/political\\_party\\_in\\_ir\\_iran.pdf](http://us-iran.org/sites/default/files/webform/userarticle-submissions/political_party_in_ir_iran.pdf)

To provide some samples of such legislations I should mention Articles 6 and 16 of the law on activities of the political parties, ratified in August 1981. This law sets numerous exceptions to the freedom of activity of various political, social and professional parties and associations including: “violating the principles of national independence, contact with foreign embassies, receiving money from foreign countries, violating Islamic principles and the basic foundations of the Islamic Republic (with) anti-Islamic propaganda...”. Furthermore, various articles of the Iran’s Islamic Penal Code are dedicated to punishments foreseen by law not only for those who perform activities against the national security (Article 498), but also those who are involved in propaganda against the system or promotion of groups and organisations which are against the Islamic Republic (Article 500).

Once again, as with other articles of the Islamic Republic’s Constitution cited above, one could not overlook the presence of interesting attempts to include various principles of the Universal Declaration of Human Rights (Article 20) and the International Covenant on Civil and Political Rights (Article 21). Nevertheless numerous restrictions and provisions and most importantly inherent ambiguities, have rendered these articles incapable of protecting and promoting the most basic principles of individual liberty. Various republican constraints and guidelines seem to have been jeopardized by the significant shortcomings of these articles. Once again the basic republican principle of non-domination seems to have been considerably violated by providing a constitutional and consequently legal framework that seems to be incapable of guaranteeing equal rights before law for all citizens of the republic. More specifically the promise of republican open public forums in the form of associations and political parties - which provide means for promoting various social and political interests, does not appear to have been materialized here. The inimical *imperium* of the dominant ideology seems to have considerably overpowered the republican spirit for an open and inclusive society, to the point where the activities of all political parties, even those with the slightest tendency for promoting any unfavourable ideologies to those held by the Islamic Republic, are currently outlawed with the accusation of being “inimical to the Islamic Principles” or “performing activities against national security”<sup>479</sup>.

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<sup>479</sup> See the previously cited official reports of the United Nation on Iran.

### **e. Constitutional Ambiguities and Inconsistencies**

As argued in Chapter 1, the primary concern of the legislative infrastructure of a republican state would be to lay down the norms of legal provisions with overriding comprehensive applicability in a clear unambiguous manner. In spite of this, various levels of inconsistency could effortlessly be highlighted which seem to have been primarily caused by a profound underlying ambiguity in the interpretation of the locus of legitimacy and sovereignty within the Iranian Constitution. As shown above there are explicit acknowledgment of the role of the people in administering all “affairs of the country” (Article 6). Nonetheless numerous limitations and boundaries imposed on this exercise of authority seem to be at unconcealed contradiction with the explicitly highlighted rights and purviews of the people. This point requires a detailed analysis which I will provide in the forthcoming chapter. Notwithstanding as far as the current argument on the Constitution goes the existence of these numerous ambiguities and in some cases even contradictions within the Iranian Fundamental Law, would inevitably raise the question of what sources of clarification have been foreseen within the constitution itself to treat numerous potentials for misunderstanding?

Yet another example of such a complication can be referred to in Article 14 of the constitution which claims that: “The Government of the Islamic Republic of Iran and all Muslims are bound to treat non-Muslims in conformity with ethical norms and the principles of the Islamic justice and equity and to respect their human rights”. As discussed previously, only three religions in Article 13 are officially recognized by the Islamic Republic. Thus it is unclear as to how the Islamic Republic could guarantee the “human rights” of all non-Muslims whilst not recognizing their rights to religious organisations? The same would obviously hold true for other non-religious associations.

Incompatibilities like these and ambiguities like the previously discussed notion of being “inimical to the principles of Islam” or “against national security” would inevitably call for a strong supervising constitutional entity to interpret the Constitution in line with what is perceived to be in the national interests of the country. The existence of such an institution with the power to interpret and clarify ambiguities is indeed a fairly common procedure in most modern day republics. Indeed at certain

points, many of the western political systems have experienced a so-called “constitutional crisis” in which the ambiguity of the constitution or its silence on specific matters has resulted in a certain type of government crisis requiring a significant effort both politically and socially, to overcome<sup>480</sup>. Hence various systems have produced different solutions for supervision over the content of the constitution and compatibility of the ordinary laws and provisions with the fundamental principles of the constitution<sup>481</sup>.

As mentioned above, within the constitutional layout of the Islamic Republic this role is reserved for the Council of the Guardian as coded in Article 98:

The authority of the interpretation of the Constitution is vested with the Guardian Council which is to be done with the approval of three-fourths of its members”.

Within the legislative structure of the Islamic Republic Constitution, the Guardian Council occupies a very prominent role as it is also responsible for the approval of all laws passed by parliament as seen in Article 94. The constitution further asserts that the Iranian Parliament or *Islamic Consultative Assembly*, does not have any legitimacy if there is no Guardian Council in existence, as seen in Article 93. These and other articles endorse the very fundamental role attributed to this council by the constitution. It is worthwhile mentioning that the 12 members of such an omnipotent council are chosen half by the Leader of the Islamic Republic and half by the head of the judiciary system, who is appointed by the Supreme Leader. I will discuss the various implications of this arrangement in the chapter related to the Islamic Republic institutions. At this stage what is pertinent to my current argument is the constitutional capacity to clarify and interpret the ambiguities and contradictions of the Islamic Republic Constitution. This could potentially constitute a significant setback for the basic republican rules of transparency and accountability of the republican institutions on the one hand, and the clarity and lucidity of the legal framework destined to uphold the basic principles of

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<sup>480</sup> See for instance the UK’s Parliament Act of 1911 and 1949 in which the supremacy of the House of Commons over the House of Lords was eventually established. See a more detailed analysis of this on the UK Parliament’s document at: <http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-00675.pdf>

<sup>481</sup> Tabātabāi, M. (2001), *Hoquq-e Asāsi*, Tehran, Mizān Pub. pp187-189 and Arjomand, A. (2005), *Nezamhaye Nezarati bar Qanun-e Asasi*. in Mehrpour, H. *Rais-e Jomhur va Masouliyat-e Ejrā’i-e Qānun-e Asāsi*, Tehran Ettela’at pub. pp.190-195.

civic rights on the other. Hence in my view a semi-elected Council of Guardians with a strong religious component of all its members<sup>482</sup> with such a comprehensive area of authority, in a near total absence of any popular supervision and transparency, would certainly be against the most basic rule of popular sovereignty and the prevention of state *imperium*, in this case in the fundamental legislative system. It is fairly simple to identify various pitfalls arising from such an *arbitrium*, in this case religiously grounded arbitrary power, that could easily degenerate into a despotic system in the absence of the means and modes of direct popular participation and constant supervision on all aspects of the political life of a country. European history of political thought for instance, is full of such examples of unaccountable religious institutions becoming sources of considerable *potestate domini* against which many political philosophers have debated elaborately.

Furthermore, I could find examples of comparative republican institutions of this quality, such as the French *Conseil Constitutionnel* or the Italian *Corte Costituzionale* both of which are theoretically open to all members of society and controlled either by directly elected representatives or indirectly appointed members, all functioning under close popular scrutiny and transparency<sup>483</sup>. Therefore the basic definition of these institutions within the republican system is said to be that of “protecting the basic liberties of the citizens against the laws that could restrict them”, rather than acting as a monitoring body of the state itself for the imposition of certain ideologies of a dominant group or currents of thought<sup>484</sup>.

As a direct consequence of all these provisions, the essential republican principles of checks and balances do not seem to have an adequate place in such a constitutional

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<sup>482</sup> Based on Article 91 the council comprises 12 members, 6 of whom are directly appointed by the supreme leader from amongst the religious figures of the country and the other 6 are appointed by the head of the judiciary power, chosen from within the Muslim jurists.

<sup>483</sup> In France for instance, there are no specific qualifications required for membership of the *Conseil Constitutionnel* and in most European countries a basic education or experience in the legal field will suffice with the obvious preference given to those with conspicuous political track records. For further details see Roussillon, H. (2011) *Le Conseil Constitutionnel* Paris: Dalloz in particular the introductory chapter for a comparative analysis of the Constitutional supervising organs across Europe.

<sup>484</sup> As an example see the ruling of the French *Conseil Constitutionnel* on the so-called “law of equal opportunities” in March 2006 at: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2006/2006-535-dc/decision-n-2006-535-dc-du-30-mars-2006.1007.html>



arrangement in which there are no other sources of public control and appeal. Even in Article 90 of the constitution which is said to be enabling the parliament to investigate complaints made against the parliament itself, the executive, and the judiciary systems, have proven to be very limited and inefficient on various occasions in which the public or the same authorities of the Islamic Republic have called for its intervention<sup>485</sup>. Hence based on these evidences and examples, there are numerous instances where questionable verdicts have been delivered, political leaders and activists have been silenced or other sentences against the basic principles of human rights have been conveyed without there being sufficient republican constitutional guarantees for unambiguous protection of individual rights and liberties by upholding and safeguarding fundamental republican principles of individual freedom and sovereignty. Even in few cases where the normative provisions are actually present, the inherent ambiguities and inconsistencies with other constitutional articles and the absence of the provisions for an independent interpretative legal body have all rendered these principles of the Fundamental Law unproductive and inefficient.

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<sup>485</sup> See for instance, a significant inquiry by Committee Member, Abbas Palizdar of Article 90 in 2008 on large scale corruption within the highest ranking officials of the Islamic Republic which controversially ended with the arrest and imprisonment of the enquiry committee member himself retrieved at: <http://iranchannel.org/archives/1090>

## V. Conclusion

Throughout this chapter I attempted to provide a thorough analysis of the Islamic Republic's Constitution and also at times adopted a comparative standpoint to evaluate its republican credentials in particular with analogy to the French Constitution. The obvious reason for adopting such an approach was not only the basic fact that the original Iranian Constitution was actually based on the French Fifth Republic Constitution<sup>486</sup>, but also due to the fact that, as I argued in the Introduction, such an approach would be extremely useful in bringing various theoretical aspects of the political philosophy into the light of appreciation. Additionally, to provide a more balanced approach I also included reflections on the constitutions of other so-called republican systems such as the North Korean one. From there I proceeded to examine the different articles of the Islamic Republic's Constitution, in particular those concerning the basic civil and political rights, in order to evaluate their conformity with the fundamental principles of republicanism as laid out in Chapter 1, or otherwise to identify their religious grounding discussed in Chapter 2. Again as referred to in Chapter 1, one of the main characteristics of the republican system is that there should be no element of discretionary power, be it individual or state, on which the basic liberty of the individual can depend<sup>487</sup>. Hence I provided a systematic analysis of the Iranian Constitution in this regard.

Based on this analysis of the Constitutions and other manifestations of these articles within the Iranian legal system, I could confirm that a significant body of legislation could, at least partially, be compatible with the previously discussed republican guidelines. For instance Article 6 declares that "in the Islamic Republic the affairs of the country must be administered on the basis of public opinion by means of elections..." which sounds extremely inclusive and progressive. Nevertheless, further examinations of all aspects of these constitutional frameworks and their relevant legislations readily demonstrates that there is a prominent presence of the religious principles and guidelines which would overwrite, or in some cases completely waive the basic principles of popular sovereignty, transparency and in general the non-dominance

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<sup>486</sup> Arjomand, S. (2009), p.7

<sup>487</sup> Skinner, Q. (1998) pp.41.74.

articles of the republican ideology. Furthermore, even the most basic articles of individual liberty seem to have been systematically subjected to the Islamic principles as interpreted by the state and its constitutional control mechanisms such as the Council of Guardians.

I also tried to evaluate a selected body of articles and the relevant ordinary laws against the republican principles of *imperium* and *dominium* in order to provide an assessment of their republican credentials. At the level of *imperium* a significant number of articles failed to comply with the basic republican condition of the state not becoming a dominant force in the individuals' life. I verified that such state provisions as the authorization of a limited number of religions to freely practice their faith or the strong discrimination imposed on the expression of personal beliefs, mass communication, political parties and so on would constitute momentous shortcomings in any system claiming to be upholding republican values. Furthermore I failed to identify any constitutional guarantees for open republican forums in the Islamic Republic in which individuals could freely express their views and concerns without fear of consequences. Hence all evidence would amount to the conclusion that the republican eye-ball test would most definitely fail against various sources of potential *imperium* arising from these constitutional inadequacies of the Islamic Republic.

At the *dominium* level I need to highlight that the significant discrimination within the articles of the Iranian Constitution and the relevant legal framework seems to have largely compromised the guarantee of an equal standing for women within the Islamic Republic. This would constitute yet another major deficiency according to the republican principle of non-domination, in particular the fundamental notions related to the actual empowerment of those in a weaker social position to get their voices heard and their rights protected<sup>488</sup>.

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<sup>488</sup> Children are another vulnerable section of society whom the Islamic Republic seems to have systematically failed to protect and empower. See for instance the legal report on juvenile execution in Iran at: <http://www.iranhrdc.org/english/publications/legal-commentary/1000000183-crimes-against-children-in-iran.html>

Finally a great amount of ambiguity and inconsistencies within the Islamic Republic's Constitution on the one hand, and the absence of a transparent and entirely elective and inclusive constitutional organ of interpretations and supervision on the other, has compromised and undermined various elected elements of the republic.

In the forthcoming chapter I will attempt to provide a closer analysis of the structure of power in the Islamic Republic to verify how this would rate against the republican guidelines against the *potestate domini* of the sovereign power. More precisely I will start by taking a closer look at the various principles of republican sovereignty within the Iranian political system, which will be an extension to the observations made in this chapter. This study will proceed into a closer examination of various repositories of sovereignty and authority in this system in particular that of the office of the leader with its considerable constitutional powers and prerogatives and the powerful concept of *Velāyat-e Faqih* with its profound socio-political consequences and constitutional and institutional implications.

# Chapter 4 - Republican Sovereignty

## I. Concept of Sovereignty

Throughout the previous chapters, I identified the basic principles of the prevalent school of republicanism highlighting its main idiosyncratic features, the most important of which was argued to be popular sovereignty and the rule of law. Nonetheless, the concept of sovereignty proves to be a complex notion to grasp, which needs to be qualified and framed before proceeding with further analysis. In addition, I also provided a thorough evaluation of the Iranian Constitution and a brief comparison of its principles with other political systems bearing the name “republic”, with their principal claims being the people’s sovereignty and the equality of their citizens before law. Thus in this chapter I pursue my enquiry into the compatibility of the republican ideology with a religiously imbued doctrine of state by initially providing a precise theoretical framework for the study of the structures sovereignty in the modern world’s republican political systems. Consequently, this needs to be extended to provide a systematic examination of the structure of power in the system subject to this enquiry, in order to provide a comprehensive assessment of its republican credentials. Therefore, the current chapter is aimed at analysing this fundamental arrangement of the political authority which as argued in Chapter 1 constitutes the main defining feature of the republics throughout history namely: “rule of people by the people and for the people” as Abraham Lincoln famously declared<sup>489</sup>.

To that end at this stage, a primary conceptual clarification should be on order. My aim in this chapter is not to provide a philosophical evaluation of the concept of sovereignty, such as the one provided by Georges Bataille, in his seminal treatise entitled *La Souveraineté*, in which he skilfully examines various conceptual and abstract ideas defining multiple manifestations of the notion of sovereignty, primarily from a socio-cultural point of view<sup>490</sup>. Furthermore I do not wish to provide a historical, comparative analysis of this concept and its political implications here whose best

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<sup>489</sup> Jackson, R. (2007) *Sovereignty*, London, Polity Publications, p.79

<sup>490</sup> See Bataille, G. (1976). *LA SOUVERAINETE*, Paris, Lignes Pub.

example can be found in the work of Hannah Arendt for instance<sup>491</sup>. Whereas here, I do wish to draw on a more functional approach towards the exact employment of the political power by the state authorities and its actual relations, interactions and eventual inconsistencies with other elements of the republican structure of power and authority. In this pursuit, my point of departure would be the concept of sovereignty provided by the Encyclopaedia Britannica as “the ultimate overseer, or authority, in the decision-making process of the state and in the maintenance of order”<sup>492</sup>.

I have already either directly or indirectly treated various aspects of this power structure in previous chapters by presenting the unifying thread of the republican ideology, progressing to studying the religious notions of the political authority, in this case the Iranian Shi‘a school, after which I endeavoured to present a general overview of the current Iranian Constitution. This document unsurprisingly contained the formulation of basic notions of national sovereignty and the repositories of power within the Islamic Republic. Thus in this and the next chapter, I will strive to inspect each one of these constitutional manifestations of sovereignty through the examination of the people’s effective power in controlling such political order, specifically the Office of the Leader, its political significance, accountability and transparency as defined by the Islamic Republic Constitution. In the next chapter I will be extending this analysis to address other public institutions and organizations holding public authority, some of which are claimed to be firmly grounded in the basic republican principles.

In order to qualify the framework for this study of the political sovereignty, I am obligated to provide a brief overview of the forms that the sovereignty has taken throughout the history of the political thought. Unsurprisingly, there have been numerous interpretations of the basic notions of sovereignty by various schools of thought ranging from the ancient divine right of the monarchs - or the Persian equivalent *farah-e izadi* (God’s grace), to the scholastic, parliamentary or direct democratic systems of the administration of public power<sup>493</sup>. Regardless of these classifications, it is widely claimed that the notion of sovereignty is a modern concept as the old world

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<sup>491</sup> See for instance Arendt, H. (1966), *The Origins of Totalitarianism*, New York, Harcourt pub. 1976

<sup>492</sup> See <http://global.britannica.com/EBchecked/topic/557065/sovereignty>

<sup>493</sup> See for instance Katouzian, H. (2003) pp. 47,77,78

authorities were either not adequately centralised - that is they were unable to impose their authorities uniformly across a specific territory, or that these authorities lacked any actual structure of power in a hierarchical and pyramidal manner which is *ex definitionem* the notion of sovereignty<sup>494</sup>. The famous Ralph Giesey's quote that "king as a judge is medieval, the king as legislator is modern", could serve as a good point of departure here when drawing the line between the modern and ancient understanding of the concept of sovereignty<sup>495</sup>. Thus one is presented with a significant scholarly consensus over the idea of sovereignty being closely related to the notion of the state, which is in turn, an aftermath of the secularization of power and authority<sup>496</sup>. This would obviously pose an immediate fundamental challenge to my case study as the very existence of a modern civic notion of sovereignty is conceptualized in an absence or at least a fundamental subordination of the ancient elements of authority feeding upon the metaphysical or divine legitimacies.

It is argued that the very subsistence of modern state systems has been dependent on such attributes as the separation of power and the rebuttal of any systems of legitimacy not reposed on the people's *podesta*, which would be at odds with the religious or other ancient world style repositories of authority<sup>497</sup>. Notwithstanding, in order to abstain from entering philosophical and theological discussions, this study has shifted its focus on a specific political arrangement of a modern day state i.e. the republican system of the authority. As argued before, such a system is bound to act within a distinct form of political sovereignty that I have attempted to theoretically frame and highlight with its constituting elements. Furthermore, in reality there are religious states or at least those with strong religious components, already in place in many areas of the world some claiming to be based on a conspicuous body of the republican doctrines, even though these might actually contain conceptual incoherencies. Nonetheless as with those inspired by the republican values, they are bound to advance certain claims of sovereignty, based on a specific structure of power and authority indispensable for the

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<sup>494</sup> See for instance Beauthier, R. (1997), *Droit et Genese de l'Etat*, Bruxelles: Editions de l'Université de Bruxelles

<sup>495</sup> Giesey, R. Medieval Jurisprudence in Bodin's Concept of Sovereignty, as cited by Beaud, O. (1994), *La Puissance de l'Etat*, Paris, Leviathan Collection, Paris, p.30

<sup>496</sup> Schmitt, K. (1922) p.46

<sup>497</sup> Ibid

very legitimacy of the republican claims, which could easily be scrutinized and their coherence analytically revealed. Thus it is evident that any reference to the concept of state throughout this chapter would be the modern notion of the political as originally conceived by the likes of Machiavelli and Bodin.

In line with these affirmations in Chapter 1, I also argued that the republican non-domination principle of power relation - both in *dominium* and *imperium* levels, requires specific layouts and guarantees, that could only be achieved in a republican political system based on the basic principles of equality before law and other guarantees of checks and balances. Thus within this framework it is necessary to continue my enquiry towards providing a detailed study of the *imperium* principle of non-domination focusing on various high repositories of power, both constitutional and religious within the Iranian Islamic Republic's political system.

Hence in a sense, this chapter brings together the previous three chapters which each provided a distinct insight into the main components of the political authority in Iran, namely the republican and the religious and their manifestations in the Iranian national constitution. The first Chapter concluded that in a republican system the source of sovereignty should lie in the *respublica*, firmly grounded in the popular consent<sup>498</sup>. I need to examine how this obvious principle of positive right could accommodate, even partially, any religious interpretations of sovereignty, which entail absolute obedience to the ultimate law-giver and its representation in the state<sup>499</sup>. It goes without saying that any divine sovereignty in practical terms implicates some types of human agency the study of which I hope would provide interesting insight into various socio-political underpinnings of my case study.

My point of departure for analysing these aspects of sovereignty within the Iranian political context would inevitably start by taking another look at the Islamic Republic

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<sup>498</sup> As Akhil Amar expounds: "The central pillar of Republican Government, I claim, is popular sovereignty. In a Republican Government, the people rule". See Reed Amar, A. (1994), *The Central Meaning of Republican Government: Popular Sovereignty, Majority Rule, and the Problem of the Denominator*. In the *University of Colorado Law Review* Vol. 65 p.750.

<sup>499</sup> For a detailed treatment of this point De Smet, F. (2010) *Aux Origines Théologiques de la Souveraineté*, Bruxelles: E.M.E Pub. pp.10-12



Constitution which should be the place where the main guiding principles of the rights and authorities of the citizens are encoded. This inevitably entails that citizens, or their representatives, have direct control over drafting and approval of the main document containing the principles of sovereignty - with the power to modify any parts based on a simple majority rule in compliance with norms and guarantees laid down by the constitution itself. Hence I will start by taking a closer look at the encoded principles of popular sovereignty over and regarding the constitution itself, together with the basic guarantees of a republican system, to promote and protect such rights. I will then proceed with addressing the highest repository of authority in the Iranian political system namely the Office of the Leader, closely examining its various purviews and prerogatives to study their compatibilities with the basic republican criteria of *imperium* that was defined previously.

## **II. Constitutional Sovereignty**

It was argued that the principles of popular sovereignty are encoded in the national constitutions which are resilient documents that serve as the foundation for a state's political layout. Furthermore, regardless of the actual content of Iran's national constitution which I treated in the previous chapter, two aspects could directly impact on various notions of sovereignty which I will attempt to analyse in this section. The first one would be the possibility of implementing changes to the national constitution and the provisions concerning the potential for its revision or amendment. On the other hand, if our frame of reference is a republican system, then the people's representatives should not only have the ultimate say over the drafting and the implementation of any piece of legislation directly or indirectly impacting their well-being, but they should also have the power to recall their representatives and even to demand referendums and public consultations at any time, if this is deemed to be the appropriate channel of enforcing their sovereignty.

Obviously in order to be able to achieve these objectives the people need to be empowered to implement any changes or adaptations to the national constitution, especially if some parts are deemed inadequate or outright incompatible with the basic principles of freedom as non-domination that was discussed previously. Hence the first

angle of analysis would concern the provisions towards the people's initiated constitutional actions regarding the constitution itself and the possibility of initiating public consultation procedures by the citizens themselves. The second analytical perspective would focus on the mechanisms and provisions in place to enforce a constitutional compliance with the guidelines of the popular sovereignty included in the constitution itself. In other words, who would oversee the compatibility of any part of these legislations to ensure that they would not violate the principles of the constitution's legitimacy and how might the ordinary people initiate such a process in the first place?

### **III. Constitutional Amendments**

The first question regarding the sovereignty over the constitution could be divided into sub-categories as to the reasons and purposes of the public consultation in this matter and the forms that this consultation could take. In this regard, three potential channels could be readily identified which could serve as vehicles for implementing the popular sovereignty to reduce the aforementioned danger of *imperium* in a republican system. The most obvious means would be public referendums concerning any piece of legislation or other ordinary laws of the state which could take the form of advisory or binding public consultations. There is then the question of endorsing and amending the constitution itself. Finally the so-called power of recall needs to be examined in order to study the possibility of holding the representatives accountable for their actions<sup>500</sup>. It is fairly easy to observe that the important aspect of these fundamental principles of sovereignty is the citizen's ability to trigger and initiate them at any moment based on the simple criteria of majority rule, even though in the case of amending the constitution this might be a more complex procedure.

As I argued throughout the previous chapter, the Islamic Republic Constitution has indeed acknowledged the basic principles of popular sovereignty in particular in Article 6 which reads:

In the Islamic Republic of Iran, the affairs of the country must be administered on the basis of public opinion expressed by the means of elections, including the election of the President, the representatives of the Islamic Consultative Assembly, and the members of

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<sup>500</sup> Alam, A. (2001) *Bonyādhāye Elme Siyāsāt* Tehran : Nei Publications p.319

councils, or by means of referenda in matters specified in other articles of this Constitution<sup>501</sup>

This is also echoed in Article 56:

Absolute sovereignty over the world and man belongs to God, and it is He Who has made man master of his own social destiny. No one can deprive man of this divine right, nor subordinate it to the vested interests of a particular individual or group. The people are to exercise this divine right in the manner specified in the following articles<sup>502</sup>

“the following articles” that the above line refers to could be Articles 72, 91 and 96. The first one acknowledges that all laws should be compatible with the guidelines of the official religion of the country and then declares that the authority to determine this compatibility will be with the Council of Guardians of the Islamic Republic whose composition is defined in Article 91. This authority is acknowledged again in Article 96 of the constitution. Thus any piece of legislation proposed by the Iranian parliament, needs to be analysed and its compatibility with the Islamic guidelines confirmed by the Council before this could have any executive validity. Furthermore the highest seat of authority in the Islamic Republic’s political layout is defined to be the persona of the Leader which as Article 57, 107, and 110, amongst others reiterate all sovereign powers of the state are run under his supervision who has various prerogatives including the power to issue decrees for national referendums.

### **a. Abrogative Sovereignty**

A closer examination of the Iranian Constitution reveals that one could identify three types of processes for returning to the public opinion. The first one regards the public consultation concerning specific laws and legislations. One reads in Article 59 that:

In extremely important economic, political, social and cultural matters, the function of the legislature may be exercised through direct recourse to popular vote through a referendum. Any request for such direct recourse to public opinion must be approved by two-thirds of the members of the Islamic Consultative Assembly<sup>503</sup>

Thus it states that the public opinion is consulted in “extremely important” matters, however one could readily observe that the constitution itself does not say anything

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<sup>501</sup> Iranian Constitution Article 6 as translated by the web source at: <http://www.iranonline.com/iran/iran-info/government/constitution.html>

<sup>502</sup> Ibid Article 56

<sup>503</sup> Ibid Article 59

regarding the power to decide which issues are important enough to be submitted to public consultation. This is later defined in Article 36 of referendum law which considers the Office of the President as the authoritative power to determine when to consult public opinion, whose proposal needs to be approved by at least two-thirds of the members of parliament.

Thus within the Iranian political system as far as the public consultation on a specific legislation is concerned, one could notice the existence of the so called “facultative” referendum, that is those which could be initiated at the will of a specific public authority, in this case the president of the Islamic Republic<sup>504</sup>. Whereas there is no sign of the possibility of direct public initiatives in the form of petitions to trigger such public consultations to amend or change any laws within the Iranian political system. A brief comparison with other modern republican systems would be instructive here. The Italian Constitution for instance, in Article 75 allows for popular referendum “to abrogate, totally or partially, a law or an act having the force of law” in most cases simply when this is requested by 500,000 electors or five regional councils<sup>505</sup>. Set against the risks of political instability and impasse, the safeguards are considered to be the fact that a majority of the electorate need to actually participate in these referendums. Thus it is clear that this system, unlike the Islamic Republic, is more permissive to the public initiatives for the amendment or the abrogation of specific laws, which could be considered as a strong safeguard against the state’s *imperium* that could easily dominate the basic republican freedoms by taking away the basic principles of public sovereignty in the legislative field.

## **b. Sovereignty over Constitution**

The second important expression of popular sovereignty, as postulated above, was the power to actually amend parts of the constitution itself. In recent years this has become a major source of controversy within the Iranian political establishment as various calls

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<sup>504</sup> For a detailed definition of the types of referendum and the procedure in particular within the European institutions see: Nohlen, D. and Stöver, P. (2010) *Elections in Europe, A data handbook*. Baden Baden: Nomos Publishers

<sup>505</sup> Italian Constitution Article 75 as retrieved from:  
<http://legislationline.org/download/action/download/id/1613/file/b4371e43dc8cf675b67904284951.htm/prview>

for public referendums on constitutional articles, in particular those mentioned above, have resulted in major public debates and even physical confrontations between the so-called reformists and conservatives of the Iranian political arena<sup>506</sup>. The original Iranian Constitution of 1980 did not include any provisions for the possibility of constitutional revisions and as noted in previous chapters this was indeed declared to be a divine constitution, grounded firmly in God's sovereignty, hence any possibility of revision would ultimately appear to be inappropriate as it probably could have been interpreted as questioning the divine nature of the constitution. Nevertheless, the possibility of amending the Constitution was subsequently added following an order by Ayatollāh Khomeini in 1989 on his deathbed, by appointing the so-called "Assembly for Revising the Constitution". This was to propose amendments to the constitution, in particular to ease the leadership criteria to allow for the selection of the Ayatollāh Khāmenei - then Hojjatoleslām Khāmenei, to the leadership position despite lacking the main prerequisite of being a *marja' taqlid* (source of emulation)<sup>507</sup>.

This resulted in the addition of the important Article 177 to the Islamic Republic Constitution, which explicitly vests the Office of the Supreme Leader himself with the authority of initiating requests for constitutional referendums<sup>508</sup>. Thus it is paramount to observe that the prerogative for deciding whether a constitutional referendum should be held lies exclusively in the hands of the Leader. Not only do the ordinary citizens

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<sup>506</sup> See for instance the so-called "reform charter" released by the Iranian Reformist Leaders Mousavi and Karroubi as retrieved from: VOA: <http://m.voanews.com/a/172743.html>

<sup>507</sup> See Ch.2

<sup>508</sup> Article 177: The revision of the Constitution of the Islamic Republic of Iran, whenever needed by the circumstances, will be carried out in the following manner: The Leader issues an edict to the President after a consultation with the Nation's Exigency Council stipulating the amendments or additions to be made by the Council for Revision of the constitution which consists of: 1. Members of the Guardian Council. 2. Heads of the three branches of the government. 3. Permanent members of the Nation's Exigency Council. 4. Five members from amongst the Assembly of Experts. 5. Ten representatives selected by the Leader. 6. Three representatives from the Council of Ministers. 7. Three representatives from the judiciary branch. 8. Ten representatives from amongst the members of the Islamic Consultative Assembly. 9. Three representatives from amongst the university professors. The method of working, manner of selection and the terms and conditions of the Council shall be determined by law. The decisions of the Council, after the confirmation and signatures of the Leader, shall be valid if approved by an absolute majority vote in a national referendum. The provisions of Article 59 of the constitution shall not apply to the referendum for the "Revision of the Constitution." The contents of the Articles of the Constitution related to the Islamic character of the political system; the basis of all the rules and regulations according to Islamic criteria, the religious footing; the objectives of the Islamic Republic of Iran, the democratic character of the government, the Velāyat al-'imr the Imamate of ommat, and the administration of the affairs of the country based on national referendums, official religion of Iran [Islam] and the school [Twelver Ja'fari] are unalterable.

appear to have no say in this but nor do the leaders of the other executive, judiciary and legislative forces have any authority in demanding a public consultation in constitutional matters. Indisputably in the same article it is acknowledged that the revised constitution needs to be submitted to public vote for approval, notwithstanding it is obvious that the role of the people in constitutional referendums is very limited and exclusively restricted to an expression of approval or rejection in the form of a simple “yes” or “no”<sup>509</sup>. The interesting aspect of these provisions is that in Article 177 utilises the Persian verb *pišnehād mikonad* that is: the Leader “proposes” the segments to be amended to the President of the Islamic Republic. Now considering the fact that in Article 57, for instance, we have:

The powers of government in the Islamic Republic are vested in the legislature, the judiciary, and the executive powers, functioning under the supervision of the absolute *velāyat al-amr* and the leadership of the ommat...

Hence the use of the word “proposes” seems inappropriate as the orders of the “*Velāyat al-amr*” could not be regarded as proposals that could be evaluated by a subordinate constitutional authority. In other words, the highest constitutional power of the state would not impart a facultative proposal to a lower ranking national authority. Whereas the allegedly divinely appointed supreme constitutional authority here enjoys the effective power to actually “instruct” the republican head of the state in this matter. Furthermore it is explicitly underlined in this article that the referendum could not be proposed against “the religious foundations of the Islamic Republic system... or (to question) the leadership of the *Velāyat al-amr*...” amongst others.

Again for the purposes of clarification, I propose an example from the French Constitution, another republican system, to see how this important purview is addressed there, precisely in Article 89. Here one encounters two processes aimed at the revision of the constitution. The so-called “*projet de revision*” is when the proposal for revision is initiated by the Prime Minister and addressed to the President of the Republic. The other alternative would be the “*proposition de revision*” which is when the members of the parliament take the initiative of proposing a constitutional revision. In both cases after being endorsed by both the National Assembly and Senate, these would

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<sup>509</sup> Hašemi, M. (2004) Constitutional Law and Public Sovereignty in *Constitutional Law magazine* Tehran year 2 nr: 3 p.331

consequently be put to popular vote for approval<sup>510</sup>. Here one clearly sees the actual possibility of the people's representatives or the republican head of executive power to initiate public consultation towards implementing modifications in the national constitution with no conceptual boundaries over the nature and scope of the revisions.

Hence these observations would lead one to conclude that, as argued above, there is an extremely marginal role envisaged for the citizenry in the Islamic Republic of Iran as far as the initiatives for the amendments of the constitution or even the ordinary laws are concerned. This would constitute a major obstacle in a system advancing the republican claims based on fundamental principles of popular sovereignty and the supervising role of the contestatory citizenry that were discussed in previous chapters.

### **c. Power of Recall**

This fundamental expression of the republican principles of sovereignty will be treated extensively in the final chapter dedicated to the rights and authorities of the contestatory citizenry that I outlined previously. Nevertheless as far as the argument on the constitutional sovereignty is concerned I could acknowledge that two main channels have been predicted in Iran for the so-called processes of recall and public accountability within the structure of the Islamic Republic. These are explicitly articulated in Articles 90 and 173 of the constitution. Article 90 of the constitution reserves the right of filing protests against the performance of all three branches of the government with the Islamic Consultancy Parliament of Iran<sup>511</sup>. Accordingly a parliamentary organ called the Commissions of Article 90 was instated to address such constitutional provisions.

As far as the question of sovereignty is concerned this article could provide a powerful means of theoretically holding all branches of government accountable to the people. While the actual performance of such an organization is definitely questionable

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<sup>510</sup> See the relative French constitution provisions on the official government website at: <http://www.vie-publique.fr/decouverte-institutions/institutions/veme-republique/heritages/comment-reviser-constitution-aujourd-hui.html>

<sup>511</sup> Article 90 of the Iranian Constitution: Whoever has a complaint concerning the work of the Assembly or the executive power, or the judicial power can forward his complaint in writing to the Assembly. The Assembly must investigate his complaint and give a satisfactory reply. In cases where the complaint relates to the executive or the judiciary, the Assembly must demand proper investigation in the matter and an adequate explanation from them, and announce the results within a reasonable time. In cases where the subject of the complaint is of public interest, the reply must be made public.

with regard to its track record in the history of the Islamic Republic, it is interesting to note that the Office of the Leader is not subjected to such public accountability. Indeed as I will demonstrate below there are no publically accessible provisions for launching any form of recall processes against the supra-constitutional institution of the Leadership. In addition, the actual power and executive guarantees that the findings and sanctions of such a Commission are endowed with, need to be taken into account<sup>512</sup>. Another constitutional locus dedicated to this question is Article 173 below:

In order to investigate the complaints, grievances, and objections of the people with respect to government officials, organs, and statutes, a court will be established to be known as the Court of Administrative Justice under the supervision of the head of the judiciary branch. The jurisdiction, powers, and mode of operation of this court will be laid down by law

Surprisingly the relative law governing the performance of the Court of Administrative Justice makes no mention of the organ's authority which could be regarded as an actual power of recall as deemed so in a Republican political system, or any constitutional system for that matter<sup>513</sup>. Indeed this seems to be entirely limited to certain functional aspects of public organisations without further authorities concerning the true accountability of public representatives of public offices<sup>514</sup>.

Therefore, one does not seem to be able to identify any unambiguous references to the actual procedures and provisions for any eventual process of "recall" of any elected member of the political system. Undeniably one does find actual references to such parliamentary provisions to address public "complaints". Nevertheless these seem to be extremely marginal references without explicit definition of the actual procedures that the citizens can launch together with the source and actual power of such authorities to promote such claims and hold the public officials accountable. Needless to say, in an ideal republican system the ability to question any public figure constitutes a fundamental building block of the political system that was defined under the eye-ball test which was defined in Chapter 1. As argued previously without such fundamental

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<sup>512</sup> See a more detailed treatment in the Contestatory Citizenry related section in the forthcoming chapters

<sup>513</sup> See the Court of Administrative Justice law on the organisation's official website at: [http://dhh.behdasht.gov.ir/uploads/284\\_1027\\_divan2.pdf](http://dhh.behdasht.gov.ir/uploads/284_1027_divan2.pdf)

<sup>514</sup> Ibid



public empowerment, any system could easily degenerate into despotism, which was what the forerunners of the republican doctrine repeatedly warned against.

On the other hand I was unable to identify any precedence for another important constitutional process fundamental to the principles of the popular sovereignty i.e. the political referendum. This type of referendum is when a political leader puts an important political question to public scrutiny to get public support in that matter<sup>515</sup>. In Article 110, Section 3 it has been acknowledged that “Issuing decrees for national referenda” fall under the Leader’s purview as I argued previously. Here there is no reference as to the “type” of referendum subject to these affirmations. But again as Hāšemi observes since this section has been consequently added in the amendments of the year 1989, when the actual revision of the constitution was the objective, it might not have been devised to allow for the possibility of a political referendum<sup>516</sup>. And indeed as mentioned above there is no sign of such an initiative throughout the entire history of the Islamic Republic, which could yet be another sign of the marginal constitutional sovereignty that people actually enjoy within the Islamic Republic’s interpretation of the locus of authority in Iran.

#### **IV. Constitutional Courts**

Inevitably, one last constitutional provision towards the protection of liberties and popular sovereignty is the existence of constitutional courts. I have already mentioned the power to draft, supervise and, if necessary, modify the constitution together with the actual authority to recall the public representatives. Consequently it should be seen what mechanisms are currently in place to actually command the compliance with these constitutional principles. It is paramount that in a republican system based on these elementary democratic principles, there should be some kind of publically accessible procedure to denounce such laws deemed incompatible with both the constitution itself or with the principles of individual liberties in particular the rights of the minority and weaker social groups. As was briefly discussed in the previous chapter this could take the form of constitutional councils as is the case of the French *Conseil Constitutionnel* whose actual role is to supervise national elections and referendums and most

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<sup>515</sup> Hāšemi, M. (2000), *Hoquq-e Asāsiy-e Jomhuri-e Eslāmi-e Irān*, Dādgoštar pub. 2000 volume 2 p.89

<sup>516</sup> *Ibid* p.9

importantly to verify the conformity of the laws and certain regulations with the national constitution<sup>517</sup>. As far as my current argument is concerned I would be interested to investigate whether such a resource is foreseen within the political structure of the Islamic Republic and the procedures and mechanisms that the constitution itself has predicted to empower the citizens to trigger the intervention of such a supervisory institution to safeguard their constitutional rights. Hence this would be a publically accessible institution whose role would include the safeguarding of individual rights by ensuring compliance with basic constitutional principles against the oppressive laws of the state itself, rather than being yet another institution within the government apparatus<sup>518</sup>. The key difference here between this organization with the previously discussed constitutional entities such as the Commission of Article 90, lies in the actual conceptual and procedural independence of such an institution from all three branches of the government itself. This would provide yet another layer of protection by incarnating a separate source of checks and balances that were deemed so vital to the existence and survival of a republican order as, I discussed in Chapter 1.

As a comparative example I could reiterate the provisions foreseen in the French system in which such an organ is composed of nine members, each third of which is nominated by the President of the Republic, the General Assembly and the Senate. Most importantly this would constitute a completely separate and independent operational entity whose functions and mechanisms of action are not subject to and bound by other state branches. Another interesting point here is that no specific qualifications are required for the membership of the *Conseil Constitutionnel* and this could theoretically open up this important institution to all members of the public regardless of their academic, religious or professional backgrounds<sup>519</sup>. Indeed an interesting example is cited by Roussillon as the nomination of an extremely qualified Louis Favoreu who wished to be nominated to the council but had little chance of success as his high qualifications would overshadow other members of the council!<sup>520</sup> Other systems might prove more selective on the choice of their members, for instance the members of the

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<sup>517</sup> See Ch.3 for a general overview and comparison.

<sup>518</sup> Ibid

<sup>519</sup> Roussillon, H. (2011) pp.12-15

<sup>520</sup> Ibid 15

Italian *Corte Costituzionale* called *giudici* (judges) have got actual legal qualifications. Nevertheless this would again be an independent institution open to all member of the public with the necessary qualifications to oversee the constitutional legitimacy of the laws, rule over the conflicts concerning the attributions of the state powers, the accusations against the President of the Republic and finally the legitimacy of the proposed abrogative referendum<sup>521</sup>. One could find similar examples in nearly all political systems of the world bearing the name of republics<sup>522</sup>.

Furthermore in France for instance, the intervention of the Constitutional Council could be triggered not only by the political authorities of the state but also by the minority groups of the parliament. Most importantly common citizens recently were given access to such a process not only in electoral matters as used to be the case previously, but also in all constitutional matters through the so-called process of *question prioritaire de constitutionnalité* (priority question of constitutionality)<sup>523</sup>. Naturally this should follow a specific juridical procedure, that is: it should be related to a specific tribunal case in front of a judge where the constitutionality of a law or a regulation is deemed detrimental to the actual ongoing legal process. A similar procedure has been foreseen by the Italian constitution through the so-called *sindacato in via incidentale* which again emphasizes the exceptional nature of these procedures initiated by local judges in relation to a legal judgment at hand<sup>524</sup>.

Hence this institution would in theory, act as the main guardian of the constitution whose intervention could be solicited at any time when there is a fear that the constitution's principles are threatened. Although its mere existence could not be regarded as the ultimate guarantee for the implementation of the constitutionally endorsed rights and liberties, its very existence demonstrates that a political system has been sensitive towards the protection of the individual liberties, in particular those of the

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<sup>521</sup> See the Italian Constitutional Court's website for more detailed information at:  
<http://www.cortecostituzionale.it/>

<sup>522</sup> This being the case even in less liberal Republics of North Korea and Cuba.

<sup>523</sup> Roussillon, H. (2011) pp 26-32

<sup>524</sup> See for instance the following official website and also a blog explaining the legal foundations and the procedures to appeal to the Italian Corte Costituzionale:  
[http://www.cortecostituzionale.it/ActionPagina\\_1188.do](http://www.cortecostituzionale.it/ActionPagina_1188.do) <http://toghe.blogspot.fr/2008/03/la-legge-elettorale-e-la-corte.html>

minorities against the *potestate domini* of the state and the encroachment of unchecked power in the hands of the ruling systems. In most cases these would prove to be efficient instruments towards upholding basic principles of popular sovereignty by providing channels to initiate official enquiries against any piece of legislation or concerning the public performance of the highest seats of sovereignty beyond political and party interests<sup>525</sup>.

It is evident that the constitution of the Islamic Republic of Iran - although it was originally inspired by the French constitutional sources<sup>526</sup>, does not provide any truly independent mechanisms for the provision of the constitutional conformity of the ordinary laws and regulations of the state. As discussed previously the Council of the Guardians performs a thorough check on all laws passed by the parliament principally to ensure their total compliance with the Islamic Shari‘a and also the irregularity claims in the electoral procedures, nevertheless one fails to identify significant guarantees regarding the protections that such an institute should offer against any violations of the constitutional liberties of the individuals, less other complaints against the state authorities and public officials.

I need to highlight again the fact that the Council of the Guardians is not an independent institution, and as I mentioned previously and will elaborate later, its members are vetted directly and indirectly by the very Leader of the Islamic Republic. This in turn inevitably transforms the institution into an actual force of domination towards the implementation of the state *imperium* rather than a tool to counter its dominance.

On the other hand it is sometimes claimed that the Office of the President of the Islamic Republic holds such constitutional authority to supervise the compliance of the ordinary laws with the constitutional provisions and if need be, to refer the violating sources to the courts of law to be prosecuted accordingly, or even having the authority to issue *tazakkor* (warnings, reminders) against the heads of other state powers namely the

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<sup>525</sup> Roussillon, H. pp.8-20

<sup>526</sup> Hāšemi, M. (2012), interview with weekly Asemān magazine, issue nr: 30 number 30 : <http://www.asemanweekly.com/article/2682.html>

judiciary and the legislative ones. Nevertheless the extent of this authority, as defined in the relative laws and decrees regulating the functions of the Office of the President, in particular the one dated 13<sup>th</sup> November 1986, seems inadequate and vague towards defining the presidential prerogatives in enforcing the compliance of the ordinary laws of the Islamic Republic with the constitutional principles. Indeed this seems to have been a major source of controversy and misunderstanding that has caused numerous debates and requests for clarification to the Council of the Guardians whom as discussed, according to the Islamic Republic Constitution is the ultimate authority to clarify constitutional ambiguities at all stages of the state's legislative procedures. In spite of this, the conclusion seems to be far from clear in defining the President's role in implementing the constitution, even though this seems to have been encoded in Article 113 of the constitution. It is not hard to imagine that such a critical function requires explicit provisions and actual resources which do not seem to have been foreseen by any legislation within the Iranian political system. Most interestingly few attempts to establish a supervising committee by subsequent presidents of the Islamic Republic have been ruled as unconstitutional by the Council of the Guardians. This has effectively deprived the Office of the President from any actual means and modes to even marginally impose the constitutional compliance of the laws and decrees<sup>527</sup>. It goes without saying that the simple power of *tazakkor dādan* (reminding) would not suffice to provide the Office of the President with sufficient constitutional authority and adequate procedural means to uphold elements of constitutional sovereignty.

It cannot be emphasized enough that a system whose main purpose is to supervise the implementation of a national constitution and judge the soundness of its laws and pronouncements, needs to be an impartial and independent system itself in the first place. This is the essence of what Pierre Sosanvallon called "*la légitimité d'impartialité*" (impartiality legitimacy)<sup>528</sup>. My close analysis of the Islamic Republic Constitutional authorities and the repositories of the sovereignty foreseen therein, fails to identify such impartial transparent sources of public power administration at the constitutional level.

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<sup>527</sup> Ibid

<sup>528</sup> Rosanvallon, P. (2008) *La légitimité démocratique*, Essais Publications, Paris: Seuil p.119

Therefore, I could safely claim that based on all these observations, the Islamic Republic Constitution does not provide for any unambiguous, accessible and most importantly independent public organs to supervise the implementation of the principles of the national constitution and uphold the basic articles of individual rights and sovereignties, some of which are explicitly endorsed by the Islamic Republic Constitution itself. These include the guarantees and entitlements concerning the various elements and manifestations of popular sovereignty such as the ability to amend the constitution or to ask for direct intervention and consultation of the public in general in the form of referendums or petitions. This would obviously result in serious shortcomings in a system claiming to be rooted in the republican non-domination values of popular sovereignty through state apparatus which themselves prove to have been turned into instruments of domination in a total absence of checks and balances that could only be provided by independent and impartial sources of power and authority as discussed in Chapter 1.

In the forthcoming chapter I will provide a more detailed analysis of the institutions of the Islamic Republic to analytically evaluate their republican credentials, but now my enquiry into the principles of sovereignty within the Islamic Republic political system would inevitably encounter another prominent repository of sovereignty and authority which is the Office of the Leader that deserves a detailed examination.

## **V. Office of the Leader and Sovereignty**

Throughout Chapter 2, I examined various interpretations of the Shi'a political ideology and identified the strand that came to dominate the political scenery of the Islamic Republic. Amongst all aspects of Iran's political system the Leadership Office is by far the most interesting and controversial one. A closer look at over three decades of the Islamic Republic's history readily reveals that this repository of sovereignty has unsurprisingly undergone various levels of mutations and changes. Two consecutive holders of this position seem to have launched numerous attempts towards extending the authority of this institution and even to subject not only other state powers to theirs but also to dominate the very religious ranks and seminaries to which they belong. Ayatollāh Khomeini initially attempted to bring all religiously inspired forces under his

dominance by creating the Islamic Republic Party which did not seem to have had much success<sup>529</sup>. Nevertheless, upon abolishing this single party in 1987, he established the Special Court for Clerics to keep the religious figures under his control<sup>530</sup>. This was pursued by allocating various other prerogatives to the Office of the Leader such as the authority to appoint the Head of the Judiciary system in an attempt to effectively subjugate this power to the authority of the Supreme Leader<sup>531</sup>. These efforts were continued in multiple directions also by the successor of Khomeini, Ayatollāh Ali Khamenei (b.1939) with significant implications on the political nature of the Islamic republic and the conceptual foundations of its doctrine, that I will study in this section.

As was briefly discussed in Chapter 2, Iran's so-called first revolution, namely the Constitutional Revolution of 1905-1910 was a modernist movement primarily aimed at establishing the rule of law and indeed the constitution which is the very place in which the limits are set for the monarch's authorities and the locus of expression of the people's sovereignty. As argued there, following the view of some of the Ayatollāhs before him - notably Ayatollāh Sheikh Fazl Allāh Nuri, Khomeini also embarked on the path of denouncing various aspects of constitutional modernism as alien western cultural values aimed at undermining Islamic principles and beliefs. Hence on the dawn of the Islamic Republic, Khomeini as the undisputed leader of the Islamic Revolution of 1979, seized his lifelong opportunity to first and foremost fight the fruits of nearly a century of modernism in Iran in particular constitutionalism<sup>532</sup>. Indeed as Iranian author Mohammad Amini stated:

the current of ideology that took the upper hand in the Iranian Revolution of 1979 culminating in the establishment of a theocratic regime headed by the figure of *Velāyat-e Faqih* was not only against all aspects of modernism and western ideology of democratic representation, but also was a movement by a certain group of lower clergy who denounced the high-ranking olamā's acceptance of the de facto separation of state and religion<sup>533</sup>.

Thus it was in such a climate that the basic fundamentals of the Islamic Republic were laid down. I turn now to a closer analysis of how Khomeini's ideas and ideals of

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<sup>529</sup> Arjomand, S. (2009) p.173

<sup>530</sup> Ibid

<sup>531</sup> Ibid

<sup>532</sup> See Ch.2 for more details of this ideological struggle

<sup>533</sup> Amini, M. (2008) *Goftari bar Caleše Din va Dowlat dar Iran*, Tehran Axbār Ruz

sovereignty which played a fundamental role in delineating the trajectory of the Islamic Republic and its various constitutional and extra-constitutional institutions.

## **VI. Human Nature and Common Good**

A careful examination of all Khomeini's recorded pronouncements and declarations reveals a very interesting aspect of his understanding of the nature of personal rights based on the so-called concept of the human nature. This proves to be extremely pertinent to my current argument as the very foundations of the republican doctrine of sovereignty reposes on this fundamental conviction, which as expounded in Chapter 1, has been central to the republican discourse and has been extensively treated from the time of the ancient republics. Most notably as I discussed previously, the very concept of *materia umana*, as Machiavelli called it, constituted the essence of what made the very existence of a republican system viable and necessary.

A closer look at all Khomeini's known utterances readily demonstrates that he regarded the human being as an essentially weak and corrupt creature in need of constant guidance and coercion to observe the laws and conform to social norms. One sees instances of this profoundly negative outlook throughout the entire intellectual career of the Ayatollāh Khomeini. This is an aspect of his discourse which has been relatively overlooked by various scholars in this field as it seems to have been greatly overshadowed by other more prominent religious and political narratives. Hence one gets the impression that this concept has not found its deserved treatment despite of its fundamental implications on any subsequent socio-political narratives in particular those treating various questions of popular sovereignty. Time and time again a pessimistic interpretation of the real essence of human beings and its social and normative implications is highlighted. In his *Islamic Government* treatise we read:

... for we see that men are prey to defect, they are not perfect and need to strive after perfection. Moreover they disagree with each other having varying inclinations and discordant states...<sup>534</sup>

He also backs up his statements by recounting religious exegeses and hadith from various Imams to underline the notion as being the main reason for which the religious

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<sup>534</sup> Khomeini, R. *Islamic Government* in translation by Algar. H. (1981) pp. 53



leader have existed throughout history and are still needed for the good of human beings. This is even being extended to prescribing a prince, or a leviathan, in this case a divinely chosen one to:

....prevent them from stepping outside the sphere of the illicit and transgressing against the rights of others. If no such individual or power were appointed, nobody would voluntarily abandon any pleasure or interest of his own that might result in harm or corruption to others; everybody would engage in oppressing and harming others for the sake of their own pleasures and interests<sup>535</sup>

Indisputably this theme is not uncommon throughout the history of political philosophy. Indeed one could safely claim that one of the fundamental notions of the entire socio-political projects of human intellectual history has centred around this basic theme, that is: how to regulate human societies in binding laws and regulations to protect and promote the common interests with a regard for the natural essence of such societies. Nevertheless a closer examination of all Khomeini's recorded pronouncements and writings reveals that he not only had a different interpretation of the "common good" but also the means to achieve this were existentially distinct from anything that has even been prescribed throughout the so-called western philosophical tradition<sup>536</sup>. For this purpose, I find this in utter incongruity with Banisadr's claims that the various aspects of the dominant Islamic Republic's ideology inspired by Khomeinist doctrines have actually got their roots in the Western tradition of political philosophy notably the Aristotelian one<sup>537</sup>.

Here it should be noted that Khomeini's understanding of the common good was a more eschatological interpretation of "goodness" in the sense of salvation, redemption and the promise of paradise as defined in the Quran<sup>538</sup>. Thus all material resources of society need to be employed towards the attainment of such a higher good through the rule of God on earth which would by far overshadow other potential material and worldly gains. Indeed at numerous historical junctures he proved to be ready to sacrifice various national interests for the higher moral objectives he perceived for the Iranian

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<sup>535</sup> Ibid 52

<sup>536</sup> It is interesting that some authors like Banisadr sustain that Khomeini's philosophical ideas are actually taken from the Greek philosophy, in particular Aristotle's dualist philosophy, see Appendix II

<sup>537</sup> See interview with Banisadr in Appendix II

<sup>538</sup> This is the consistent theme in the majority of Khomeini's works and pronouncements, a good collection of which can be found in "sahife-ye Nur" and at: [www.imam-khomeini.ir](http://www.imam-khomeini.ir)

nation<sup>539</sup>. Thus every social means and political power had to be directed towards the realization of such a Godly nation based on the ordained commandments, or more accurately a certain interpretation of the religious directives.

Again proceeding through all Khomeini's public pronouncements and writings, before and after the revolution of 1979, one cannot overlook the manifestations of contempt with which he held various representations of popular sovereignty throughout the western political philosophy. He even went as far as claiming that: "Other than their deceiving appearances, there is no fundamental distinction among constitutional, democratic and communistic regimes<sup>540</sup>". Indeed, as I briefly discussed in Chapter 2, he deemed all non-Islamic governments as instances of *taqut* which need to be fought and overthrown. It seems as if he even considered the absence of an Islamic rule as a state of complete anarchy due to the corrupt nature of human beings<sup>541</sup>. From there the main objective of an Islamic government was defined as creating moral and righteous human beings<sup>542</sup>.

Thus Khomeini in his work appears to treat human beings as unreliable, wretched, miserable, corrupt, weak, arrogant and ignorant<sup>543</sup>. Moreover unlike most western political philosophers, Khomeini opted for a heavenly source of happiness and eschatological objectives who would justify the scarification of any worldly tangible and material values. Indeed the commonwealth that Khomeini envisages is based on a negligible component of the voluntary association of the people to promote common interests. In fact as discussed above, people are essentially considered as incapable of identifying their own real interests. In spite of this Khomeini's revolutionary language and call for the overthrow of the political order also due to economical mismanagements would put all these claims at odds with his otherworldly *desiderata*.

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<sup>539</sup>Takeyh, R. (2009) p.86

<sup>540</sup> Khomeini, R. as cited in Takeyh, R. (2009) p.13

<sup>541</sup> Khomeini, R. Islamic Government in translation by Algar, H. (1981) p.53

<sup>542</sup> Ibid 44

<sup>543</sup> Khomeini, R. *Jahad-e Akbar* (the greatest jahād) which could be consulted in electronic format on <http://www.al-islam.org/al-tawhid/jihadeakbar/> pp. 24, 32, 34, 53

This religiously motivated perception of human nature by Khomeini envisaged a Godly appointed authority to interpret the social rules and norm of salvation from an already existing unalterable body of religious dogma. This is due to human's inability to fully comprehend what is in their real interests, hence in such a doctrine it comes as no surprise to refer to people with such expressions as *saqir* (children, immature), *mahjur* (mentally impaired) and *yatim* (orphan) which all appear to be part of the common terminology employed by Khomeini and many apologists of an undisputed rule of the divinely chosen figure of *faqih* in society<sup>544</sup>.

These observations lead us to a deeper level of appreciation for Khomeini's ideology as one notices that these would inevitably result in a fundamental crisis in the acknowledgment of the very basis of people's contractual rights. Indeed as Akhavi has observed Khomeini, like many other Sunni and Shi'a thinkers before him, did not believe in the concept of an autonomous individual with natural rights of sovereignty to come together to promote their common interests<sup>545</sup>. As I expounded in Chapter 2, Khomeini, by selectively citing Quranic verses and certain traditions of Hadith, underlined the very conviction that all social contracts were actually initiated by God who is the owner of the trust<sup>546</sup>. Thus the religious school which came to dominate the Iranian political scene was firmly rooted in this solid conviction that the mere act of *bey'at* (approval, acclamation) would suffice to express people's natural rights of sovereignty, which incidentally does not belong to them in the first place. This would suffice to delegate their authority to a more qualified and Godly chosen figure of superior knowledge (*elm*) whose primary objective would be to advance God's purpose.

Most interestingly, regardless of the conceptual inconsistency between the very act of *bey'at* and the Divine pre-selection of the Islamic Leviathan, it appears that this discourse is founded on a certain form of complete alienation of the authority by the subject with little or no space left for the reversal or re-appropriation of the sovereignty by the people. This could well be an expected outcome of the conviction that the

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<sup>544</sup> See the above passages from the Khomeini, R. (1993) treatises and also numerous declarations by such religious scholars as Ayatollāh Ahmad Jannati for example those in the *Sobhe Emruz* newspaper dated 2<sup>nd</sup> and 9<sup>th</sup> February 1999.

<sup>545</sup> Akhavi, Sh. (2007 ) *ibid*

<sup>546</sup> *Ibid* 145

sovereignty is not rooted in human nature itself in the first place. Hence all evidence points to the conclusion that here an external source of happiness is conceived as being completely distinct from the essence of human-beings in such exterior concepts as *rezā Allāh* (God's satisfaction) and *šādiy-e Emām-e Zamān* (delight of Hidden Imam).

It is easy to imagine how such theoretical ambiguities have had fundamental implication on the formation of a political system with strong religious convictions and competing republican principles. As I will demonstrate later even the republican and civil institutions of such a system, whilst in theory should be chosen by the people - through expressive demonstration of their collective will in the form of free and open elections, are in fact directly or indirectly influenced, if not utterly controlled by the perceived will of God as manifested in the persona of the *faqih*. As a result of such a doctrine: "if reason can not be sovereign, then room exist for mandates, which of course are not self-evident but interpreted and imposed on behalf of God by not always benevolent human beings"<sup>547</sup>. One observation to make here would be that such doctrine seems to contain numerous points of conceptual ambiguity even from theological standpoint as if human beings are so devoid of positive qualities, and are by nature flawed and prone to evil, how can anyone interpret God's mandate in the first place? However this conceptual consideration falls beyond the scope of my current study.

## **VII.Khomeini's Idea of Republic**

As I expounded in the very eloquent declaration above, Khomeini clearly expresses his disdain for the concept of "democracy" by rejecting any use of such a word in the Iranian Constitution on the grounds that this would mean that Islam is not democratic; whereas Islam was claimed to actually include all such principles. His outright rejection of this term might be unsurprising and indeed coherent with his interpretation of the principles of sovereignty and the role of the people in his proposed form of government.

However, in spite of this, as many scholars have noted, at important junctures of the Islamic Revolution, Khomeini conceded to a number of democratic elements under great

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<sup>547</sup> Ibid 155

pressure of a sizeable number of intellectuals and laymen within his revolutionary coalition. This ranged from the leftist Mojahedin-Khalq and communist Tudeh and Feda'i parties to the secular and moderate Islamist groups like the Jebhe-ye Melli and Freedom Movement. This might clearly be an expression of what many authors label the “recombinant authoritarianism”, namely the idea that the authoritarian regimes need to concede something in order to consolidate their rule without having a firm belief in those principles<sup>548</sup>. In my interview with Banisadr, he unambiguously acknowledged that it was indeed due to the significant pressure from the secular sections of the Islamic Revolutions and also as a result of various cultural and historical heritage of Iran that Khomeini did not manage to fully implement his restrictive doctrine of state, and had to initially concede to numerous compromises<sup>549</sup>. The obvious example of such a concession is the very republican label Khomeini accepted for the political order, which was fundamentally built on his ideas. Despite this another examination of all his work clearly shows that he still demonstrated a significant coherence in consistently falling short of subscribing to a government based on the rule of the people. Indeed he rarely ever pronounced the word *jomhuri* (republic), even the title of his most seminal treatise is the “*Islamic Government*” and not the Islamic Republic. As Takeyh rightly notes:

Throughout his writings and speeches, Khomeini rarely made reference to a republic, as he firmly believed that laws should be derived from scriptural sources as interpreted by the clerical elite. Thus traditional democratic institutions and practices such as assemblies, the right to vote and referendums were not to infringe on the prerogatives of an unaccountable clerical class.<sup>550</sup>

It is interesting to note that even the notion of “republic” that Khomeini eventually endorsed was a partial and incomplete reading of the numerous political implications of such a concept. This is clearly reflected in one of his speeches, various aspects of which seems to have surprisingly been overlooked by not only the very secular and moderate elements of his Islamic Revolution but also by a considerable number of scholars in this field. In December 1980 he famously declared:

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<sup>548</sup> See for instance “Resilient Authoritarianism in the Middle East” : Lessons from Syria and Iran by Heydemann, S. & Leenders, R. retrieved from: <http://www.hivos.net/Hivos-Knowledge-Programme/Themes/Civil-Society-in-West-Asia/Publications/Policy-Papers/Resilient-Authoritarianism-in-the-Middle-East>

<sup>549</sup> See Appendix II

<sup>550</sup> Takeyh, R. (2009) p.25

Our nation has not accepted a democratic Islamic Republic. They said we understand Islam and we understand Republic. But democracy which has changed its guise many times throughout the history, in the west it has one meaning, in the east another, Plato meant one thing by democracy and Aristotle had another understanding. We do not comprehend this. Something that we do not understand why should we even mention? we understand Islam and we understand the republic which means that people should vote. We accept these. But we don't accept this democratic thing, even combined with the Islam<sup>551</sup>

He went as far as explicitly underlining the fact that in the Islamic Republic people are bound to abide by the Islamic Shari'a even though they do not vote for it, as they have already chosen Islam by giving blood towards the realization of such sacred ideals<sup>552</sup>. This is the essence of the total alienation of sovereignty that was referred to above which could even materialize through a simple act of acclamation. Thus one could arguably claim that Khomeini himself, at least at the initial stages of his political involvement, had a firm conviction and an uncompromising understanding of the true nature of the social values he was prescribing for an Islamic government and did whatever he could to constitutionalize such an ideology and subject all private and public interests to it.

It has to be reiterated that there has not been a single homogeneous perception of the actual role that people play in the selection, supervision and even removal of this Islamic Leviathan within the ruling apparatus of the Islamic Republic itself. For instance, people like Rafsanjani, in particular after the events of the 2009 elections have voiced a current of thought based on which this figurehead actually needs to be at least partially accountable to the publically elected institution as it is controversially acknowledged in the Iranian Constitution<sup>553</sup>. However, this school of thought and that of many closely related scholars, some of whom I discussed in Chapter 2, have lost significant ground to the totalitarian perception of the authority of the Office of the Leader and the role that people play in this regard as discussed previously.

It is inevitable to conclude that this interpretation of the Quranic expressions of such terms as *šowra* (consultation) and other related notions, plus a long tradition of hadith, at

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<sup>551</sup> Khomeini, R. (2010) in *Hokumat-e Eslāmi va Velāyat-e Faḡih dar Andišeye Emam Khomeini*, Tehran, the Center for collection and publication of Imam Khomeini's work., p.59

<sup>552</sup> Ibid

<sup>553</sup> See for instance Rafsanjani's declarations as reported on the BBC news portal at: [http://www.bbc.co.uk/persian/iran/2009/07/090719\\_si\\_ir88\\_islam\\_election.shtml](http://www.bbc.co.uk/persian/iran/2009/07/090719_si_ir88_islam_election.shtml)

best, do not provide adequate grounds for the investiture of the principles of sovereignty in the masses. This is independent from the so-called “persuasive” or “coercive” nature of the Islamic Shari‘a as in neither case one encounters unambiguous endorsements of the human sovereignty, whilst as one sees in the case of Khomeinist ideology one does not need to try too hard to find principles that could be used to justify the contrary. Veritably, the instructions on public consultation directed to the leaders of the Islamic community do not necessarily and automatically guarantee any degree of individual rights to a participatory political system, let alone the natural right to the ultimate sovereignty. Thus in the light of an almost total absence of any unequivocal acknowledgment of a human’s innate right to sovereignty regardless of such considerations as gender and faith idiosyncrasies etc, and in particular considering specific perception of a human’s rational ability to identify and pursue his true good, any discussion of an undisputed and inalienable human right to sovereignty within any religiously inspired ideology would prove superfluous if not outright incompatible.

To this I could add the observations that this entire doctrine of sovereignty and its underlying notion of “the people” clearly do not denote a sovereign community that might willingly and purposefully be contracting amongst themselves for founding a new *civis* or a source of normativity. Here obviously the subject of this connotation appears to be the Islamic *ommat* with predictable implications for the republican inclusive notions of popular sovereignty.

Furthermore in Chapter 1 the idea was put forward that the existence of a simple electoral system would not suffice to qualify a political system for being a republican order. Indeed as was argued there, there are numerous socio-political channels among which holding regular elections to choose by majority consent constitutes one of the many elements of a bigger republican political architecture. The rule of law, republican institutions, an independent judiciary system and an effective separation of power coupled with an active body of the contestatory citizenry were some of the distinctive features characterising a republican system. This translated into the republican language of non-domination - both at the private level and in relation to the government - would

provide a complete set of qualifying criteria for any political system claiming to be based on the republican values.

## VIII. Social Justice

It has to be acknowledged that Khomeini consistently subscribed to various ideas geared towards promoting social justice at a time when the populist ideas - such as fighting colonialism and foreign encroachment on Muslim land and struggling against exploitation of resources by the dominating powers, was a fairly common trend amongst the third-world, middle-class intelligentsia<sup>554</sup>. As Abrahamian noted in the 1970s, Khomeini included such populist themes in all his delivered speeches, words including the oppressed, the downtrodden, the exploited and even references to the class hegemony, all fundamentally leftist slogans, were extremely frequent in all his political discourses. It was briefly mentioned in Chapter 1 that this principle of social justice and distributive fairness was indeed at the heart of all schools of republican thought especially the French one<sup>555</sup>. These efforts did not stay at the level of declaration, indeed a significant body of these promises were incorporated into the Iranian Constitution which amongst others promised to eradicate poverty, unemployment and social deprivation together with other provisions such as providing unemployment benefits, disability pay, interest-free loans and medical services, to name but a few<sup>556</sup>. This might explain why the parties and intellectuals of the left of the political spectrum were also counted amongst his revolutionary supporters and also inspirers whose basic ideas of a class-struggle and the denunciation of the oppression of the *mostaz'afin* (downtrodden) by the *mostakberin* (oppressors) became a current reference all the way through Khomeini's political discourse. Indeed one could identify a subtle line of argument based on this theme throughout the entire narratives of the Islamic Republic<sup>557</sup>. Whilst this at times seems to have lost its centrality, such as during the presidency of

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<sup>554</sup> Abrahamian, E. (1993) *ibid* pp.26-27

<sup>555</sup> Moreover as we have seen thus far, we consistently encounter various ideologies underpinning the Islamic Republic closely resembling the French school of Republicanism: the Office of the President and the Prime Minister, a certain conception of the principle of the separation of power and even the format of the constitution itself, for example.

<sup>556</sup> *Ibid* 35

<sup>557</sup> The most prominent figure of the Islamist left was undoubtedly Dr. Ali Shari'ati (1933-1977) whose seminal lectures and articles became a point of reference for a wide range of political activists across the political spectrum including Khomeini. Indeed he is even credited with introducing the term *mostaz'afin* (downtrodden) into Persian with this connotation by translating Frantz Fanon's "The Wretched of the Earth" as the "*mostaz'afin-e Zamin*".



Rafsanjāni (b. 1934), it emerged and topped the political agenda of president Ahmadinejād with such populist projects as the widely proclaimed *sahm-e edālat* (share of justice) which in theory consisted of an equitable share that every individual would receive from the national economic revenues.

Indisputably various aspects of a material empowerment of the weaker members of the society would obviously make up a significant element of fighting against many aspects of interpersonal and at certain levels, state domination. A significant portion of social domination is undoubtedly composed of economic domination steeped in the access and control of the resources, as we remember too well from a voluminous body of Marxist scholarships. As discussed in Chapter 1 the republican non-domination principle inevitably entails the material empowerment of the vulnerable sections of the society by establishing that all socio-economic resources of the common social space are fairly and transparently managed and distributed. In fact this made up the very essence of the constant vigilance and fight against the *dominium* in the private space. Nevertheless, this important principle is closely related and even regulated by the second important republican principle of non-domination i.e. *imperium*, which as argued previously was the attention that should be paid to the prevention of the state itself from becoming a dominating force in the private spaces<sup>558</sup>.

In fact a closer examination of all these particular political discourses of the Islamic Republic and their relevant constitutionalization and practical provisions, quickly reveals a great deficit in the provisions against the state's potential for economic and material domination. As it will be argued in the upcoming chapter dedicate to a study of the Islamic Republic's institutions, the lack of institutional transparency and accountability and a widespread endemic corruption together with the significant deficit in viable procedures of checks and balances have all transformed this main theme of social justice in Iran into an actual instrument of socio-political domination and oppression. In any case one could observe that the very foundations of social justice that ran throughout Khomeini's declarations were mainly limited to the economic well-being of society and a better access to the resources. Furthermore, this at times is even

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<sup>558</sup> See Ch.1 for more details.

completely reversed by subordinating individual private spaces to the otherworldly questions of religious ethics. In addition to this as I have argued, central to the republican doctrine was an active and unhindered participation of a self-determining civil society of which there is very little acknowledgment in the Islamic Republic's political discourse.

Thus based on my republican framework of study, one could safely conclude that the questions related to the material well-being of society and concerns regarding an equitable distribution of its resources could actually be regarded as the by-product of a deeper level of domination, as outlined previously. Furthermore, these objectives do not seem to be providing any safeguards against the *imperium* of the government itself from becoming an oppressive force in the lives of the citizens. In other words, an equitable access to the resources, although potentially a major step towards the elimination of the *dominium* in the inter-personal social spaces, it marginally if at all makes any contributions towards the safeguarding of the private rights of sovereignty and individual authority against the domination of the ruling apparatus. An unfair distribution of the material resources before being an unethical or an immoral act, would actually signal a deeper level of social malaise of the violation of individual rights underpinned in the basic republican principle of non-domination. In addition to all one could highlight the very identification of the true social values worthy of pursuit in this school as being the eternal salvation and a prosperous afterlife which could hardly justify such a momentous strife to establish a social justice and distributive fairness in this world.

In line with these observations it becomes evident that there is no unambiguous endorsement of the people's right to sovereignty in Khomeini's entire political discourse both before and after the Islamic Revolution. The prevalent theme of social justice that runs through his, and indeed a significant number of the Islamic Republic's ideologues' political discourse, seems to be based on a very narrow interpretation and partial understanding of the true mechanisms of material domination in a modern society. Moreover, if one considers the actual political structure devised to promote such elements of the social justice in order to, most importantly, establish the rule of the

ultimate sovereign on earth; it becomes evident that there will be no space left for any principle of individual sovereignty in such a political order. Hence these could actually prove detrimental to most elements of liberty as non-domination central to the republican ideology.

Most crucially, as outlined above, I agree with some scholars' observations that the very claims of social justice and an egalitarian economy have in practice constituted integral components of a state-owned economic structure in the hands of the government itself to "rewards loyalists and punish the critics"<sup>559</sup>. Hence these would in reality translate into a certain system of patrimonial frameworks that actually enhance the state's *imperium* in the individual spaces. Thus the claims of the social justice instead of being directed towards the actual economic empowerment of the citizens, fundamental to any system based on the republican sovereignty, have actually resulted in a structure of economic governance which has controversially contributed to the regime "resilience"<sup>560</sup>.

Following my analytical examination of the Iranian political system, I will proceed by inspecting the actual steps taken by Ayatollāh Khomeini to create an Islamic rule which incorporates numerous principles of popular sovereignty and its practical hurdles and complications which would in turn provide us with a more revealing insight into the coherence of such a vision of political sovereignty and their implications on various republican norms and principles.

## **IX. Means and Modes of Implementing Sovereignty**

As was demonstrated throughout Chapter 2 and the reflections of such principles in the Iranian Constitution in Chapter 3, Islam does not seem to be dedicating a significant amount of its teachings to actual means and modes of state politics, let alone details such as endorsing a participatory involvement by the citizens. Indeed the Quran appears to be prevalently silent on most government related questions for that matter. Nevertheless, one could encounter consistent references in the political narratives of the state to

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<sup>559</sup> Heydemann, S. & Leenders ibid

<sup>560</sup> Ibid

various Quranic and Hadith exegeses throughout the various formative stages of the Islamic Republic<sup>561</sup>. Numerous scholars within the religious camp have attempted to extend few sporadic religious political concepts to include a range of official guidelines to address aspects of democracy as I discussed previously. Nevertheless, while there have been heated debates on the true nature of this Islamic democracy or as some have labelled it theo-democracy, the extent of the actual public participation and the means and modes for implementing and safeguarding such involvement have gone widely untreated<sup>562</sup>. This inherent ambiguity and even silence of any reference to the actual form of the government in the entire Islamic doctrines has given rise to various speculations and interpretations of the actual political form of an Islamic state and the role that Shari‘a should play on the one hand and the citizen’s rights to sovereignty and authority on the other. As discussed previously the Iranian Constitution embodies the most prominent collection of such ambiguities and inconsistencies. Hence the Islamic Republic is conceived in such a climate of numerous centrifugal forces of socio-political ideology all claiming to be central to the existence of such an unprecedented political order<sup>563</sup>.

We will probably never know what was the exact understanding of the founding fathers of the Iranian political system regarding the true nature of various republican principles. We will probably know even less about their true and sincere commitment to such republican ideas as the rule of people, the equality before law and the separation of power, to name but a few. However, we could certainly find out, with the privilege of hindsight, what real practical measures they adopted to promote their convictions and evaluate their appropriateness. Thus following my declared empirical method in the introductory chapter, I will proceed to take a closer look at the concrete actions taken by the political leaders of the Islamic Republic to implement their ideologies, as it is much

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<sup>561</sup> Articles 7 and 8 of the Iranian Constitution embody this Quranic recommendation for public consultancy

<sup>562</sup> Esposito, J.L. & Piscatori, J. P. Democratization and Islam, in *the Middle East Journal*, Vol. 45, No.3 1991

<sup>563</sup> Hashemi Rafsanjani once famously declared: “where in the Islamic history do you find parliament, president and prime minister?” as cited by Milani, (1988) p.156

easier and more accurate to evaluate the observable actions rather than trying to analyse the motivations, in particular when such complex social phenomena are concerned<sup>564</sup>.

As was mentioned in the previous sections, Khomeini seems to have had a very partial understanding of the true implications of the republican concepts, and in practice explicitly restricted this to popular participation in the regular national elections only. The most prominent instance of such a popular manifestation of consent is undoubtedly the presidential elections. Most interestingly as the main theme of the Iranian revolution was centred round the mobilization of the masses and political participation of the “oppressed”, the elections perhaps were viewed as a means of legitimizing the rule of the religious authorities through the approval of their popular base<sup>565</sup>. This becomes evident when one considers the actual form that the popular elections and the referendum took and practices that were included to supervise and direct the electoral results in the desired directions. An interesting example of such a half-hearted dedication to the public ballot was the first referendum held in the history of the Islamic Republic. In March 1979, people were asked one simple question: Islamic Republic, Yes or No? The popular answer was unsurprisingly a resounding “Yes”, nevertheless there are serious questions regarding the form of this election and the actual content of the Islamic Republic put to the public vote. Indeed if one theoretically consider the possibility of the “No” answer to prevail, it would have not been clear where such a result would have led to. No efforts were made to elucidate the alternatives, if any, or at least to provide an exact definition of the political agenda of the only available option.

Once again recalling the republican non-domination principle, the domination could actually take the form of providing partial or incomplete information or removing some of the options that the people have without their explicit consent. Indeed this constituted the idiosyncratic feature of the republican systems as compared to other political ideologies including the liberal ones. In fact from the very birth of the Islamic Republic such grave violations of the republican principles could be observed as the entire propaganda machinery of the regime seems to have been geared towards promoting a

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<sup>564</sup> Fox, J. (2008) *A World Survey of Religion and the State* Cambridge: Cambridge University Press, p.2

<sup>565</sup> Takeyh, R. (2009) p.25

certain type of political system through feeding the public spaces with such incomplete information or even direct and indirect coercion. Indeed as Milani has observed:

As soon as Khomeini came back to Iran he shrewdly empowered his network of the clerical establishment and created a new network within both the state bureaucracy and the newly created revolutionary institution. He appointed his supports... as the Friday prayer leaders...appointed the director of the national television and radio..personally selected the member of the secret Council of the Islamic Revolution. He sent his trusted allies to every important decision making organs, accountable only to him, these eyes and ears of Imam were more powerful than government authorities.<sup>566</sup>

Moreover, various parallel institutions were conceived whose aim was to undermine the official interim government of Mehdi Bāzargān. For instance, besides the above mentioned revolutionary council there were the Revolutionary Guards and the local Islamic *Komite* (Islamic Revolutionary vigilante Committees) which acted in parallel to the regular army and the police. This interference was so intense that Bāzargān himself famously stated: “in theory the government is in charge, but in reality it is Khomeini who is in charge, He with his Revolutionary Council, his Revolutionary *Komite*, and his relationship with the masses”<sup>567</sup>.

In addition to this, it appears that Khomeini and his followers undertook all possible actions to weaken the elected republican institutions of the Islamic Republic, or otherwise to bring them under their complete dominance and influence. Hence it comes as no surprise to find out that Ayatollāh Khomeini clearly instructed his closest allies to establish a firm grip on such institutions as the Parliament, the Assembly of Experts and the Judiciary system<sup>568</sup>.

To be sure, as highlighted previously, the political philosophy of Ayatollāh Khomeini seems to have gone through various phases and was reviewed on numerous occasions<sup>569</sup>. Nevertheless what the Iranian Constitution reflects today is his original Najaf version that has underpinned the entire layout of the elected and unelected sections of the Islamic Republic’s public offices. As a result, to promote such a prevailing dominance

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<sup>566</sup> Milani, M. (1988) *The Making of Iran Islamic Revolution* Oxford: Westvies press p.146

<sup>567</sup> Bāzargān, M. (1979) in an interview with the New York Times, 21<sup>st</sup> October 1979

<sup>568</sup> See for instance, Kani, M. (2007) *Xāterāt-e Ayatollāh Mahdavi Kani*, Tehran: Markaz-e Asnād-e Enqelāb-e Eslāmi pp.283-284

<sup>569</sup> See my interview with Banisadr in the Appendix

on all public institutions, for instance in the original conception of the executive branch, it was divided between the Office of the Prime Minister and the President which seems to have been designed to preclude the emergence of a strong presidency that could challenge the dominant role of the *olamā*<sup>570</sup>. This went as far as the first president of Iran who was not even capable of independently choosing the prime minister of his own government and at the end Raja'i (1933-1981) was forced on him by the parliament dominated by the conservative forces<sup>571</sup>.

Once more based on this study's reference republican framework, the domination could not only be in the form of actual coercion and obligation, but it could well be through invigilation or threat of consequences. Again with the benefit of retrospection, one could observe that a variety of dominating tactics and actual interferences have been employed to promote a certain type of political sovereignty which would contain considerable amounts of anti-republican dominatory principles. As I have expounded so far this has had fundamental impact not only on the very basic republican fundamentals of the Islamic Republic, but also on the very viability and indeed the theoretical consistency of such a political order. Hence these all lead to one simple conclusion that all provision in the Iranian political system have been taken to subject numerous democratic and participatory elements of the Islamic Republic to the *imperium* of one single figure of the *Valiye Faqih* with numerous material and military prerogatives which effectively turns the entire political system into a type of "Praetorian" dictatorship headed by a religious figurehead<sup>572</sup>. This office and its prevailing domination will be the subject of my next analysis in the remaining part of this and also in the next chapter.

## **X. *Velāyat-e Faqih* and Sovereignty**

The final chapter of the people's sovereignty in the Islamic Republic of Iran should end with the introduction of the figure of *Valiye Faqih*. As I have expounded in Chapter 2 this is a very controversial concept which has caused fierce debates not only in the secular circles but also within the Shi'a religious domains itself. On the one side there is the doctrine of *entesāb* (appointment) which basically declares the *velāyat-e faqih* is a

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<sup>570</sup> Milani, M. (1988) p.175

<sup>571</sup> Ibid

<sup>572</sup> March, A. p.2

divinely appointed figure over which the people have no sovereignty, not even within the endorsement and approval procedures. On the other hand one finds a more moderate current of Shi‘a ideologists proposing the so-called notion of *entexāb* (selection) which considers an endorsement role for the population whilst still acknowledging the centrality of such a figure in the political layout of the Islamic Republic<sup>573</sup>. As I discussed in Chapter 2, other more secular currents even go so far as to refute the very religious and rational foundations of such an institution. Banisadr for instance, as a clear example of a religiously inspired secular figure, who is an eloquent representative of the Iranian intelligentsia after the Islamic Revolution dedicated long articles to the refutation of the religious foundations of what he deems as an unprecedented concept within the Shi‘a school of the political theology<sup>574</sup>. Indeed Banisadr appear to be striving to provide a new interpretation of the term *velāyat* by conceptually removing any notions of domination from it through the rebuttal of all connotations of power implied by it<sup>575</sup>. He even draws clear connections with other regional movements with Islamic agenda in which he systematically denounces for lacking any true religious foundations as a result of endorsing significant elements of power and domination which he finds to be at odds with his interpretation of the Islamic *velāyat* of the people<sup>576</sup>.

Delving beyond these conceptual controversies one would inevitably discover the previously elaborated vision of the founders of the Islamic Republic’s ideology on seeing people as incapable of distinguishing good from evil, due to their “incomplete” rational faculties. This enjoyed no other outcome than being translated into the creation of an Islamic Leviathan, a superior wisdom that had the power to supervise the entire political apparatus of the country whilst being accountable to God only. Indeed it appears that while the Iranian parliament is theoretically accountable to the people and the Office of the President is deemed accountable to the parliament thus indirectly to

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<sup>573</sup> The example of the first group would be Ayatollāh Yazdi and for the second group we could cite Hashemi Rafsanjāni, see for instance, the article treating this argument at: [http://www.bbc.co.uk/persian/iran/2009/07/090719\\_si\\_ir88\\_islam\\_election.shtml](http://www.bbc.co.uk/persian/iran/2009/07/090719_si_ir88_islam_election.shtml)

<sup>574</sup> See for instance, Banisadr’s article entitled “Bayān-e Esteqlāl va āzādi” p.73 could be retrieved at: [http://banisadr.org/index.php?option=com\\_content&view=article&id=172:2013-03-08-17-09-20&catid=9&Itemid=141](http://banisadr.org/index.php?option=com_content&view=article&id=172:2013-03-08-17-09-20&catid=9&Itemid=141)

<sup>575</sup> See Appendix II

<sup>576</sup> *ibid*



people, the Leader in theory is only accountable to the institutions whose members are directly or indirectly appointed by himself.

For the sake of comparison, one could examine the constitution of the Iranian parliamentary monarchy of 1906 in which it was required for the King to take an oath of allegiance in front of the parliament. Whilst only a symbolic gesture, it was a powerful sign of the submission to the people's will and their representatives. It is remarkable to notice that the Leader of the Islamic republic is not required to undergo such a ritual. It will be instructive to note that in most monarchies of the modern world the constitutional sovereigns are bound to undergo the so-called "Coronation Oath" in which they usually endorse to serve people and to maintain the laws and customs of the land amongst other things<sup>577</sup>. The provisions at times proved to be forming extremely binding contractual relations between the monarch and the subjects to the point that some monarchs were occasionally forced to abdicate or were even publically executed for having transgressed the established laws and customs, a good example of which is King Charles I of England<sup>578</sup>. This further reiterates that the actual administrative form of the state's political layout does not necessarily rule out the existence of various principles of the republican doctrine in particular the principles of popular sovereignty. Whereas the Islamic Republic, while officially claiming to be a certain type of republic, does not allow for such a powerful symbol of submission to law and the sovereignty of the people for the highest authority of the state.

It is interesting to note that even on the dawn of the introduction of such an overarching all powerful institution after the Islamic Revolution of 1979, there were fierce debates and opposition in particular by the religious figures like Ayatollāh Shari'atmadāri, to which for instance Khamenei replied: "how can *Valiye Faqih* become a despot, one who acts on God's behalf is not a dictator"<sup>579</sup>.

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<sup>577</sup> See for instance the British Royal Coronation Oath as reported on the Official Monarchy website at: <http://www.royal.gov.uk/ImagesandBroadcasts/Historic%20speeches%20and%20broadcasts/CoronationOath2June1953.aspx>

<sup>578</sup> See the official website of the British Monarchy at: <http://www.royal.gov.uk/HistoryoftheMonarchy/KingsandQueensoftheUnitedKingdom/TheStuarts/CharlesI.aspx>

<sup>579</sup> Milani, M. (1992), The Transformation of the Velāyat-e Faqih Institution: from Khomeini to Khamenei, *Muslim World* 82 p.178

It has to be acknowledged that the very institution of such an office and extension of its prerogatives to absolute levels in the framework of *Velāyat-e Faqih-e Motlaq* (absolute guardianship) or more recent emphasis on the concept of *Velāyat Faqih-e a'alam* (guardianship of the most learned), would paradoxically provide this locus of authority with significant reformative power that could potentially revolutionize the entire ideological edifice of the Shi'a political theology in the face of all conservative interpretations of such principles. Certain limited application of such reformative potentials by means of the previously discussed principles of *ejtehād* could still be identified through the institutions of numerous processes and provisions such as the Maslahat Council to which will be addressed in the upcoming chapter. Notwithstanding, a closer examination of these declarations and similar ones by another proponent of figure of the *Valiye Faqih*, namely Ayatollāh Beheshti, and the actual practice of such doctrines on the ground would clearly highlight strong anti-modernist tendencies and outcomes that could well be observed in all socio-political structures of the Islamic Republic.

Regardless of these observations, the very existence of such an office would immediately remind one of the ancient republican concepts of freedom and the threats to it. In the republican framework adopted in this study I cited the emblematic figure of a Roman slave who happily declared that he was a free man since he had a kindly master who never interfered with his liberty! Nevertheless, the republican principle of freedom as non-domination ruled out such claims to liberty resulting from the lack of actual interference or also benevolent interventions of a supposedly kind, or in this case a moral authority. This school identified the domination even in the mere possibility that the *dominus* figure actually occupies a position to be able to command such an authority. Thus the republican freedom is waived as soon as there is such a public figure in a dominant position capable of enforcing such *imperium* in the absence of adequate structures of checks and balances and without the clear transparent system of consent and accountability.

Hence the figure of *Valiye Faqih*, regardless of its religious basis and justifications and even its actual track record within the Iranian political system, proves to be the seat

of power most inimical to the very basic principles of republican freedom. Even if this institution, for a variety of reasons including religious, ethics and virtue might not actually interfere with the supposedly transparently elected popular institutions. The very existence of such a repository of power would immediately dissolve the republican credentials of the system. No degree of republican claims could be advanced in a system where there is a permanent overarching and all-encompassing seat of authority over which the citizens can exercise no significant overseeing power and regulating vigilance. Needless to underline that as I expounded previously the Office of the Supreme Leader has proven to be far from a kindly master in the form of a neutral super-partisan institution dedicated to the moral guidance of the nation. In fact all evidence points to the fact that from the very beginning of the institution of such an Office, the Supreme Jurist has actively participated in the day-to-day political affairs of the country, from directly disqualifying the presidential elections' candidates<sup>580</sup>, to the management of the powerful financial institution which under Khamenei's leadership has resulted in what some authors have defined as "neopatrimonial domination"<sup>581</sup>. I will provide a more detailed analysis of the institutional implications of such an arrangement of the sovereign power in the Islamic Republic in the forthcoming Chapter.

Based on these observations I could reiterate the claim that the very existence of such an unchecked repository of public power would be sufficient to undermine numerous republican building blocks of such a political system. In addition, the famous republican eye-ball test would not even be applicable to such an overtly anti-republican entity which stands beyond any possibility of criticism and accountability. Indeed it could be concluded that this is the highest manifestation of the state *imperium* which as argued previously would render the citizens of such a system unfree under the *potestate domini* of the enslaving powers.

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<sup>580</sup> Carried out by Khomeini for the candidacy of the opposition MKP party's leader Mas'oud Rajavi

<sup>581</sup> Arjomand, S. (2009) pp.172-174

## **XI. Conclusion**

Various aspects of the political sovereignty were examined in this chapter considering the constitutional provisions in place to uphold and protect such basic cornerstones of the republican liberty. The analytical approach here pursued a multi-layered objective studying the people's sovereignty over the constitution itself as far as drafting, approval and eventual modification of the same document is concerned. I then examined the republican mechanisms in place to enforce the constitutional compatibility and eventually considered the possibility of recalling public representatives and authorities. This was then followed up by a closer examination of the highest seat of authority in the Islamic Republic namely the Office of the Leader.

As far as the ratification and amendment procedures of the constitution are concerned I highlighted the serious shortcomings in the Constitution of the Islamic Republic which does not seem to be providing adequate potentials for publically initiated constitutional processes. Furthermore, the only effective supervising commission aimed at the verification of the compatibility of the ordinary laws and procedures with the constitution does not appear to be a publically elected office lacking the most basic criteria of independence and transparency. Indeed all observations so far point to the conclusion that the Council of the Guardians seems to have been devised as an actual instrument of domination and protection of the state *imperium* rather than a republican instrument for upholding popular sovereignty.

These all led to an unequivocal remark that many constitutional provisions when observed closely prove to be extremely inadequate as the contemporary history of Iran plainly demonstrates. Thus all evidence point to the conclusions that many of these half-hearted republican provisions could well be interpreted as authoritarian recombinant strategies aimed at providing the resilience of the system from domestic and international perspectives. Other constitutional provisions such as the emphasis on the promotion of social justice and the material well-being of the society, although having provided some short-lived social benefits such as a higher social mobility or a temporary re-distribution of the national resources, seem to be extremely inadequate to produce any long-lasting social effects, again as the recent history of the Islamic Republic witnesses.

Indeed all empirical evidences support the conclusion that these economic arrangements have been devised as the effective instrument of domination by employing the resources to promote and reward a specific strand of the politico-religious narrative and their supporting social forces.

Many of these socialist discourses on distributive fairness could easily be classified as anti-republican efforts of providing incomplete information through populist propaganda or at times even removing some of the options available to the people possibly through providing misleading or inadequate information or invigilation and threat of consequences, of which one could see significant traces in all domains of the Islamic Republic social existence that were examined thus far.

The prevailing perception of human nature as existentially corrupt and evil lacking adequate power of reason, and the definition provided for the principles of the common good within this narrative would also underpin the justifications for such an anti-republican layout of power with momentous normative consequences that I discussed above.

And finally the very institute of the *Velāyate-e Faqih* proves to be in blatant infringement of various republican non-domination principles of individual sovereignty underpinned by the principles of the civic humanism. This semi or even un-elected institution, considering the procedures of selection, with little or no public accountability and such an extremely significant concentration of public power - both constitutional and extra-constitutional, would provide the precise incarnation of the *imperium* of a dominating power in the public domains as conceived by the republican doctrine. Hence at it was demonstrated in this chapter, throughout the doctrinal foundations of the structure of power in the Islamic Republic, one seems to be facing an essential deficit of the basic principles of republican sovereignty underpinned by the human reason central to the entire republican political discourse.

In any case it should be reiterated once more that these conclusions are essentially independent from the actual track record of this institution in the public life of society as

the very existence of even a hypothetically benevolent *dominus* would automatically exclude the subsistence of numerous republican fundamental principles. Notwithstanding as I will demonstrate in the next chapters, the epistemological outcomes of such interpretations of the locus of the political sovereignty within the institutional structure of power of the Islamic Republic will also prove to be significantly inconsistent with the basic principles of the republican liberty.

# Chapter 5 - Republican Institutions

## I. Introduction

Based on the guidelines set forward in Chapter 1 it becomes evident that the republican state does not leave social matters to the mere contractual relations between individuals but rather it strives to play a more active role particularly through the republican principles of institutionalism<sup>582</sup>. Thus one of the main components of a republican system of government, throughout the history of this school of the political philosophy, has been an elaborate project of institution building aimed at reducing various levels of domination at individual and state levels. As I argued previously, the principle underpinning the so-called *respublica mixta* has been at the heart of all state efforts to promote and defend various articles of individual sovereignty<sup>583</sup>. This would obviously require constitutional institutions capable of upholding and protecting socio-political liberties against the danger of subjections to the unchecked power which was equated with servitude<sup>584</sup>. The specific republican solution for this in order to reduce the possibility of the *potestate domini* of the state or individuals has been in the form of extensive efforts towards the distribution of power and provisions of sufficient checks on every repository of public power. This was in order to protect the liberty of the republican citizens who were effectively considered the owners of such authorities.

As I argued before this constituted one of the main points of divergence between the liberal ideology - including the liberal republicanism<sup>585</sup>, where the non-interference of the state has become an unshakable pillar of the doctrine of state as compared to the classic and neo-republican's non-domination principle where not all state interferences are regarded as inimical to the individual's liberty. Hence in the context of the republican political system one could expect extensive efforts towards the institution and

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<sup>582</sup> Berstein, S. & Rudelle, pp.207

<sup>583</sup> Maynor, J ibid p.27

<sup>584</sup> Van Geldern, M. and Skinner, Q. p.4

<sup>585</sup> See Ch.1 for a discussion of the liberalist republicanism, particularly within the French school of republicanism

promotion of strong public centres of authority with significant power to uphold and guarantee republican values<sup>586</sup>.

Thus the institution building efforts could be considered as one of the main preoccupations of republican ideology as it is firmly believed that these could provide the necessary guarantees to nourish and promote all republican principles. Indeed every republican principle of power administration could potentially be translated into or at least corresponds to a relative public institution of the republican state. One could safely claim that the only practical channel for the execution of the entire republican doctrine of sovereignty would be through the public institutions whose correct layout and operation could guarantee the very existence of a republican political system. All principles of distribution of power, checks and balances, equality before law and people's sovereignty would become viable only through such a political structure whose main pillars are built around efficient, transparent and elected public institutions. Thus to provide a thorough analysis of the republican credentials of a system, one should not only consider the effective dispersion and distribution of public power in society, but also the efficiency and transparency of publically accountable systems of execution and monitoring, which are open and inclusive to all members of society regardless of their idiosyncratic belongings. To use Pettit's description, the republican institutions act like the antibodies in the human body: they do not cause the immunity; they are the body's immunity, which would render the elements of this political body immune to domination by providing adequate institutional protection to guard the liberties against the diseases of liberty caused by arbitrary interference<sup>587</sup>.

One small point that needs to be highlighted here is that the institution building endeavours of the republican doctrine has proven to be a very complex, gradual and incremental process throughout the history of the Republican ideology. For instance, the French republican school had to go through five consecutive constitutions in order to arrive at what was finally regarded as a system with adequate republican credentials with efficient public institutions to uphold various aspects of the republican principles of

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<sup>586</sup> For a comprehensive discussion of this point see Maynor, J. (2003) Ch.1 & p.49

<sup>587</sup> Pettit, P. (1997) p.108



freedom<sup>588</sup>. Thus one needs to consider various historical, cultural and socio-political factors to provide a truly comprehensive study of all aspects of republican thought, but this would open up an immense field of study that requires adequate space and time to be fully addressed. Notwithstanding by closely examining the republican basic pillars of sovereignty and their manifestations within the institutional layout of a political system, one could get a relatively accurate idea of the philosophical credentials of any political order and the values forming the core guiding principles of such a system. On the other hand again as highlighted in Chapter 1, throughout the treatises of the main ideologues of the republican thought, particularly Machiavelli, one could appreciate their detailed analysis of the Roman liberty, attributing it to the two main elements of good laws and good institutions. Hence it would prove mandatory to provide an institutional analysis for my case study, i.e. to assess the Islamic Republic's republican credentials, after having scrutinized the constitutional provisions of this system in Chapter 3 and principles of sovereignty in Chapter 4.

In this pursuit I will initially start by providing a thorough analysis of the main repositories of public power in the Islamic Republic, thereafter proceed with a detailed study of the republican credentials of these institutions. I have already treated *in passim* some of these institutions throughout the previous chapters such as the Office of the Leader, Council of the Guardians and others by means of scrutinizing various constitutional aspects of sovereignty. However, here I would like to take a more detailed look at the actual institutional layout of these structures of sovereignty within the Islamic Republic, by focusing on the implications of such a layout of power on the principles of the republican liberty as highlighted throughout the previous chapters. In other words, I would like to examine the actual outcome and the institutional interpretations of those ideological foundations of this system discussed thus far, after having provided an analysis of the constitutional manifestations of such principles.

Furthermore all observations have so far lead to the paramount conclusion that a republican project has got both political and social dimensions. In this chapter I focus on the political and institutional dimensions of the republican ideology in my area of

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<sup>588</sup> Bernstein, S. & Rudelle, p.10

interest whilst in the final one I will focus on the social projects and their fundamental implications within the comprehensive republican ideology of government<sup>589</sup>.

## II. Islamic Republic State

As I briefly mentioned in the previous chapters, Locke and Montesquieu could well be credited for being the most prominent ideologues of the separation and independence of the government powers. Hence the *magnum opus* of the Montesquieu entitled *De l'esprit des lois* (The Spirit of Laws) is unsurprisingly centred around the main theme of the separation of power and the importance of the independence and transparency of these powers in the state<sup>590</sup>. Their detailed observations and recommendations for the creation of the three main branches of the sovereign authority can still be clearly identified in nearly all modern day political orders. In this section my objective will be to study these three principal institutions of government making up the main seats of public power in the Islamic Republic, namely the judiciary, the legislative and the executive powers. As I will expound below there are other significant repositories of power within the Islamic Republic which are not part of the traditional republican layout of government, although nonetheless occupy a prominent role within the hierarchy of the state in the Islamic Republic. As far as the constitutional provisions are concerned in Article 57 of the Iranian Constitution one reads:

The powers of government in the Islamic Republic are vested in the legislature, the judiciary, and the executive powers, functioning under the supervision of the absolute *velāyat al-amr* and the leadership of the *ommat*, in accordance with the forthcoming articles of this Constitution. These powers are independent of each other.<sup>591</sup>

This is a very important article of the constitution with an extremely fundamental role in defining the structure of power in the Islamic Republic. At first glance this article readily reveals that there would be at least one extra seat of authority within the Islamic Republic that falls above and beyond the sovereign powers of the government. The traditional republican *trias politica* does not seem to be the case in the Islamic Republic

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<sup>589</sup> See for instance Berstein, S. & Rudelle, p.167

<sup>590</sup> This book could be retrieved at:

[http://books.google.ae/books?id=\\_\\_F8xEX8uw8C&printsec=frontcover&dq=the+spirit+of+laws&hl=fr&sa=X&ei=6lYCUouQGobYrQers4DgCQ#v=onepage&q&f=false](http://books.google.ae/books?id=__F8xEX8uw8C&printsec=frontcover&dq=the+spirit+of+laws&hl=fr&sa=X&ei=6lYCUouQGobYrQers4DgCQ#v=onepage&q&f=false)

<sup>591</sup> Iranian Constitution Article 57 as translated by the online source: <http://www.iranonline.com/iran/iran-info/government/constitution-5.html>

and rather one should more correctly be speaking of four main sources of state authority in Iran including the Office of the Leader. Indeed the supervision of the Supreme Leader seems to be an overarching power that extends to all political structures of the country. Article 110 of the constitution details various prerogatives of the Office of the Leader which clearly underlines the fact that this institution is indeed a fourth pillar of political power to which all other institutions of the government are subordinated<sup>592</sup>. I have already addressed some aspects of this institution in the previous chapter scrutinizing its purviews with regard to the principles of the republican sovereignty; Here I will treat the institutional implications of this repository of power as every aspect of the political life of the Islamic Republic seems to have been linked to this Office in one way or another.

Another important aspect of Article 57 cited above, is the pronouncement of the term “independence” of the powers of the state from each other and not the “separation” of these powers. The separation of powers constitute a fundamental principle of all republican systems of politics to which one could seamlessly find explicit references throughout the history of this ideology. For instance as far back as the first French Republic, Article 16 of the 1789 French Universal Declaration of Human Rights clearly underlines the point that any institution which does not implement a clear separation of power would be regarded as unconstitutional<sup>593</sup>. In the case of the Islamic Republic, a closer look at each individual power readily reveals that one could not be speaking of any clear separation of power. For instance, the legislative authority’s power to legislate is not entirely reserved for the parliament and there are other institutions with significant law-making authority which I will return to further below. For now what is fundamental to notice is that a basic *esteqlāl* (independence) of these powers would at best denote a “relative” separation of powers as conceptually there could well be independent powers in charge of the same assignment in every theoretical field. It is evident that in practical terms one could not be speaking of a total separation of powers as the practical needs of every political system would entail relative interference of responsibilities. The critical issue here would be the definition of the “primary” functions as compared to the

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<sup>592</sup> See Article 110 online at : <http://www.iranonline.com/iran/iran-info/government/constitution-8.html>

<sup>593</sup> See Article 16 of the French *Déclaration des droits de l'homme et du citoyen de 1789*, at: <http://www.assemblee-nationale.fr/histoire/dudh/1789.asp>

“secondary” responsibilities<sup>594</sup>. For instance as regarding the legislative authority, the secondary functions would concern the capability and indeed the authority in specific restricted spheres as compared to the ecumenical law-making power. Indeed as I will demonstrate further below this is exactly the crucial distinction which seems to have caused a great amount of bewilderment within the institutional functions of the Islamic Republic with other centres of power such as the Expediency Council, or the Supreme National Security Council and so on who have extensive legislative power that sometimes even overrides that of the Islamic Consultative Parliament. For now in line with the order of the provisions of the Iranian Constitution, I will start my analysis of the Iranian political institutions by focusing on the Islamic Republic’s Legislative Power which could be regarded as the main building block of every modern day constitutional political system, regardless of their ideological orientation.

### **a. Legislative Power**

One could fairly safely claim that the power to legislate and create laws has been the main theme treated throughout the entire history of political thought. It could easily be shown that from Aristotle to modern day republican ideologues, the role that the definition of the processes of law-making has played in any system based on the contractual social rights, has been of the utmost importance<sup>595</sup>. Indeed the popular power to legislate is regarded as the main manifestation of the transition from the ancient system of the divine right of kings to the modern era of participatory politics<sup>596</sup>. Besides the very fundamental principle of the rule of law - which some authors might interestingly trace back to the Mesopotamian Hamurabi code of 1775 BC, the actual form that the legislative power takes in a political system could also have interesting implications<sup>597</sup>. As I argued in Chapter 1 the republican system with its emphasis on the superiority of law and equality of the citizens before it, has dedicated a significant amount of resources towards the definition and illustration of this fundamental building block of popular sovereignty. Again as argued previously more than the actual contents of the laws produced by such a body, the processes by which such an organization is

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<sup>594</sup> Qāzi, S.A. (2004) *Hoquqe Asāsi va Nahādihāye Siāsi*, Tehran, Mizān Pub. 2004 pp.308-311

<sup>595</sup> See for instance Congleton, R. D. (2011) *Perfecting Parliament*, Cambridge University Press. Part II

<sup>596</sup> See Ch.3 for more discussion

<sup>597</sup> Congleton R. D. *ibid.* p.1

formed in the first place and the mechanisms by which it consequently operates constitute the main centre of debate for the republicans. This has resulted in dedicating a particular attention to the mechanisms of devising the right processes based on negotiated solutions and compromises rather than focusing on the mere validity of the outcomes<sup>598</sup>.

Furthermore it was mentioned before that the existence of other guarantees such as an inviolable bill of rights could be regarded as an essential legislative safeguard against the numerous threats that the basic principles of republican ideology face in a modern day polity. I will now turn my attention to a closer examination of these provisions within the institutional structure of the Iranian legislative power.

The Iranian republican structure of the state includes numerous provisions to allow for a certain form of public participation, in particular regarding the process of law-making and legislation. The Islamic Consultative Assembly of Iran acts as a unicameral system, down from the former bicameral parliament of the Iranian National Assembly and the Senate under the Pahlavi monarchy. The choice between a unicameral system as compared to the bicameral one, customary in many modern day legislations of the western world, could be revealing towards the appreciation of the ideological foundations of a political system<sup>599</sup>. As I argued in the previous chapter, the Islamic revolution with its strong anti-monarchic and anti-aristocratic agenda has unsurprisingly opted for the abolition of the former Iranian Senate and the institution of one single legislative body to represent the “oppressed” and the “downtrodden” claiming to be making up the majority of the Iranian population<sup>600</sup>. Now as I stated in Chapter 1 the bicameralism could prove to be an efficient element against the domination and particularly the paramount danger of the tyranny of the majority as a significant threat to all modern day republican systems<sup>601</sup>. The rationale behind this consideration is a simple observation that providing further elements of checks and balances within the processes of legislation could provide additional layers of republican institutional

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<sup>598</sup> See Ch.1 with reference to the argument put forward by the scholars including John Maynor within the republican school of thought.

<sup>599</sup> Bušehri, J. (2005) *Qānun-e Asāsi* Tehran: Entešār Pub. pp.113-117

<sup>600</sup> See Chapter 4 for the notions of justice advanced by the founders of the Islamic Republic

<sup>601</sup> See the section entitled modern republicanism in Chapter 1.

protection against the *imperium* of the potentially ill-considered legislations. Or alternatively that one group or a current of thought turns into a hegemonic ideology in the absence of a more reasoned debate that one might expect to arise in a higher parliament made up of more specialized experts of the socio-political issues<sup>602</sup>. Most importantly the existence of a second legislative body with more stable membership rules in the form of longer mandates and the impossibility of dissolution would provide an important safeguard for upholding the principles of the constitution in a republican system<sup>603</sup>. The obvious advantages regarding the creation of more moderate and balanced laws by preventing potential radical or extreme utterances of the lower camera, have long been highlighted by the forerunners of the republican doctrine whose best manifestations could be found in the Montesquieu's *Spirit of the Laws*<sup>604</sup>.

Thus due to this institutional organization of the Iranian Legislative Power, from the outset I could highlight a potential deficit in the parliamentary structure of the Islamic Republic. It is a well established process by nations characterised by a significant level of ethno-religious diversity to adopt multi-layered parliamentary centres of law-making<sup>605</sup>. This is to ensure that the various interests of peripheral groups and ideologies would still be accounted for in the core of the legislative power. It should be acknowledged that based on the Iranian Constitution that I examined in Chapter 3, the presence of various religious and ethnic groups are relatively guaranteed in the process of law-making in the Iranian Parliament<sup>606</sup>. There are also local assemblies foreseen by the constitution which play a small role in extending the power of law-making in restricted matters to various ethnic and religious groups in Iran, but these do not seem to be playing a significant role in giving a voice to the local realities to fend off the potential *imperium* of the dominant ideology. I will return to these institutions later in this chapter.

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<sup>602</sup> As an example of this observation see the recommendations for democratic reform in the Arab world including the adoption of bicameral legislative systems by the US Council on Foreign Relations co-sponsored by former Secretary of State Madeleine Albright, as found in the online source: <http://www.cfr.org/democratization/support-arab-democracy/p8166>

<sup>603</sup> See for instance Verpeaux, M, (2012) *Institutions et vie politiques sous la Ve République*, Paris Documentation Française Ch.6 pp.71-84

<sup>604</sup> See for instance Montesquieu, (1995) *De l' Esprit de Lois*, Paris: Gallimard Pub. p.257

<sup>605</sup> Congleton *ibid*

<sup>606</sup> As I argued in Ch.3 there is not sufficient coverage and various ethnic, religious and social groups are systematically prohibited from having any representation within the Islamic Republic Consultative Assembly

The Iranian Majles is an institution composed of 290 members, supervised and dominated by the overriding 12 member institution of the Council of Guardians whose members are directly or indirectly nominated by the Office of the Supreme Leader. Surprisingly the number of Iranian MPs seems relatively low considering the unicameral nature of the parliament. For instance France - a bicameral legislative system, has allowed for 577 MPs in the lower house of the parliament, Italy 630, Russia 450, Egypt, 588 and Pakistan 342 members. In any case studying the quantitative and demographic implications of such an arrangement requires another space aimed at the analysis of the social implications of these statistics.

According to the Iranian electoral law, these members of the Islamic Consultative Assembly should pass a strict qualification procedure administered by the Council of the Guardians. This vetting process amongst others verifies that every candidate should possess a “full belief and commitment to Islam and the sacred principles of the Islamic Republic of Iran” and “show a practical allegiance to the constitution and the progressive principle of the absolute rule of the Supreme Jurisprudence (*Velāyat-e faqih*)”<sup>607</sup>. Unsurprisingly this process has resulted in a considerable domination of the parliament by the forces endorsed by the Office of the Leader particularly salient in the elections of 2004 and 2008<sup>608</sup>. One important consequence of such an ideological orientation has been that in 2008 the Majles passed a law based on which all aspects of the Office of the Leader would be exempted from any parliamentary power of oversight and accountability<sup>609</sup>. This is truly remarkable in a system whose constitution explicitly claims that “the Islamic Consultative Assembly has the right to investigate and examine all the affairs of the country”<sup>610</sup>. Furthermore if one considers other external regulating bodies aimed at monitoring, obstructing, rejecting and directing not only the processes of legislation but also the very acts of the formation of the parliament, the resulting image would become a very complex system that provides little protection for the basic republican principles of liberty as non-domination.

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<sup>607</sup> Iranian Constitution *ibid*

<sup>608</sup> Arjomand, S. (2009) p.181

<sup>609</sup> *Ibid*

<sup>610</sup> Article 76 of the Iranian Constitution at: <http://www.iranonline.com/iran/iran-info/government/constitution-6-2.html>

Thus it becomes evident that the legislative system of the Islamic Republic is geared towards promoting and preserving a specific ideology endorsed by a particular class, namely the clergy, who appear to have had a systematic presence in various legislations of the country. Paradoxically, the diminishing trend of the presence of the religious figures in the quality of the parliamentary members has been attributed to them failing to secure a popular endorsement rather than a secularizing trend in the process of qualification and selection of the MPs, as the number of the candidates within the ranks of clergy seems to be relatively constant<sup>611</sup>. Indeed as the following table demonstrates in 9 consecutive parliaments of the Islamic Republic a persistence presence of the clergy could clearly be perceived in spite of its declining trend:

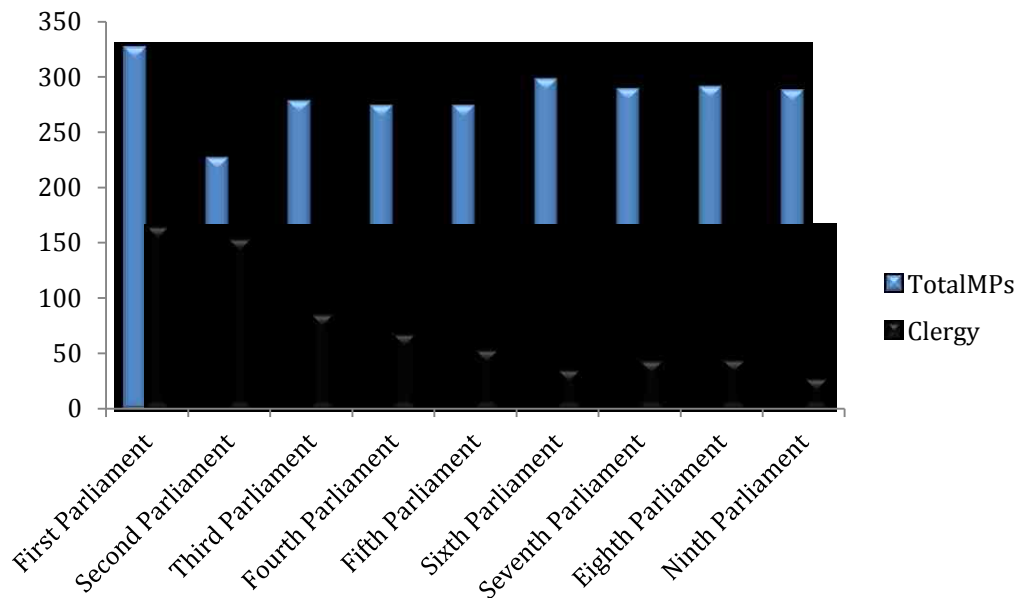


Figure 5.1

Furthermore as I argued in the previous chapters based on Article 72, 73 and in particular 93 of the Iranian Constitution, all laws of the parliament should be sent to the Council of the Guardians for approval and that “the Islamic Consultative Assembly does not hold any legal status if there is no Guardian Council in existence”<sup>612</sup>. It becomes evident that significant potential for the total domination of a specific class of ruling

<sup>611</sup> Ganji, A. (2013) as reflected on the Radiofarda news portal on 10<sup>th</sup> August 2013 at:

<http://www.radiofarda.com/content/f7-revolutionary-guard-and-rohani-presidency/25022314.html>

<sup>612</sup> See the relative Articles of the Constitution in the online source: <http://www.iranonline.com/iran/iran-info/government/constitution-6-2.html>



elite has been provided for in the Constitution of the Islamic Republic. Hence the very institution that should create laws aimed at protecting the republican values of liberty as non-domination itself seems to be strictly dominated by specific group and vested ideological interests.

In spite of these constitutional arrangements of the Legislative System, the experience during the three decades since the establishment of the Islamic Republic, demonstrates that the interactions between the Islamic Consultative Assembly and the Council of the Guardians is a much more complicated matter than the simple subordinate relationship between a dominant and a dominated entity. Indeed at various junctures within the life of the Islamic Republic various provisions have been added in an attempt to resolve the inevitable gridlock resulting from functional and instrumental necessities of a modern day society on the one hand and the religious and doctrinal imperatives of the dominant school of ideology on the other. One such solution has been the creation of the Expediency Council which proves to be a very interesting institution within the structure of the Islamic Republic. This requires further analysis which I will be providing in the relative section, for now I will proceed by taking a closer look at the structure of the Guardian Council which I have cited on numerous occasions thus far.

## **i. The Council of the Guardians**

If one had to prepare a list of all the institutions within the structure of the Islamic Republic wielding the highest concentration of public authority, the Council of the Guardians would probably top the pinnacle. This organization was created following Khomeini's explicit order immediately after the Islamic Revolution aimed at influencing and controlling the formational processes of the Islamic Republic. To be sure, as I mentioned in Chapter 2, there was a strong precedence for such an organization even in the first Iranian Constitutional Revolution of 1906-1911, with explicit guidelines for the supervision of all legislative affairs by the theologians to verify their compliance with Shari'a law<sup>613</sup>. Immediately following the Islamic Revolution of 1979, the Council of

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<sup>613</sup> See the section on the Iranian Constitutional Revolution in Ch.2

the Guardians was instituted by 6 *faqih*s directly nominated by Khomeini who unambiguously declared that:

With a view to safeguard the Islamic ordinances and the Constitution, in order to examine the compatibility of the legislation passed by the Islamic Consultative Assembly with Islam, a council to be known as the Guardian Council is to be constituted for which I have the responsibility to name six *faqih* from among the pious *faqih*s conscious of the present needs and the issues of the day.<sup>614</sup>

These provisions effectively turned the Council of the Guardians into a powerful institution with significant prerogatives in all legislative matters of the country. Indeed as discussed in Chapter 3, the Council of the Guardians has become the sole institution with the power to interpret the Iranian Constitution (Article 98), to validate every law passed by the parliament and most importantly to supervise the elections of the Assembly of Experts for Leadership, the president of the Republic, the Islamic Consultative Assembly, and the direct recourse to popular opinion and referenda (Article 99). Indeed this institution could well be regarded as the main architect of the fundamental political structure of the entire system.

From an institutional point of view, besides having the power to nullify any piece of legislation deemed incompatible with the rules of the Sacred Law, every candidate of the Majles - the office of presidency and Assembly of the Experts, should be first approved by this council through a process called *nezārat estesvābi* (approval supervision)<sup>615</sup>. This became even more blatant when in 1995, the parliament under the strong influence of the conservatives passed a law aimed at unambiguously extending the prerogatives of the council to be “unequivocal throughout the duration of the elections and with regard to all matters”<sup>616</sup>. All these purviews seem to have turned this institute into an effective gatekeeper for all existing elected offices of the system. For instance in 2004 and 2008 the Council rejected the candidacy of around a third of the Parliamentary candidates and in the presidential elections of 2013, 672 candidates were rejected out of a total 680 nominees!

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<sup>614</sup> This is a clear reference to Article 91 of the Iranian Constitution.

<sup>615</sup> Article 99 does not qualify the “type” of the supervision by the Council of the Guardians and the Council’s appropriation of the *nezārat-e estesvābi* has been a post-Khomeini practice that is still at the centre of heated debate within the political establishments of Iran

<sup>616</sup> Arjomand, S. (2009) p.71

The striking aspect of the institutional locus of the Guardian Council is not just the extent of its constitutional prerogatives, which one might even find in other comparable contexts, whereas it is its compositional structure, its accountability and its transparency which one should expect from any repository of power with such significant levels of political authority. As I mentioned above six religious figures from the council are directly selected by the Supreme Leader whilst the other six members with legal qualifications are proposed by the head of the judiciary system to the parliament for endorsement. Now, the head of the judiciary system himself is in turn appointed by the Supreme Leader, which in effect turns the whole Council of the Guardians into an extremely powerful tool in the hands of one individual, the Leader of the Islamic Republic.

Therefore it is easy to imagine an immense potential for domination in such a system controlled by an omnipotent institution which practically controls the entire republican apparatus of the system, on which people have little to no direct control and which is only accountable to the Office of the Leader. This could and indeed has provided for various anti-republican elements of unchecked sources of authority with potential for the outright elimination of any traces of the popular sovereignty in such a system. One could safely claim that the institution itself could be regarded as the highest manifestation of the *imperium* of the state which as I argued previously, is regarded as the most inimical to the basic principles of republican liberty. Furthermore if one considers the complete cycle of the *imperium* of the dominating ideology in the Islamic Republic, the role that the Council of the Guardian plays in it becomes even more evident, as this Council is charged with vetting the candidates of the Council of the Experts which are theoretically in charge of nominating or even dismissing the Supreme Leader. Thus the highest seat of authority, the Office of the Leader, directly or indirectly nominates the members of the Council of the Guardians which in turn approves the candidates for the Assembly of the Experts. In other words the Supreme Leader has the final authority in selecting or dismissing himself if he is considered to be lacking the necessary qualifications! It comes to no surprise that some elements of popular endorsement in the form of choosing between the approved candidates have also been included, but these clear instances of the “recombinant authoritarianism” by no

means go anywhere near the republican guarantees against the *potestate domini* of the ruling system.

Again a comparison with other republican systems, particularly the French Republic whose Fifth Constitution has been used as the blueprint for the formation of the various institutions of the Islamic Republic, would be instructive here. Surprisingly the Council of the Guardians itself seems to be providing a comparative definition of its role by defining its functions in an analogy with other European Constitutional Courts or Councils<sup>617</sup>. In Chapter 1, I provided a comparative overview of some of these institutions, in particular the French and Italian ones, which would lead to the unequivocal conclusion that such a comparison by the Council of the Guardians with these institutions is fundamentally flawed and misleading due to a variety of reasons including:

- These are not ideologically driven institutions with little to no regard for any doctrinal underpinnings of the questions treated<sup>618</sup>;
- They are meant to be open and inclusive to all members of society regardless of gender, religion, ethnic belongings or personal and political beliefs<sup>619</sup>;
- In most cases their interventions should be triggered by specific authorities through predefined constitutional channels<sup>620</sup>;
- The area of jurisdiction is restricted to specifically defined constitutional matters which could not be easily extended to other socio-political fields, strictly refraining from taking overt public political positions;
- Their supervision is not a comprehensive exercise of authority extended to all laws passed by the parliament<sup>621</sup>;
- All efforts are made to turn these institutions into completely independent organs of supervisions and checks, unlike the Guardian Council which is directly linked to the unelected Office of the Supreme Leader.

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<sup>617</sup> See the official portal of the Council of the Guardians at: <http://www.shora-gc.ir/>

<sup>618</sup> Roussillon, H. Ch.1

<sup>619</sup> In France for instance the 9 members of the *Conseil Constitutionnel* are nominated respectively by the president of the Republic, the head of parliament and the Head of the Senate each by three members. All these authorities are directly elected by all members of society or their representatives with no restrictions for gender, religious belief or other idiosyncratic considerations. See for instance De Gunten, B. Bernard, G. Martin, A. Niogret, et M. Bouthier, C. (2004) *Les Institutions de la France*, Paris: Nathan Pub.pp.56-57

<sup>620</sup> Again found in the example of the *Conseil Constitutionnel* whose eloquent interventions could be triggered by the president of the republic, the head of the parliament or 60 members of each parliament. De Gunten, B. Bernard, G. Martin, A. Niogret, et M. Bouthier, C ibid

<sup>621</sup> They do not automatically supervise all ordinary laws passed by the parliament. Roussillon, H. Ch.1

Thus it becomes evident that such an institution does not have any resemblance to the traditional republican seats of power dedicated to upholding the principles of popular sovereignty and republican liberty. In the previous chapters I discussed the constitutional implications of such political arrangements. In line with those observations, here again institutionally, through the gate-keeping functions that this organ imposes on all elected offices of the Islamic Republic; it seems to be acting as a veritable tool of domination for a certain ideology rather than a republican institution guarding against domination and dependence. Basic considerations on aspects of transparency, independence, inclusiveness and neutrality would all lead to the conclusion that any analogy between the Council of the Guardians with other republican institutions - aimed at upholding republican principles of liberty by protecting the constitution and resolving the areas of conflict between the state powers, should be taken a pinch of salt.

## **ii. Other Legislative Purviews**

It is imperative to mention that there are some interesting organizations within the structure of the legislative power which deserve particular attention such as the Komision-e Asle Navad (Commission for Article 90) and the Divān-e Mohasebat-e Kešvar (Supreme Audit Court). These organizations, again clearly based on the French model of the Fifth Republic, could play an important role in protecting the rights of the individual and implementing an important level of accountability for the governmental agents before the people. As I discussed previously, Article 90 of the Iranian Constitution reads as below:

Whoever has a complaint concerning the work of the Assembly or the executive power, or the judicial power can forward his complaint in writing to the Assembly. The Assembly must investigate his complaint and give a satisfactory reply. In cases where the complaint relates to the executive or the judiciary, the Assembly must demand proper investigation in the matter and an adequate explanation from them, and announce the results within a reasonable time. In cases where the subject of the complaint is of public interest, the reply must be made public<sup>622</sup>

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<sup>622</sup> Article 90 of the Iranian Constitution as found at: <http://www.iranonline.com/iran/iran-info/government/constitution-6-2.html>

Indeed numerous recourses to the intervention of this commission have been solicited either by the general public or by other authorities of the Islamic Republic<sup>623</sup>. The above article explicitly mentions that this Commission of the Islamic Consultative Assembly has the power to investigate all complaints filed against all three state branches. Hence based on this Article of the constitution, this Commission seems to have been endowed with two types of authority. The first is to investigate public complaints and if deemed appropriate refer them to the judiciary system to be prosecuted, and the second is to inform the public of the proceedings if these prove to be in their general interests<sup>624</sup>. Nevertheless there are important aspects of the commission which deserve further thought. Firstly it has been asserted that the complaints filed with this commission should concern only the procedures and the *modus operandi* of the executive and judiciary powers<sup>625</sup>. As three decades of the Islamic Republic's history shows, complaints to this Commission would rarely result in any tangible gains for the filing parties. One could seamlessly find numerous instances which demonstrate that the function of this commission has been reduced to the initial investigation of the complaints and referral to the same organizations concerned, which in most cases have simply chosen to ignore or archive them with little to no executive sanctions attached. Most significantly these have rarely been reflected in the public domain as the public media, and in particular the national broadcasting organization - which is directly controlled by the Office of the Leader and the heavily invigilated private media, seem to have failed to function as neutral and efficient means of public information and awareness<sup>626</sup>. And finally this Commission does not possess any power over the Office of the Leader or other powerful organizations falling under his authority such as the Expediency Council or various Bonyāds and revolutionary organizations. I will treat this argument in more detail at the end of this chapter.

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<sup>623</sup> The most emblematic of these complaints are those filed against the government of former President Ahmadinejad which is said to amount to 30 cases which are still under investigation by the Article 90 Commission: <http://www.radiozamaneh.com/90210>

<sup>624</sup> Imani, A & Qetmiri, A. pp.603-612

<sup>625</sup> Amid Zanjani.A. and Musāzādeh, A. (2010) *Nezārat bar A'māle Dolat va Edālat-e Edāri*, Tehran: Tehran University Press p.100

<sup>626</sup> See for instance the research performed in this domain found at: <http://iranmediaresearch.org/en/research/download/1444>

Similar considerations could be made regarding the Supreme Audit Court. This court which was established and is administered by the Legislative System based on Articles 54 and 55 of the Iranian Constitution, has the declared objective of “controlling financial operations and activities of all Ministries, institutions, government companies and other organizations which in any manner whatsoever benefit from the state budget”<sup>627</sup>. Despite this ambitious and fundamental objective of financial monitoring over the operation of all state powers by this institution, in practice it seems to have encountered numerous limitations and setbacks. These have not only been the result of the ambiguity of the definition of the scope of authority of this organization, but also from the conflict of responsibilities - notably with the Administrative Justice Court and other organizational councils in charge of dealing with wrongdoings and irregularities<sup>628</sup>. Therefore serious doubts has been raised against the efficiency and transparency of the operations of such financial auditing institutions, particularly in the wake of the 2011 embezzlement scandal which revealed a striking levels of corruption at the highest financial levels of the Iranian establishment<sup>629</sup>. Unsurprisingly this court does not have any constitutional authority either over the Office of the Leader and all the revolutionary and financial foundations that fall under the control of that office, which as I will discuss further below is said to control over 40% of the entire Iranian economy<sup>630</sup>.

### **iii. Limits of the Legislative Power**

As far as one can see in the Iranian Constitution, the explicit limits set out for the practice of the legislation is that it should not be against the Sacred Law of Islam. Now on closer scrutiny of the various articles regulating this matter, it could be observed that two distinct terms are being used to reflect this concept. Surprisingly it appears that not enough attention by scholars of this field has been dedicated to these subtle details of these important pronouncements of the Iranian Constitution. In certain places one encounters the term *entebāq* (be compliant with) the Islamic laws (in Articles 4 and 94) and in another the text read as *adame moqāyerat* (not to be against) the Islamic Codes (in Articles 91 and 96). As one could well imagine this could be a potential source for

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<sup>627</sup> See the official charter of the Supreme Audit Court on the relative portal at: [www.dmk.ir](http://www.dmk.ir)

<sup>628</sup> Amid Zanjani and Musāzādeh, A. pp.242-245

<sup>629</sup> [http://www.nytimes.com/2011/10/26/world/middleeast/new-arrests-and-interrogations-in-iran-fraud-case.html?\\_r=2&](http://www.nytimes.com/2011/10/26/world/middleeast/new-arrests-and-interrogations-in-iran-fraud-case.html?_r=2&)

<sup>630</sup> Arjomand, S. (2009) p.61

misunderstanding in the interpretations of the Articles and the role that these institutions could play in producing and monitoring the ordinary laws of the Islamic Republic. It is evident that an article of law might not be *montabeq* with the Islamic Shari‘a as the Sacred Law might be silent in that matter, as it often is, but this does not automatically entail that it is against Shari‘a Law. Consider for instance the traffic law or the laws regulating import and export for which one could not find any precedence in the religious doctrine. Therefore it is obvious that the boundaries of the legislation in Iran and the scope of the oversight of the Council of the Guardians on all laws passed by the parliament, still contain various points of ambiguity which could result in a dangerous potential for domination as the Council of the Guardians is also endowed with the power to interpret the ambiguities of the Iranian Constitution.

Unsurprisingly the parliament faces many other constraints as well. As I discussed previously, the Islamic Consultative Assembly no longer has the power to investigate unelected institutions, such as the Council of the Guardians and the Office of the Leader. Furthermore any inquiry into the functioning of any organization falling under the control of the Supreme Leader such as the state-controlled media, requires his explicit authorization<sup>631</sup>. In any case these restriction most strikingly extend to the very process of law-making as well.

In practice the Majles has faced numerous restrictions on the exercise of its legislative mandates with other institutions enjoying similar rights to legislate in certain matters. These include the Supreme Council for National Security, the Expediency Council, the Guardian Council itself, the Supreme Council for Cultural Revolution and the Office of the Supreme Leader<sup>632</sup>. For instance Article 176 of the Iranian Constitution explicitly mentions that “The decisions of the Supreme Council for National Security shall be effective after the confirmation by the Leader” which indeed provides this institution with the power to legislate and promulgate binding laws<sup>633</sup>. I

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<sup>631</sup> See Ch.3 for a detailed discussion

<sup>632</sup> Article 112 of the Iranian Constitution gives the Expediency Council the right to pass all its internal regulations after the approval by the Leader and also to actually decide on the legislations when these are deemed incompatible with Shari‘a Law by the Council of the Guardians.

<sup>633</sup> Article 176 of the Iranian Constitution as translated on the web at: <http://www.iranonline.com/iran/iran-info/government/constitution-13.html>



will take a look at the operation of the Expediency Council further below but for now what is interesting to underline is that the Office of the Leader has been given the power to issue the so-called “state orders” which would have the same effect as the normal laws although in the absence of any legislative debates and proceedings<sup>634</sup>. This could be regarded as the most blatant violation of the republican principles of popular sovereignty in the legislative matters which I will treat in further detail in the forthcoming section relating to the Office of the Supreme Leader. As an example I can only cite the state order of the Supreme Leader in 2012 to drop the parliamentary investigation into the performance of the then President of the Islamic Republic, Mahmud Ahmadinejād which was immediately obeyed by the members of Majles as the decrees of the highest seat of authority in the Iranian political system<sup>635</sup>.

Thus all analysis on legislative power leads to the conclusion that whilst there is interesting potential - such as the direct popular participation in selecting members of parliament or the existence of interesting organs such as the Commission for Article 90, there are significant limitations imposed on the power of these fundamental republican institutions. Direct checks and invigilation by the Council of the Guardians, not only on all processes of law-making but also on the very formation of the Majles, seem to have turned this institution into a simple tool in the hands of the dominating ideology to promote and legalize its doctrinal convictions. This would in turn leave very little power and space for the promotion and preservation of the principles of individual liberty and sovereignty. Therefore the legislative system as the cornerstone for any republican ideology based on *buoni leggi* (good laws), seems to be facing significant limitations and shortcomings in Iran and a persistent influence of powerful unelected institutions whose overriding power would leave the Majles with little authority to fight the *imperium* of the state in the lives of the people.

Furthermore, one of the basic fundamentals of the republican doctrine was to enable the political system to formulate reasonable and measured legislation by soliciting opinions from all interested parties and not just a specific dominant ideology and its

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<sup>634</sup> See for instance <http://iranprimer.usip.org/resource/parliament>

<sup>635</sup> See for instance the news of this at: <http://khabaronline.ir/detail/259196/>

proponents<sup>636</sup>. To be living in a republican state, as argued in Chapter 1, would entail that “the body politic is never moved to act except by the will of the citizen body as a whole” regardless of their individual belongings and any other idiosyncratic considerations<sup>637</sup>. This is a basic legislative principle which seems to have been systematically disregarded within the entire apparatus of the Iranian Legislative machinery that seems to have been geared towards the promotions and protection of one particular interpretation of the principles of sovereignty.

## **b. The Judiciary Power**

The next state power in the order of nomination by the above cited Article 57 of the Constitution is the judiciary power. As I mentioned previously the judiciary system and its socio-political relevance has always played a fundamental role throughout the history of the republican thought. Indeed without an efficient system of administration of justice, the entire edifice of the republican ideology would prove baseless in the absence of a centre for recourse against the *dominium* of individuals who wish to dominate and impose their will on others, and the *imperium* of the state itself with its potentials for arbitrary interference. This could indeed be regarded as the materialization of the previously mentioned republican objective to create an “empire of law and not of men”<sup>638</sup>.

Article 157 of the Iranian Constitution states that the Supreme Leader:

shall appoint a just *mojtahed* well versed in judiciary affairs and possessing prudence and administrative abilities as the head of the judiciary power for a period of five years who shall be the highest judicial authority<sup>639</sup>

In other words, the highest seat of authority within the judiciary system of the Islamic Republic is reserved for a religious figure with certain doctrinal qualifications who is directly appointed by the Office of the Leader. The head of the judiciary system is then responsible for the appointment of the head of the Supreme Court, the Chief Public

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<sup>636</sup> Maynor, J. (2003) p.161

<sup>637</sup> See Ch.1 for details

<sup>638</sup> See Ch.1

<sup>639</sup> See Article 157 at <http://www.iranonline.com/iran/iran-info/government/constitution-11.html>

Prosecutor and the creation of the entire judiciary machinery of the Islamic Republic according to Articles 156, 158 and 162 of the constitution.

Based on my republican framework of analysis, this would immediately ring numerous alarm bells both concerning the inclusiveness and accessibility of such a position to all, and also most importantly, the independence and impartiality of a system created by such a figure with various potential group and ideological vested interests. As it was shown above the head of the judiciary system, himself nominated by the Supreme Leader, has the authority to nominate half of the members of the all-powerful Guardian Council; the other half is directly nominated by the Leader himself. Hence it becomes evident that, as with the Legislative Power, there seems to have been meticulous efforts in designing this fundamental power of the state in such a way to be in complete compliance with one specific dominant ideology pertaining to one specific seat of authority, namely the Office of the Leader.

Again some examples from other republican systems would be useful to illustrate the existential conceptual differences. In France the *Autorité Judiciaire* is meant to be a completely independent power which interestingly has no jurisdiction over the executive and the legislative powers, which are said to take their legitimacy from direct popular mandates. Thus in such a system, any seat of power whose authority emanates from the direct popular vote is accorded a higher level of political legitimacy<sup>640</sup>. It appears that significant efforts have been made to make these institutions open and inclusive to all member of society at all levels. Such high administrative councils as the French *Conseil Supérieur de la Magistrature* or the Italian equivalent *Consiglio Superiore della Magistratura* are manned and headed by members who are directly or indirectly chosen by the people or who originally entered the organization on the basis of their legal knowledge and reasoning skills which is tested through publically administered open national selection and placement contests. The counterpart of these Councils in the Islamic Republic, šowray-e Aliye Qazā‘ei (the Supreme Judicial Council) is comprised of the chief jurist of the Supreme Court, the chief public prosecutor - both of whom must

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<sup>640</sup> This is explicitly highlighted in the official portal of the French Government website on: <http://www.vie-publique.fr/decouverte-institutions/institutions/approfondissements/separation-pouvoirs.html>

be Shi'a *mojtaheds*, and three other clergy chosen by religious jurists<sup>641</sup>. It is evident that unlike the Iranian High Judiciary Council, the Italian and French systems allow for all members of society with the adequate knowledge and qualifications to participate regardless of their gender, religion, and personal or individual beliefs and belongings<sup>642</sup>.

Another aspect worthy of mentioning is that since the Islamic Revolution, women's presence in the quality of primary judges has been banned in the judiciary system of Iran. Indeed the law on Qualifications for Appointment of Judges enacted on 4<sup>th</sup> May 1982 states that judges should be chosen amongst the male applicants who have "faith, justice and practical commitment to the Islamic principles and loyalty to the Islamic Republic of Iran" and who have reached the level of *ejtehād*<sup>643</sup>. If the number of *mojtaheds* is not sufficient, judges can be chosen from amongst the graduates of law schools, faculties of theology or the religious seminaries who have not yet reached the level of *ejtehād*<sup>644</sup>. By any standards, let alone the current republican framework of study, this would represent a considerable source of domination by a system whose legal institutions are meant to be the primary port of call for all citizens against the private *dominium* and public *imperium*.

Indeed the entire Iranian judiciary system under the Islamic Republic appears to be more centralised under one source of authority and less independent than even the one under the previous monarchic regime. For instance during the totalitarian rule of Reza Shah (1878-1944) the judiciary system went as far as condemning the Shah for having taken land illegitimately, something which was remarkable considering the time and setting of those pronouncements. The authority of this legal power seems to have continued unabated both since the *coup d'état* of 1320 and under Mohammad Mosaddeq's (1882-1967) government<sup>645</sup>.

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<sup>641</sup> For a full description see: <http://www.iranicaonline.org/articles/judicial-and-legal-systems-v-judicial-system-in-the-20th-century#sec3>

<sup>642</sup> In Italy the so-called "concorso pubblico" is administered on a regular basis nationally to select new magistrates (judges) based on their legal knowledge. See [http://www.csm.it/circolari/100915\\_9.pdf](http://www.csm.it/circolari/100915_9.pdf)

<sup>643</sup> See interesting research on this matter at: <http://www.li.com/docs/future-of-iran/2012-future-of-iran-by-nargess-tavassolian-reform-within-the-judiciary-of-iran.pdf?sfvrsn=4>

<sup>644</sup> *ibid*

<sup>645</sup> Amin, H. (2003) pp.554 & 740-709

In a similar vein to the legislative power, here again parallel considerations could be made regarding the actual independence and provisions for the separation of powers in the Islamic Republic. Most Surprisingly, Article 160 stipulates that the minister of justice will be elected from among the individuals proposed to the President to the head of the judiciary branch. This would generate yet another source of republican concern with regards to the independence of state authorities. For the sake of comprehensiveness, I could analyse the issue of independence from both an institutional and functional point of view. All the above evidence demonstrates that the institutional independence of this system does not appear to have been guaranteed with the head of the institution being appointed by the Supreme Leader. To this one I have to add that the power to grant amnesty or to pardon criminals have also been left to the discretion of the Office of the Leader.

Other reflections on the day-to-day operational aspects of the judiciary system demonstrate that one could note numerous top-down interventions to implement and promote a specific judiciary doctrine within the entire system. These could all be regarded as blatant violations of the functional independence of this authority. For instance the Leader's explicit stance regarding the newspapers or the need to punish those participating in the 2009 electoral unrest in Iran<sup>646</sup>, are just a few of the explicit or implicit practical instructions passed down to this system by the Office of the Leader that would violate even the most basic principles of the independence of the system of administration of justice in Iran.

All this would lead to the basic conclusion that serious concerns could be raised regarding the independence and the openness of the Islamic Republic's judiciary system to administer justice and uphold individual principles of liberty regardless of their personal diversities. Despite this there still seems to be some interesting republican provisions in place within the Islamic Republic's judiciary structure that allows for a certain level of the administration of justice. These could potentially provide an interesting level of protection against the violations of individual liberties - particularly by the executive power, the most important of which are the Court of Administrative

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<sup>646</sup>See <http://articles.latimes.com/2009/jun/20/world/fg-iran-khamenei20> and <http://www.theguardian.com/world/2009/jun/19/iran-khamenei-speech-key-phrases>

Justice and the General Inspection office which deserve further consideration that I will now provide.

## **i. Administrative Justice Court**

Article 173 of the Iranian Constitution contains instructions for the Legislative Power to create an institution called *Divān-e Edālat-e Edāri* (Administrative Justice Court) “in order to investigate the complaints, grievances, and objections of the people with respect to the government officials, organs, and statutes”<sup>647</sup>. This institution is again strongly inspired by the French *Conseil d'état* and the administrative tribunals, hence unsurprisingly the original name of the relevant legal disposition before the Islamic Revolution was the State Council Law<sup>648</sup>.

Throughout the western history of political philosophy, the idea of an independent institution with the power to oversee all operations of government and act as the judiciary organ in cases where the rights of the people have been trampled upon by the state administration itself, has been one of the main identifying features of the Republican pattern of state building<sup>649</sup>. In contrast for the sake of comparison I could cite the Anglo-Saxon model in which legal experts such as Albert Dicey (1835-1922) strictly rejected the idea of a specialized administrative tribunal. This was claimed to be on the grounds that having a specific court for treating the cases related to the operation of the administrations would violate the principles of the separation of powers due to interferences of the judiciary power into the executive affairs, and also undermine the basic elements of equality before the laws<sup>650</sup>. Hence in such a system all judiciary cases were proposed to be processed in one type of judiciary court of justice which treated all cases regardless of the nature of the plaintiff and the defendant<sup>651</sup>. Nevertheless this principle has now been widely adopted in the form of a special court dedicated to the

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<sup>647</sup> See Article 173 at <http://www.iranonline.com/iran/iran-info/government/constitution-11.html>

<sup>648</sup> See the official website at the Divān-e Edālat-e Edāri on: <http://www.divan-edalat.ir/show.php?page=about>

<sup>649</sup> See Ch.1 for republican principles of non-domination against the state *imperium*

<sup>650</sup> This is one of the main themes of Dicey's main book entitled “An Introduction to the Study of the Law of the Constitution (1885)” which can be consulted at: [http://www.constitution.org/cmt/avd/law\\_con.htm](http://www.constitution.org/cmt/avd/law_con.htm)

<sup>651</sup> Ibid

administrative offences which in most cases are separate from the judiciary power of the state<sup>652</sup>.

In the Islamic Republican system, as seen in the above cited article of the constitution, the organization is part of the Judiciary system with ample power to investigate complaints brought forward by the people primarily against the Executive Power. It is evident that the exact definition of the “claimants” and the “defendants” subject to these constitutional provisions is of prime importance towards the correct functioning and indeed the effectiveness of this important institution. With regards to the claimant, it is interesting to note that there has not been a clear interpretation of the term “the people” as three decades of Divān’s history has shown. The debate still seems to be wide open between those who consider the “plaintiff” of these provisions to be the legal personalities (natural and judicial persons), or alternatively the state organizations and institutions themselves as well. In fact one could find some interesting examples in this regard where the ambiguity seems to have induced the Administrative Justice Court itself to handle cases in which the “claimants” have actually been other administrative entities rather than “the people”<sup>653</sup>. In any case the rights of the people in the sense of *persona iuris* to initiate a lawsuit through this institution are guaranteed in the above mentioned constitutional article.

The second aspect of any lawsuit is the clear definition of the defendant and indeed the potential violation of laws by them. As one could note in Article 173, this would denote “government officials, organs, and statutes”. Article 10 of the law regulating the Court of the Administrative Justice, states that all government entities such as the ministries, organizations, institutions, local councils, national welfare system and all revolutionary organizations and their related institutions would be under the purview of this court. Nevertheless, it immediately underlines in note 2 that all courts and other judiciary sources, the armed forces, military courts and judges would not be subjected to the jurisdiction of the Divān. And finally in Article 12 all the decisions and judgements of the judiciary power, the Council of the Guardians, the Expediency Council, the Assembly of the Experts and the Supreme National Security Council are explicitly excluded.

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<sup>652</sup> De Gunten, B. Bernard, G. Martin, A. Niogret, et M. Bouthier, C. p.114

<sup>653</sup> Emami, M. & Ostovarsangari, K. (2007) *Hoquq-e Edāri*, Tehran, Mizan Pub. p.157

Hence it becomes evident that the main subject of the prerogatives of the Court of the Administrative Justice is the executive power, and it has little to no power over the other two powers of the state, let alone the Office of the Leader which is not even mentioned throughout the entire legal charter of this court. Indeed in an explicit ruling by the Council of the Guardians following a query by the head of the judiciary system in November 2004, the council in the quality of the sole interpreter of the Iranian Constitution ruled that the term “government” used in Article 170 denotes exclusively the executive power<sup>654</sup>. Thus once again a potentially powerful republican institution for the protection of individual rights against the *imperium* of the state seems to have been designed in such a way to exclude the highest repositories of state power, namely the Office of the Leader and all organizations and institutions that fall directly under his control. Nevertheless, the most striking aspect of this remains in the exclusion of other state powers from this supervision, particularly the judiciary system which in practical terms leaves citizens with no alternative course of appeal against the potential administrative domination of this powerful institution, other than certain subordinate organs of this institution itself.

Furthermore one could underline an operational limit of the Divān whose headquarters are based in the capital and seems to have been significantly overwhelmed by the sheer volume of complaints brought against various functions of the executive power. Most curiously during this study it was observed that the government of President Ahmadinejād seems to have consistently taken advantage of this momentous limitation and significant backlog of work at the Court of the Administrative Justice, by passing quick government decrees to make significant financial gains through inappropriate levies, taxation and financial penalties<sup>655</sup>. In any case in a total absence of any impartial transparent system of monitoring and reporting, one would never be able to unravel the true scale of efficiency or also abuse of the loopholes and bureaucratic overheads of such a system.

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<sup>654</sup> Mousāzadeh, R. (2011) *Administrative Law*, Tehran: Mizan Pub. p.312

<sup>655</sup> One such example would be the laws regarding the confiscation of vehicles by the traffic authorities aimed at forcing those committing even minor traffic offences to pay exorbitant fines which at one stage were passed by the government and in effect for several years until the Court of the Administrative Justice ruled them illegal. Nevertheless by then the government had made significant financial gains, and this seems to have been a pattern that was repeated several times by the executive power. See for instance: <http://www.maavanews.ir/Default.aspx?tabid=4355&articleType=ArticleView&articleId=70289>



## **ii. General Inspection Office**

Article 174 instructs the creation of a specific office to supervise “the proper conducting of affairs and the correct implementation of laws by the administrative organs of the government”. Indeed this could be a very interesting organ of monitoring and control over all government institutions in particular in relation to the correct application of the laws of the State and the use of the public resources. The law seems to have given ample power to this office to investigate and inspect every aspect of the State’s use of public power. Article 2 of the constituting law of the General Inspection Office details the jurisdiction of this office which is extended to any organization or institution which is a beneficiary of state budget together with all revolutionary organizations and military and judiciary sectors. It is also underlined that this inspection could be either in the form of a continuous supervision or triggered at any moment by the Supreme Leader, the head of the judiciary power, the President, the Commission for Article 90 of the Parliament, the chairman of the concerned administrative organization or in any other cases where the chairman of the General Inspection Office deems appropriate<sup>656</sup>. The internal regulatory charter nominates the Supreme Leader as the authority whose inspection orders would have the highest priority of execution<sup>657</sup>.

While the general objectives of this Office appear to be extremely important and fundamental towards the correct functioning of all state machinery, the very fact that this organization belongs to the Legislative Power could by itself create significant issues arising from the interference of state powers. Furthermore the head of the General Inspection Office is directly appointed by the head of the judiciary system, himself directly nominated by the Office of the Leader. This again could cause some concern regarding the impartiality and neutrality of the procedures and judgments which is yet to be fully studied.

And finally as with most supervision and public accountability organizations within the Islamic Republic, I noticed that the last clause of Article 2 of the law regulating the jurisdictions of this Office, explicitly exempts all organizations directly supervised by

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<sup>656</sup> See the law regulating the General Inspection Office particularly Article 2 at: <http://www.bazresi.ir>

<sup>657</sup> Ibid Article 3 of the Regulatory Charter

the Supreme Leader, the Guardian Council, the armed forces and even the same judiciary power from being subject to any legal prosecutions arising from potential wrongdoings as detailed in this law<sup>658</sup>. Once again the function of a crucial republican organization that could play a vital role in keeping other state institutions in check seems to have been severely undermined not only due to special privileges accorded to specific political repositories of public power but also due to a blatant lack of clarity of its scope of jurisdiction and even the definition of its very basic pillars of conceptual significance<sup>659</sup>.

### **iii. Other Judiciary Considerations**

In this final section dedicated to the institutions belonging to the judiciary power, I would like to highlight an important observation made during my analysis of various aspects of the legal administration system in Iran. It is evident that one important section of any country's judiciary system, namely the law attorneys, plays an important role in materializing the rule of law in that system and indeed makes the system of justice work<sup>660</sup>. Undeniably in a modern day society based on the division of labour and ever more specialization of tasks, lawyers play a fundamental role in communicating the legislation through advice to private clients so that they can act within the limits of the law and constitutional boundaries. Obviously the informed clients would also be enabled to recognize their civil and legal rights in order to reclaim them when there is a danger that these are violated or ignored not only by other individuals but also by the state.

Nevertheless throughout the history of the Islamic Republic's judiciary system, numerous instances have been identified in which the independence, the instrumental utility and even the intellectual capabilities of this specific judiciary guild have been systematically undermined by various official elements of the Judiciary Power. For instance, whilst the previous law regulating the conditions of the attorneys participating

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<sup>658</sup> Ibid Article 2 final clause

<sup>659</sup> This conceptual ambiguity seems to be prevalent throughout the entire juridical system of Iran where astonishingly there does not seem to be even a clear definition of such terms as law, regulations, circulars etc. with rivaling terms being used interchangeably in various texts and by different authorities

<sup>660</sup> Hazarika, B. (2012) *Role of Lawyer in the Society: A Critical Analysis* Volume I Number I February (2012) pp. 148-52 The Clarion

in the Administrative Justice Courts prescribed that the barristers need to be qualified lawyers from amongst the official attorneys registered with the Iranian Bar Association, the later updates to this law included amendments removing the need for having formally trained legal attorneys as a simple authorised representative could represent the case in the court to be processed<sup>661</sup>. This trend seems to have been pursued in numerous other procedural laws and legal guidelines<sup>662</sup>. It went even as far as officially banning the presence of attorneys “during the evidence collection” processes of criminal court cases, if a judge decided that this would entail potential for corruption or pose a threat to the principles of national security<sup>663</sup>. Even people with little legal knowledge could readily appreciate the hidden pitfalls in these provisions as the stage of evidence collection and building the case would obviously have significant bearings on the potential final legal rulings. Other attempts include the provisions to subvert the independence of the Iranian Bar Association which on numerous occasions seem to have been the active objective of the judiciary system with predictable results on the independence and the autonomy of this important source of legal assistance and public awareness in the society<sup>664</sup>. Undoubtedly this could lead to an important potential for depriving the people of their rights to employ qualified legal experts that could inform them of their basic rights and the ways to guard against possible individual and state dominatory laws and procedures.

My personal suspicion is that this unfavourable judicial environment and restrictions against the professional practices of the legal representation and advice could well stem from the lack of religious endorsement for any notions of legal delegation which might turn this practice into a subversive or even anti-religious professional exercise in a theological framework. Indeed the Islamic Shari‘a appears to allow only a limited number of admissible elements in a religious court of justice. Other than the presence of the defendant and the plaintiff, these restrictive religious provisions seem to foresee only the possibility of the participation of potential witnesses with eventual recourse to the

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<sup>661</sup> See Article 17 of the Administrative Justice Court at <http://www.divan-edalat.ir/show.php?page=law>

<sup>662</sup> The judiciary system reform act Articles 333 and 334 were also good examples of fact that were dropped by the Court of Cassation removing the need for the presence of academically trained and official lawyers in all criminal justice cases.

<sup>663</sup> See Article 128 of the criminal procedural law of the Islamic Republic at <http://edalatjooya.com/spip.php?article5>

<sup>664</sup> See an interesting article in this regard by Farid Nickpay in the Tehran Bar Association magazine dated 4<sup>th</sup> July 2009.

individual oath of the parties involved. Hence it might not be wrong to claim that the Attorney At Law's profession and their legal representation functions does not appear to have any resonance within the Islamic guidelines for the administration of justice which might in turn explain all the professional restrictions imposed on this fundamental legal profession.

To all this I need to add another important reflection that I perceived in analysing various legal and juridical texts and resources. There seem to be a fundamental conceptual ambiguity throughout the entire juridical system of Iran in every aspect of legal administration to the degree that there does not seem to be even a clear definition of such terms as law, regulations, decrees, circulars and so on. I found confusing use of these fundamental terms throughout the legal sources of the Islamic Republic with contradictory terms being used interchangeably in various texts and by different authorities<sup>665</sup>. This could be yet again another source of uncertainty and maybe even domination as the principles of the sovereignty of law implicates that these need to be laid down in clear terms with predictable connotations and results applicable to all indistinctively, unambiguously and in equal terms<sup>666</sup>.

### **c. The Executive Power**

The main emblematic manifestation of the republican institutions could probably be considered to be the executive power. Continuing with the institutional analysis of the structure of power in the Islamic Republic, in this section my objective would be to critically analyse the republican credentials of its executive power, scrutinizing its institutional standing with respect to the protection of the basic republican principles of liberty.

Interestingly, on the first layer of analysis, the Islamic Republic's Executive Power seems to possess all the necessary criteria to qualify for a typical republican presidential system. All seats of power within this institution appear to be elected offices with limited mandates subject to various layers of checks and balances on their exercise of

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<sup>665</sup> This point is sporadically mentioned by some scholars. See for instance Amid Zanjani and Musāzādeh, A. pp.361

<sup>666</sup> See an interesting article regarding this by Gordon R. on the Yale Law School portal at: <http://digitalcommons.law.yale.edu>

the institutional power. The president of the Islamic Republic is selected by universal adult suffrage with a regular four-year frequency whose mandate could not be extended for more than two consecutive terms<sup>667</sup>. This institution has also been placed under strict supervision of other state powers in particular the parliament which at times has even rejected or impeached the nominated cabinet ministers<sup>668</sup>. Most cabinet decisions, regulations and pronouncements are regularly made public and accessible throughout numerous state owned media, although a great level of inadequacy is felt in that sense, which I will discuss in the forthcoming chapter. For now let's focus on the constitutional role of this seat of authority which as the Iranian Constitution affirms, is the second highest official in the country (Article 113). Moreover Article 115 of the Islamic Republic Constitution reads as below:

The President must be elected from among religious and political men possessing the following qualifications: Iranian origin; Iranian nationality; administrative capacity and resourcefulness; a good past-record; trustworthiness and piety; convinced belief in the fundamental principles of the Islamic Republic of Iran and the official religion of the country

This is a very eloquent article which clearly sets apart the criteria for the presidential candidates whose credentials need to be approved by the Council of the Guardians (Article 118). Thus from the outset one notices that this seat of power is actually reserved for male applicants belonging to one specific current of thought with firm belief in the ideological foundations of the Islamic Republic only. The word *rejāl* (men) clearly mentioned in this article has been at the centre of numerous controversies and diverging interpretations with some scholars reading it as “statesmen” including both genders<sup>669</sup>. This has curiously resulted in the presence of defiant female applicants duly showing up at the registration bureaus for presidential candidates throughout the years<sup>670</sup>. Nevertheless three decades of the electoral history of Iran demonstrates that the Guardian Council in the quality of the sole interpreter of the Iranian Constitution and

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<sup>667</sup> Article 114 of the Iranian Constitution: <http://www.iranonline.com/iran/iran-info/government/constitution-9-1.html>

<sup>668</sup> Ibid <http://iranprimer.usip.org/resource/parliament>

<sup>669</sup> Imani & Qetmiri, p.720

<sup>670</sup> In 2013 elections no less than 30 female applicants registered for the presidential elections: <http://www.aljazeera.com/news/middleeast/2013/05/201351754634102939.html>

the watchdog authority of the electoral procedures has systematically rejected the candidacy of women on the grounds of gender<sup>671</sup>.

It goes without saying that the criteria of being a pious believer in the “official religion of the country” would automatically exclude a section of society which might not be Muslim or pious for that matter with a “firm belief in the principles of the Islamic Republic”. Most importantly the verification of such qualifications is entrusted to the Council of the Guardians which as I argued above is far from being an impartial transparent and open institution. Thus all potential candidates are initially vetted by the unelected institutions of the Council of the Guardians which decides who can run for all elected offices. As I demonstrated above this council is not only directly or indirectly nominated by the persona of the Supreme Leader but also the Leader appears to exercise direct influence and at times explicit instructions on this vetting and filtering process<sup>672</sup>.

This crucial arrangement has resulted in the expected outcome that the majority of Iranian Presidents during three decades of the Islamic Republic have been from the ranks of the clergy with only three laymen within the same dominant religious circle. Interestingly I have noticed that the duration of the presidency of the three laymen presidents has been significantly shorter than the clergymen, 114 months as opposed to 336 months respectively<sup>673</sup>. Thus these numbers clearly demonstrate that the conditions imposed on such a fundamental republican institution has made the occupancy of this office more adapted to a specific class of society - namely a subset of the Shi‘a clerics; see figure 5.2.

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<sup>671</sup> See Article 118 of the Constitution: <http://www.iranonline.com/iran/iran-info/government/constitution-9-1.html>

<sup>672</sup> I mentioned previously such examples of this direct interference with such examples as the imposition of the Prime Minister Raja’ei on the first Iranian President Banisadr or the endorsement of Ahmadinejad by the current Leader of the Islamic Republic particularly following the contestation for potential fraud in the elections of 2009.

<sup>673</sup> A total of 114 months for Banisadr, Raja’ei and Ahmadinejad as compared to a total of 288 months for Khamenei, Rafsanjani, Khatami and Rohani combined. The period of the presidency of the cleric Rouhani has been estimated to one mandate (4 years)

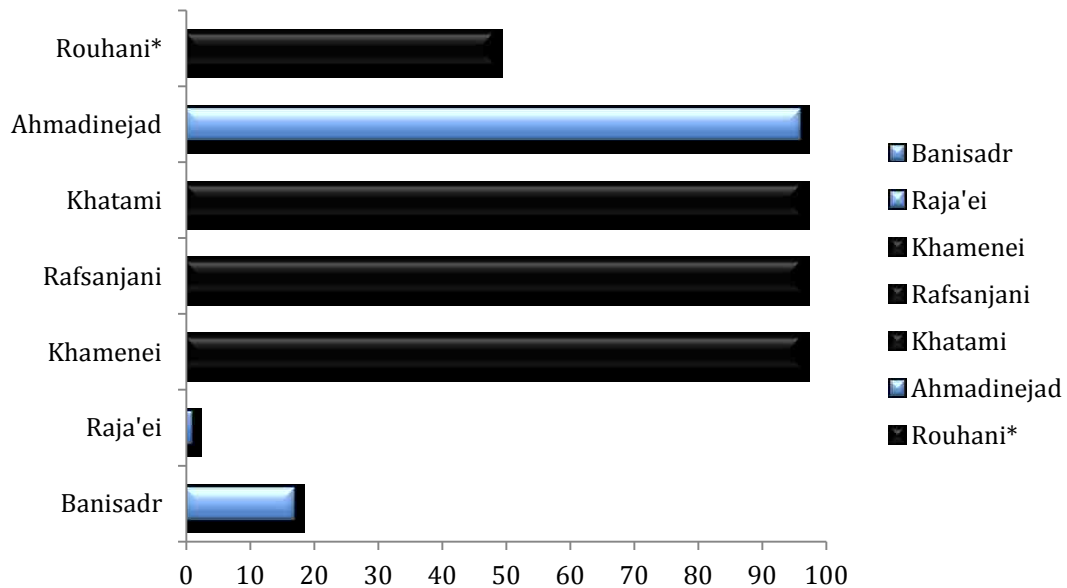


Figure 5.2: Months of presidency for clerics and laymen

One important aspect of the executive power that needs to be considered in Iran is that due to various constitutional arrangements the actual power of this office has been significantly reduced and subjected to other seats of authority within the Islamic Republic's structure of power. In the next section I will detail the prerogatives of the Office of the Leader and its systematic intrusions into the executive branch with which it has a long history of conflict of interests. Indeed as I mentioned in the previous Chapter and could be seen from the affirmation of the first Iranian president Banisadr in our interview, this conflict has been endemic in the Islamic Republic throughout its three decades of existence. Banisadr highlighted the fact that Khomeini had institutional conflicts with him and Khamenei after him. He even cited the interesting confessions by Khamenei who claimed that he used to go to the rooftop to "cry in silence" due to his institutional conflicts with Khomeini<sup>674</sup>! Once Khamenei was in the vest of the Supreme Leader the same pattern was repeated between him and Rafsanjani and later Khatami and even the hardliner Ahmadinejad, who was initially endorsed and sustained by the Leader himself<sup>675</sup>. At various junctures of the Islamic republic's history one could identify the signs of this institutional divergence which at times seems to have been

<sup>674</sup> See Appendix for my interview with Banisadr

<sup>675</sup> See for instance <http://www.theguardian.com/world/2009/aug/03/iran-khamenei-endorses-president-ahmadinejad>

turned into open conflict with significant reflections on the public domains. One such example was when Ahmadinejād, following the example of Khatami before him, set up the Hay'at-e Nezārat bar Ejrāy-e Qānun-e Asāsi (Council to Safeguard the Provisions of the Constitution) which he himself has originally abolished when elected to the office. This was an attempt to counter-balance the power of the Legislative System to oversee all laws passed by the government which was unsurprisingly duly declared illegal by the Guardian Council in February 2012<sup>676</sup>.

These all lead one to an important conclusion to which I have hinted at on numerous occasions; which is that the underlying conflict here is an existential incompatibility between two incongruent institutions. On one hand there is a republican repository of power which has been elected, to some degree by the people and on the other there is the unelected seat of religious authority rooted in the principles of the dominant political theology. This in turn is a manifestation of a much deeper doctrinal incompatibility of the principles of popular sovereignty with the legitimacies rooted in the eschatological authorities. As demonstrated so far, various attempts seem to have been made within the Islamic Republic to resolve this institutional conflict. However, all these seem to have followed a systematic pattern of subordinating all elected office of the system to the hegemonic domination of the Office of the Supreme Leader and all its dependent organizations. Even with these persistent efforts to solve the institutional conflicts in all sectors of the political authority, one could still raise serious doubts over the success of such efforts and the actual viability of a system feeding upon such fundamental structural inconsistencies.

#### **d. The Office of the Leader**

It should come to no surprise to conclude at this stage that all roads in Iranian politics seem to lead to the Office of the Supreme Leader. As I demonstrated in the previous chapters, the Iranian Constitution has accorded ample privileges and prerogatives to this seat of power and actually subordinated all other powers of the state to this authority. Indeed whilst the constitution provides for numerous elected and unelected institutions

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<sup>676</sup> See relative news at:

[http://www.bbc.co.uk/persian/iran/2012/02/120225\\_123\\_ahmadinejad\\_gc\\_iranian\\_constitutional\\_law\\_khatami.shtml](http://www.bbc.co.uk/persian/iran/2012/02/120225_123_ahmadinejad_gc_iranian_constitutional_law_khatami.shtml)



within the Islamic Republic such as: the parliament, the presidency, the Council of the Guardians, the Expediency Council, the Assembly of Experts and the Supreme National Security Council - the Supreme Leader directly or indirectly dominates all of them. He is indeed vested with the authority to appoint or oversee the appointment of individuals to each of these offices and institutions.

I have already cited Khomeini's efforts for institutionalizing his authority by creating parallel organizations following the Islamic Revolution, such as creating his own loyal Pāsdāran (revolutionary guards), his own Dādgāh-e Enqelāb (revolutionary tribunals) and even his own Komite Enqelāb and Basij (police and militia forces). This extensive effort also included the creation of a comprehensive network of mosques and seminaries and most importantly numerous revolutionary organizations and *bonyāds* which were accountable only to him personally<sup>677</sup>. Surprisingly this trend seems to have been exacerbated after Khomeini's death with the new amendments to the Iranian Constitution, even though the second Leader of the Islamic Republic did not seem to possess a fraction of the charisma or even the religious credentials of the first one<sup>678</sup>.

The constitutional reforms of 1988 ensured a stricter centralisation of authority within the judiciary and the executive powers bringing such important institutions as the state media under the Leader's direct control. According to the provisions of the Fundamental Law, The Supreme Leader is constitutionally empowered to set forth the general policies of the state, supervise the execution of these policies, command the state's armed forces, declare war and peace, determine the suitability of the president, and appoint and dismiss key officials including the supreme judicial authority, the various military commanders, members of various governmental bodies, and the head of the state media<sup>679</sup>. Indeed the prerogatives of this office, some of which stated in Article 110 of the Iranian Constitution appear to be so vast that if one decides to scrutinize them in details, they would open up an unmanageably vast field of inquiry by themselves. It

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<sup>677</sup> Arjomand S. (2009) pp.176, 182, 184, 187

<sup>678</sup> See an interesting article on this issue at:

<http://isites.harvard.edu/fs/docs/icb.topic1197294.files/Sherrill.%20After%20Khamenei%20Who%20Will%20Succeed.pdf>

<sup>679</sup> See for instance

<http://isites.harvard.edu/fs/docs/icb.topic1197294.files/Sherrill.%20After%20Khamenei%20Who%20Will%20Succeed.pdf>

is not overstating it to say that this institution is vested with unlimited political and social power, as some authors have rightly noted<sup>680</sup>.

I also underlined the self-limiting move by the Iranian Parliament dominated by the conservatives to exempt all aspects of the Office of the Leader from its complete political and financial supervision. The judiciary power, as I discussed above, itself manned and directed by the Supreme Leader, has also conditioned any enquiry into the affairs of the Leadership Office to the Leader's explicit permission. Notwithstanding, it would be interesting to further consider an outline of the actual track record of this repository of power throughout the history of the Islamic Republic.

A closer inspection of over three decades of this institution's track record readily reveals that it has been far from playing only the nonpartisan role of a neutral seat of moral guidance to the system. Indeed the very existence of the concept of *Velāyat-e Faqih* which I discussed in detail in Chapter 2 and 4, with its limitless purviews, entails a comprehensive involvement of such an authority in every single aspect of socio-political life of the country. Interesting observations could be made on the numerous socio-political and even religious implications of the introductions of the principle absolute rule of the jurispudent (*Velāyat-e Motlaq Faqih*). The introduction of this concepts not only appears to an ideological revolution by itself in the Shi'a politics of state, but also most interestingly appear to have had remarkable implications towards the inclusion of more *raison d'état* as compare to the pure ideological principle of the political theology<sup>681</sup>. Nevertheless the experience has unequivocally shown that these pervasive prerogatives have not only failed to result in any tangible reformative trends in the religious ideological foundations of the systems, but also unsurprisingly have enhanced the *imperium* of this seat of power. It is unsurprising to notice that this unchecked institution has persistently exercised its full potential on the selection and formation of all elected and unelected offices and directions of the policies of the country and even actively interfered with the day-to-day functioning of every one of these subordinates. As mentioned before Article 4 of the Iranian Constitution declares that all laws of the land and all articles of the Constitution itself should be compliant

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<sup>680</sup> Ibid

<sup>681</sup> Interesting elaborations of such points could be found in Axworthy, M. *ibid*

with the Islamic Shari‘a and the Council of the Guardians is the one to judge them in this matter. Thus once the members of the parliament are elected or the president of the Islamic Republic chosen, all their laws and regulations and policies would still be actively monitored by the Office of the Leader through its direct nominees at the Council of the Guardians. It is even sometimes claimed that during the reform era of the late 1990s a staggering 90% of the laws proposed were nullified for “being in violation of the Islamic principle of state”<sup>682</sup>. The same holds true for the presidency. I previously cited the institutional incompatibility which inevitably entailed direct confrontation between these institutions, but this seems to have been settled by a significant domination of the Office of the Supreme Leader. Hence it should come as no surprise to observe that the Leader has on various occasions directly meddled with the affairs of other powers, particularly the executive branch, where for instance on numerous occasions the Leader’s preferred ministers have been forcefully imposed on the president of the Republic<sup>683</sup>. Other more streamlined fields such as delineation of foreign policy, particularly in such areas as the negotiations with world powers regarding the controversial nuclear issue, and many areas of domestic socio-political affairs, such as the appointment of the chairman of the national TV etc, are constitutionally included in the exclusive area of supervision of the Supreme Leader. Hence it is unsurprising to notice that the entire policies in those fields and the modality of the executions are defined in details by him.

Thus it becomes evident that within the power structure of the Islamic Republic, the Office of the Leader enjoys a momentous accumulation of authority combined with an insignificant level of public accountability. There is no need to reiterate that the members of the Assembly of Experts in charge of supervising the Leader’s performance and abilities are vetted by the Council of the Guardians. Furthermore there seems to be extensive evidence that this vast repository of unchecked authority has actually been wielded and employed to the full to impose and maintain the *imperium* of a specific class of society who seem to be enjoying a disproportionate access to all state’s socio-

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<sup>682</sup> See Amirpour, K. (2006) *The Future of Iran’s Reform Movement in Iran Challenges*, Paris: Institute for Security Studies, European Union p.31

<sup>683</sup> See previously discussed interferences of the Leader in the affairs of the executive power. Khomeini seems to have continued on the same path on numerous occasions too such as in imposing the Intelligence Minister Dorri Najafabadi on President Khatami. See for instance Arjomani S. (2009) pp.179-180

political and economic resources. In particular the extreme concentration of wealth and financial resources have been one controversial aspects of this comprehensive *potestate domini* whose claims over ethical guidance and leading a pious life of spiritual devotion and moral rectitude sound ironical once all aspects of the economical and financial practices of this institution are considered.

## **i. Revolutionary Organizations and *Bonyāds***

Inevitably another important section of the Iranian institutions is composed of various non-governmental public institutions and organizations. As I briefly mentioned before the majority of these organizations were created by Khomeini himself immediately after the Islamic Revolution in order to promote parallel institutions aimed at managing the conspicuous economic funds left from the previous regime and also to create dependable forces to promote certain ideological views and ensure their total dominance in the early 1980s<sup>684</sup>. These organizations have shown an unabated growth in a favourable environment of the Islamic Republic with a consistent trend of supportive legislations and patronage of the highest seats of authority<sup>685</sup>. It is of prime importance to study such a consistent sector and other related socio-cultural frameworks to analyse the conceptual principles of the Islamic Republic's interpretation of the state's role and its prescriptions regarding the means and mode of its access to the country's resources.

This study proves challenging from the very outset as strikingly there seems to be numerous concurrent definitions for the very concept of "non-governmental organizations" within the Islamic Republic<sup>686</sup>. It is obvious that the term "government" clearly implies the entire state apparatus of the Islamic Republic and not just the executive power. However, even in the light of this interpretation this definition would

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<sup>684</sup> See for instance the official website of the Bonyād Mostazafān (organization for the dispossessed) and the Khomeini relative constitution edict on February 1979 which reads: "By means of this letter, the Assembly is appointed to confiscate all movable and immovable property of Pahlavi dynasty and its branches, subsidiary and associates whatsoever who have embezzled from the treasury of the Muslims during this unlawful reign, for benefit of the needy, and frail workers and employees, and to deposit the movable assets in a bank account under the name of the Islamic Revolution Council or mine, and to notarize and seize the immovable assets, such as real estate and land lots, in order to utilize them for the benefit of the poor from every stratum of the society, to generate housing, employment..." see the complete version at: <http://www.irmf.ir/En/About-Us/History.aspx>

<sup>685</sup> See examples of such supportive provisions in the constituting charters of most of the monitoring and auditing institutions of the Islamic Republic that were cited here above.

<sup>686</sup> See for instance Purardakāni, M. (2000) *Governing Legal System of the Non Governmental Public Institutes and Organizations*. Tehran: Jungle Pub. pp.8-15

not be adequate as most of these organizations fall under the prerogatives of the Office of the Leader which as I discussed above does indeed constitute an overriding pillar of the state. This very observation seems to have been at the heart of various legislative conflicts within the Islamic Republic; with some sources insisting on subjecting these organization to the supervision of various monitoring institutes of the state which were cited above, and some others insisting on their independence and accountability to their only constitutional supreme authority i.e. the Office of the Leader<sup>687</sup>.

Nonetheless, in practical terms these important public institutions have enjoyed absolute freedom in managing their resources which not only is composed of their exclusive access to certain sectors of the economy but also at times made up of a consistent amount of the public funding amounting to 50% or higher of their entire budgets. Indeed a closer examination of the economic foundation of the Islamic Republic - with its slogans for social equality and the refutation of the basic principles of western capitalism and liberal economy, readily reveals that it appears to have spectacularly failed in this very subject<sup>688</sup>. Like most government managed economies, the beneficiaries of such an economic arrangement would prevalently include certain classes from the political strata which have direct links to the centre of power and management of the resources, with an inevitable decline in the overall level of financial transparency<sup>689</sup>. Indeed the Islamic Revolution seems to have failed one of its principal founding slogans centred on social justice and a Marxist style classless society at the heart of all founding father's propaganda<sup>690</sup>. In Iran this new bourgeois class commonly referred to as *āqāzādehhā* (sons of the masters) are unsurprising result of such a prevailing distributive injustice which has enabled certain social classes - particularly those related to the clergy or the Islamic Revolutionary organizations, to dominate various sectors of the national economy<sup>691</sup>.

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<sup>687</sup> Ibid

<sup>688</sup> See Chapter 4 for notions of justice promoted by Khomeinist doctrine of the Islamic Republic

<sup>689</sup> See for instance regular publications by the Transparency International on such economy's corruption indexes on: <http://www.transparency.org/research/cpi/overview>

<sup>690</sup> Khomeini ibid

<sup>691</sup> Arjomand ibid p.121

The endemic corruption and social injustice inherent to the system has reached a point that even the ruling system has decided to somehow curb the influence of these unchecked elements connected to the numerous islands of power within the economic structure of the Islamic Republic. Various legislations which have been publically announced particularly following some astounding corruption cases that shook the Islamic Republic's very foundations, could be regarded as instances of these efforts<sup>692</sup>. The so-called "law to promote administrative health and fight corruption" was a direct result of such legislative efforts to bring this widespread malaise under control or at the very least officially distance the state from it<sup>693</sup>. Most interestingly this law was rejected by the Council of the Guardians for not being compliant with the rulings of the Shari'a and was only approved by the Expediency Council three years later following the public unravelling of such blatant cases of corruption involving various authorities of the state itself<sup>694</sup>.

Therefore once again these observations underline the existence of a significant level of material domination within the economic sections of the Islamic Republic whose basic claims paradoxically include fundamental notions of social justice and distributive fairness. A significant body of evidence, some of which I have cited throughout this Chapter, clearly demonstrates that these Revolutionary Organizations and Bonyāds - which are said to hold no less than 40% of the entire Iranian economy, have actually been the promoting engine for such disparity in the distribution of wealth, leading to such remarkable levels of material domination<sup>695</sup>. All evidence analysed here concurs with the historical republican admonition against the accumulation of unchecked power, authority and wealth in certain repositories of the state which is thought to be the most inimical to the basic republican principles of freedom as non-domination. In this case the economic domination of certain social strata and a subsequent imbalance in the opportunities to access the resources of the state would obviously undermine or even

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<sup>692</sup> See interesting research on this subject by "the freedom house" at:

<http://www.freedomhouse.org/report/countries-crossroads/2012/iran>

<sup>693</sup> See the details of this law at <http://www.freedomhouse.org/report/countries-crossroads/2012/iran>

<sup>694</sup> Ibid, also see the following article for the accusations brought forward against the highest state authorities for certain momentous cases of corruption in Iran:

<http://www.businessweek.com/ap/financialnews/D9Q4V3TO0.htm>

<sup>695</sup> See again the interesting research on this at: <http://www.freedomhouse.org/report/countries-crossroads/2012/iran>

cancel out the presence of the most basic principles of the republican ideology as set forward in Chapter 1.

## ii. The Expediency Council

This Chapter could not end without the examination of an organization which I find to be the most intriguing institution in the entire layout of power of the Islamic Republic. Ayatollāh Hashemi Rafsanjani (b.1934), currently head of the Majma‘ Tašxis-e Maslahat (Expediency Council) has provided interesting insights into the *raison d'être* of this institution by providing an illuminating introduction to a comprehensive work under the same title published in 2010. Within the lines of his considerations on the underlying principles of this institution, he echoes what Khomeini regarded as the most important priority of the Islamic state; i.e. the preservation of the Islamic Republic<sup>696</sup>. As I will expound below this apparently innocuous affirmations prove to have the most groundbreaking ideological implications for the entire Islamic Republic's political theology.

The Expediency Council has proven to be crucial towards resolving important issues and gridlocks arising from the Council of the Guardian's rejection of the Parliament's law decrees on the grounds of their incompatibility with the Islamic Law or the Constitution. In a report published by the Expediency Council on the fifth anniversary of its establishment, it was announced that no less than 145 laws originally rejected by the Council of the Guardians have been reviewed by the *Maslahat* Council. Furthermore 46 cases of the general policies of the state have been studied; tens of other regulations and enquiries have also been reviewed including the cases in which the Leader directly sought the advice of the council on important state issues<sup>697</sup>. The important Islamic Laws of *Ta'zirāt* (Islamic punishments) was amongst the main corpus of the legal provisions approved by the Expediency Council with significant implications on the authority and the power of the judges. This would, for instance, require them to pass rulings based on the predefined legal norms rather than based on the

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<sup>696</sup> Rafsanjani's introduction to Javāheri, Q. (2010), *Ārā va Asnād-e Majma'-e Tašxis-e Maslahat*, Tehran official paper, pp. 9-10

<sup>697</sup> As reported by Sharq newspaper, 9th year. Issue number 1468, 2012

considerable amount of discretion and independence that they enjoyed throughout the entire history of the Islamic jurisprudence<sup>698</sup>.

I have already briefly presented the idea of *maslahat* (expediency, necessity) within certain currents of thought in the Shi'a doctrine of state in Chapter 2. What is remarkable to underline here is the emphasis that Khomeini places upon the maintenance and practical viability of the structure of the political authority. This coupled with significant authoritarian potential of the concept of *Velāyate Motlaq Faqih* seems to have been promoted in spite of the fundamental implications that these principles could have on the centrality of even the most basic principles of Islam<sup>699</sup>. He even goes as far as stating that the preservation of the Islamic Government and the ensuing *maslahat* would have priority even over basic pillars of faith such as the prayer, fasting and *haj* (Mecca pilgrimage)<sup>700</sup>. Reading through the details of his argumentation in this regard, it comes as no surprise to observe that he is still using rigorous religious debate and counter-examples to demonstrate that the necessities of a modern political could take precedence even over all fundamental principles of the Sacred Law<sup>701</sup>. He even goes as far as claiming that the authority of the *Valiye Faqih* is the same as the Prophet and the Imams whose rulings would override the specific pronouncements of the Shari'a. Unsurprisingly he is quick to rectify that these rulings based on the principles of reason and rational deliberation would be "temporary provisions" of the Islamic state and do not constitute permanent principles<sup>702</sup>. Although in another letter in December 1988 he again states that "the decisions of this Council are permanent as long as the *maslahat* persists"<sup>703</sup>. Interestingly in this important letter he continues by giving "fatherly advice" to the member of the Council to give priority to the preservation of the

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<sup>698</sup> Ta'zir are the punishments which are not explicitly defined in Shari'a hence historically Muslim judges had free rein in passing any ruling based on their complete discretion. Hence this ruling of the Maslahat Council to limit their authority to the predefined legal norms was a significant change in the history of Islamic Legal tradition. Also See Ch.2 for the historical prerogatives of the religious judges in Shi'a jurisprudence.

<sup>699</sup> Ibid pp.25-26

<sup>700</sup> Ibid

<sup>701</sup> Ibid

<sup>702</sup> See Mousazādeh, E. The meaning of the State Maslahat, in Constitutional Law review nr:11 summer 2009 p.229-242

<sup>703</sup> Javāheri, Q. p.575



Islamic Government as "the theoretical (religious) discussion which belongs to the theological schools could never be resolved and will take us nowhere"<sup>704</sup>.

Rafsanjani on his introduction to the treatise on the principles of the Expediency Council further expounds on these inadequacies of the *fiqh* (Islamic jurisprudence) in managing a modern day state with all its complicated and specialized intricacies. The emphasis he places upon the priority of the principles of reason as compared to what he calls *fiqh-e hokumati* (Islamic governance laws) is truly striking. It is not difficult to imagine that these pronouncements would indeed pose a fundamental challenge to even the most basic professed principles of the Shi'a faith regarded as eternal and immutable. This could well explain, in my view, the fact that Khomeini preferred to pass on the instructions to amend the constitution to officially institutionalize this significant religious controversy towards the end of his life. This might well have been his final attempt to discard the responsibility of admitting the failure of the most fundamental pillars of his political agenda based on the doctrine of the adequacy and comprehensiveness of the Divine Law to address all aspects of a human's life at all times.

Therefore by closely analysing the correspondence that Khomeini undertook with all relevant organizations and the way he chose to put these into practice, together with a thorough consideration of the unequivocal outcomes of instituting such an organization, One could not avoid reaching the evident conclusion that Khomeini himself seems to have arrived at the outright understanding that the principles of the political theology he had been promoting would at best be inadequate to address the practical realities of a modern day polity<sup>705</sup>. Furthermore if one considers some of the pronouncements of the Expediency Council - which at times have preferred the "un-Islamic" laws of the

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<sup>704</sup> Ibid

<sup>705</sup> This would be even more striking if one considers the entire Khomeini's initial discourse reposing on the fundamental belief of the sufficiency of the Shari'a to address every aspects of the modern societies. See Ch.2 for more details.

parliament, such as the equality of blood money between the Muslims and non-Muslims, these would all make this controversial conclusion even more compelling<sup>706</sup>.

Thus I would like to end this comprehensive chapter on the Islamic Republic's institutions with this note that clear connections could be drawn between the final conclusions of the late Ayatollāh Khomeini with other secular proponents of the republican ideology that I cited throughout the previous chapters. Although through different argumentations and by means of separate narratives, they all seem to be hinting at the same existential incompatibility of a political doctrine underpinned by the alleged divine or metaphysical legitimacies with the practical and normative necessities of a modern day state resulting from the human rational political activity. All aspects and actual outcomes of these deliberations considered, the final conclusions might not actually be as different as it appears at the first sight!

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<sup>706</sup> Based on the ruling of the Expediency Council on December 2003 the blood money of non-Muslims was considered to be the same amount as that of Muslims. Although this was an obvious inconsistency with the basic principles of Shari'a law. See Javāheri, Q. p.261

### III. Conclusion

The important passage in Chapter 1 reflecting Machiavelli's considerations on the nature of the republican institutions would be insightful to close this Chapter with:

Machiavelli believed that in order to maintain liberty proper republican institutions were essential. Furthermore if these institutions were to support liberty, they necessarily had to be inclusive and open to the many different interests found within the public so that vibrant public debates could take place<sup>707</sup>

In the light of these reflections, throughout this Chapter, I have attempted to provide a critical analysis of the Islamic Republic's institutions scrutinizing their republican role in safeguarding and promoting the basic republican principles of liberty as non-domination. My objective has been to provide a thorough overview of the most important repositories of power within this system whilst being at the same time mindful of not opening an unmanageably vast field of inquiry.

Detailed observations were made regarding the main pillars of the public power in Iran with a critical analysis of the scope of their authority, their openness to public participation and most importantly the transparency and neutrality of the checks and balances in place in each case. At various junctures significant shortcomings were highlighted in institutions whose basic republican role should include the protection of various principles of liberty and individual sovereignty. It was argued that the majority of these institutions are formed in such a way as to provide exclusive access to specific strata of the Iranian society failing to perform as real republican open and inclusive institutions. These considerations not only held true of the unelected sections of the Iranian political system but were also true of the elected ones through the existence of powerful gatekeeping institutes such as the all powerful Council of the Guardians.

Furthermore based on these detailed analysis, one could certainly claim that the level of the separation of powers within the structure of the Islamic Republic is certainly not adequate to qualify with the minimum requirements of a republican system. This is not only due to the fact that all three powers of the state are in one way or another subjected to the unaccountable, unelected and non-transparent Office of the Supreme Leader, but

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<sup>707</sup> Maynor, J. p.126

also due to significant institutional and functional uncertainty within the boundaries and scope of their authorities. As a blatant example of such jurisdictional confusion, I could still cite the authorities with the power to annul the government's decrees within the Islamic Republic. Indeed there appears to be numerous seats of power capable of interfering with such a process and even invalidating these provisions altogether. One such organization capable of annulling the government's law and regulation is the previously discussed Court of the Administrative Justice. However, this right is also reserved for the head of the parliament as all internal circulars and regulations need to be sent to him for approval (Article 138). Furthermore even the ordinary judges could refrain from obeying such regulations if, based on their personal judgments, were found against the principles of the Constitution or the Islamic Shar'ia (Article 170). And finally the Leader himself can directly invalidate any state laws or regulations through the powerful *arbitrium* of the *ahkāme hokumati* (state orders).

Moreover one fails to identify significant institutional guarantees for the participation of the minorities and weaker classes of society, something which would raise serious concerns for the potential of such a system to degenerate into a state sponsored tyranny of the majority. The republican stance on this point was the firm conviction that "the republic should not be the rule of the numbers, it should be the rule of rights"<sup>708</sup>. These rights whose basic manifestations should be captured in an inviolable bill of rights in any republican system, seems to have been systematically undermined by all these momentous constitutional and institutional inadequacies.

The systematic failure of the institutions of the Islamic Republic highlighted here to provide the minimum republican guarantees for open inclusive repositories of power with adequate level of public participation and supervision has critically undermined the few true republican provisions in such a system. All these observations would lead to the conclusion that, from an institutional point of view, this political arrangement by providing exclusive access to all main seats of power and resources to a certain stratum of the religious elites or the connected revolutionary organizations, has effectively been turned into an authoritarian hierocracy.

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<sup>708</sup> The famous affirmation by the French politician George Gurvitch as cited by Roussillon, H. (2011) p.1

# Chapter 6 - Republican Citizenry

## I. Introduction

This final chapter of this study is dedicated to the concept that could be regarded as the most fundamental pillar of the republican project, that of creating and empowering the citizens. This indeed constitutes the main ideological nucleus of the civic republicanism reposed on the fundamental principles of the humanist philosophy. If one had to identify one single distinctive feature of the republican ideology which sets it apart from all other political doctrines of state, the notion of republican citizenry would probably be the main one to highlight. It is easy to observe that throughout the entire history of republican thought the state's active intervention aimed at forming "high spirited" members of society as opposed to the "dull minded" states of being, have been of prime importance to any strand of this school of thought<sup>709</sup>. As it was expostulated in Chapter 1 this constitutes one of the core arguments put forward by the fathers of the republican ideology particularly Machiavelli, who defined the principles of the *vita activa* centred on systematic prescriptions to create the *materia umana* deemed indispensable to any republican project. It could be argued that possibly one of the main reasons that Machiavelli initiated his political treatises with *The Prince* to move up then to a republican political agenda in his consequent works, has been this utmost concern for creating and forming the citizens first which form the building block of any notions of the republican *vivere libero*<sup>710</sup>.

Subsequent republican ideologues further developed these fundamental notions in particular as they all regarded the education and formation of the republican citizens to be the republic's most imperative mission. This could substantially be viewed as the essence of a certain form of *eudaimonia* (human flourishing) at the heart of all republican social construction efforts as the republican doctrine was conceived as a political and social project<sup>711</sup>. The most intense and systematic of these efforts could be observed in the French republican school, in particular the so-called "radical

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<sup>709</sup> Ashley, R (1950) as cited by Van Geldern, M. and Skinner, Q. p.104

<sup>710</sup> See Ch.1 for more details

<sup>711</sup> Maynor, J. pp.56-58

republicans”, where the *citoyens* (citizens) were defined as those aware of their civil and political rights and exercised them “actively” in the society<sup>712</sup>. These set forward extensive educational projects following the common sense observation that the republican citizens do not come to being with a pre-existing awareness of their republican privileges due to various inherited social conditions. The republican principles of citizenship based on building an “empire of reason” had to be inculcated to enable the sufficiently empowered citizen to cast off the chains of domination and servitude<sup>713</sup>. It is even argued that this extensive process of “regenerating the people” took the French Republic one hundred years and five consecutive constitutions to complete and was only successful as a result of extensive schooling and public education which managed to inculcate the republican values in the society and create the right republican citizens<sup>714</sup>. These ideologues even went as far as claiming that the people are nothing but what the state, in this case the republican state, creates of them<sup>715</sup>.

This would obviously have significant implications on the various discourses regarding the “natural rights” to sovereignty versus the acquired rights of a citizen that is yet to be created. An interesting observation to make here on philosophical grounds is that on a deeper level of analysis these egalitarian interpretations of the republican ideology do not seem to confer any natural rights to the citizens. All these would intriguingly remain contractual rights rooted in the principles of equality before law without any concessions towards the concept of natural liberty<sup>716</sup>. Importantly I need to highlight the fact that any notion of rights seems to be generated within the republican state which is both the source and the protector of an individual’s political liberties<sup>717</sup>. This is yet again a natural consequence of the civic humanist outright refutation of any transcendental and immutable truth and social values. This would in turn once more highlight the importance of the republican institutions and state sovereignty firmly grounded in the existence of actively engaged and participatory citizens.

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<sup>712</sup> Berstein, S. & Rudelle, pp.27,32,197

<sup>713</sup> See Ch.1 for more details

<sup>714</sup> Berstein, S. & Rudelle, pp.11, 64

<sup>715</sup> Ibid p.69

<sup>716</sup> See for instance Grange, *ibid* p.179

<sup>717</sup> *Ibid* p.34

Thus it is easy to imagine that the republican agenda contains multilayered projects aimed at, on the one hand generating the citizens, and on the other subsequently empowering these adequately informed members of society to actively register their opinion and interests within the republican institutional frameworks. Hence the legitimacy and indeed the viability of the entire republican project seems to corroborate with this basic prerequisite of the contestatory citizenship. The institution of the civic virtue within the society, underpinning all Machiavelli's works, could be regarded as a direct result of such proactive and indeed interventionist republican agenda. This would primarily be against the danger of "corruption" which was said to be constantly eminent in a society where the *umori* (self-interests) as Machiavelli calls them, takes precedence over the common good of the society<sup>718</sup>. This would highlight once more the role and the centrality of the republican education aimed at forming and informing these private interests to enable them to pursue their objectives without arbitrarily dominating others. This was indeed the core principle of guarding against *dominium* which enables the republican citizen to make successful life choices through a framework of civic virtue and the common medium of citizenship.

One final aspect highlighted in Chapter 1 in this regard was the importance of diversity and pluralism in the republican state. Indeed many authors see this republican potential for harnessing and utilizing the significant potential for inevitable civic discord as the marked departure of the republican ideology from other competing social ideologies and indeed its point of strength<sup>719</sup>. In my specific case study of Iran - particularly considering the existence of a significant amount of ethno-cultural diversities, this aspect of the republic, i.e. the pluralism of dissent, becomes a fundamental point to address as its success or failure could determine the fate of the entire republican project with various potential for domination.

Consequently in order to provide a practical framework for the current chapter I will treat the fundamental republican principle of *vita activa* by dividing it into two main sections. As a point of departure, I will analyse the Iranian educational system, to evaluate its republican credentials for generating informed citizens by encouraging them

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<sup>718</sup> See Ch.1 for a discussion of the notion for the common good in the republican ideology

<sup>719</sup> See for instance Maynor J. ch.5

to be aware of their basic republican rights and duties. The second pillar of active citizenship would inevitably consist of empowering these citizens and providing republican channels of expression and participation to play an active role in their own non-domination, what Machiavelli called *vivere politico*. In this regard I will attempt to critically study the existing participatory channels of the state trying to evaluate their effectiveness with regard to the forums and tribunes essential to the entire republican political discourse.

## II. Republican Education

All this conceptual observations lead to a thorough appreciation of the fundamental role that the state plays in inculcating the republican values of active socio-political participation and various means and modes that it should foresee to this end. As I argued previously the republican state appears to be far from neutral in this respect with assertive interventions to educate the individuals to recognize their citizen rights and duties and be able to cast their ends in a non-dominating manner. In light of this, the role of state public education becomes significant as this would naturally provide an accessible and inclusive channel to procure large scale opinion formation projects aimed at spreading and instilling republican values. Thus from the outset I can recognize two important aspects of this argument, namely the accessibility and actual contents of these educational projects.

The Islamic Republic, as one might expect of any post-revolutionary ideological system, has shown an interesting track record with regards to fighting illiteracy across the country. The success has been so spectacular that due to this UNESCO regularly ranks Iran higher than many developing countries such as Brazil and Mexico, although with underlying issues regarding the gender disparity<sup>720</sup>. It is said that the youth literacy in Iran stands at about 99% which makes it comparable to any developed countries of the western world, see figure 6.1<sup>721</sup>.

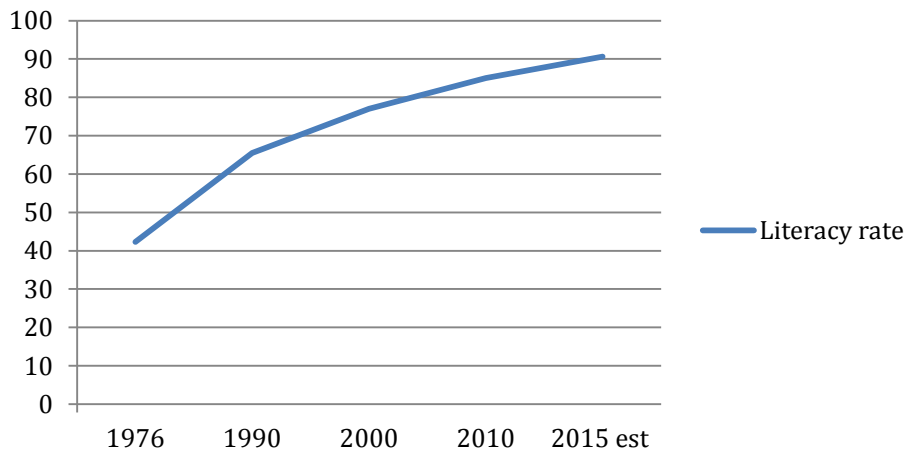
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<sup>720</sup> See the UNESCO report at <http://www.uis.unesco.org/Education/Documents/UIS-literacy-statistics-1990-2015-en.pdf>

<sup>721</sup> Ibid



## Adult literacy rate



Figuer 6.1

All this could potentially provide interesting grounds for the diffusion of a republican culture leading to a wider public appreciation of individual rights and civic duties. In particular the important trends in the social mobility which one could expect following socio-political revolutions, was actively encouraged and underpinned by extensive projects of national literacy and education over the years following the Islamic Revolution<sup>722</sup>.

Nevertheless as I will expound below the actual content and objectives of this public administration of literacy have been far from strictly pursuing the republican *desiderata* of empowering the citizens to recognize and resist domination on any level. In any case the real audience and indeed the support base of the *res publica* are inevitably composed of the middle and the upper middle classes with higher levels of education than basic literacy<sup>723</sup>. The underlying reason for this does not seem to be purely due to the fact that the middle classes have a better availability of the financial resources to access the education, as compared to the lower classes of society for instance. As stated above one of the main objectives of the republican state should be the provision of accessible public education for all in an equitable manner. The real reason could be found in the simple observation that the middle classes might prove to be more prone to losing

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<sup>722</sup> Arjomand, S (2009) Ch.6

<sup>723</sup> Berestein S. & Rudelle, O. ibid p.203

everything due to their unstable intermediary position, if the republican project fails its mission<sup>724</sup>. Hence the real formative battleground seems to be centred on both the content of these state sponsored education system and also the higher and more specialized level of the provision of public education.

The study of Iran's higher educational system appears to be more complex and filled with defining historical and contemporary events. The Islamic Revolution, in which the student movement played a significant role, unsurprisingly launched a structural overhaul in the entire educational system of Iran. The 1979 revolution ended up being a radical departure from the previous secularizing process of the state towards the traditionalism of religion, unlike comparable trends in all known modern revolutions. This inevitably had extensive implications particularly for the public higher education<sup>725</sup>. Indeed the universities labelled as "the nest of spies" were shut down for three years post-Revolution and consequently underwent a systematic purge to Islamise the curriculum and the staff, a process that became known as the Cultural Revolution<sup>726</sup>. Various bodies and organizations were set up to implement the pervasive provisions of this cultural overhaul on all levels, the most prominent of which could be identified with the High Assembly of Cultural Revolution which is even empowered with the purview to legislate in certain cultural matters with obvious institutional implications. The normative prerogatives of the Assembly would enable this institution to ratify laws and decrees which at times prove to have overriding priority even over the laws passed by the parliament in certain matters.

This practice closely resembled the extensive ideological agendas of the post-revolutionary communist and fascist experiences of the preceding centuries in which momentous state resources were mobilized to create and inculcate the defining values of the ideology underlying the social upheavals<sup>727</sup>. In Iran this process was not only aimed at a systematic revision of the entire universities' subjects and texts, but also to purge the

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<sup>724</sup> Ibid

<sup>725</sup> Goldstein, W. (2010) Secularization and the Islamic Revolution in *Islamic Prospective*, London: Centre for Sociological Studies p.50

<sup>726</sup> See for instance <http://www.universityworldnews.com/article.php?story=20101105221117557>

<sup>727</sup> The Chinese Cultural Revolution launched by Mao Zedong is a good example of such comprehensive social projects

politically unfavourable teaching staff and banning the critical minded students from entering into higher education<sup>728</sup>. This process seems to have been continued unabated throughout the political life of the Islamic Republic particularly after the 2009 contested presidential election which has resulted in hundreds of university professors being forced into early retirement and a controversial practice known as “starring the students”<sup>729</sup>. This in practice meant marking the politically adverse active students with a ranking from one to three stars denoting their level of undesirability to the higher education system.

Thus the obvious conclusion one could draw from these observations is that from accessibility point of view to the public education - at least at the higher more specialized levels, one would fail to identify republican inclusive entitlement to education for every member of the society regardless of their political or religious beliefs. Indeed the state has actually put in place a quota system (*sahmiye*) to favour its supporters and in particular those belonging to the ranks of Basij (the Islamic militia) to access higher education on a preferential basis, even when their qualifications prove to be inferior to that of ordinary candidates<sup>730</sup>. Furthermore in recent years there have even been talks of imposing limits on the number of women entering the Iranian universities as they appear to overtake the male university graduate population<sup>731</sup>. Thus the republican inclusive and indiscriminate access to the higher education does not seem to have any centrality in an ideologically driven educational system which seems to be failing on numerous accounts to comply with what one would expect from a republican system of public training aimed at enabling the citizens to recognize and enjoy even the basic conditional rights that the Iranian Constitution itself has guaranteed for the majority of the citizens<sup>732</sup>.

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<sup>728</sup> See for instance Rivetti, P. (2012) *Student Movements in the Islamic Republic in Iran a Revolutionary Republic in Transit*, Paris: Chaillot Papers

<sup>729</sup> Rivetti, P. *ibid*

<sup>730</sup> *Sahmiye* is a systematic process of favoring certain classes of society with a military or religious background to pass the highly competitive entrance exam to Iranian universities with significantly lower knowledge requirements due to preferential financial arrangements.

<sup>731</sup> See for instance <http://missionfreeiran.org/2012/09/06/exclusion-of-iranian-women-from-university-must-cease-unesco-must-end-its-legitimation-of-gender-apartheid-in-iran/>

<sup>732</sup> Article 30 of the Iranian Constitution reads as: “The government must provide all citizens with free-education up to secondary school, and must expand free higher education to the extent required by the country for attaining self-sufficiency”

Furthermore I encountered significant challenges when it came to the actual content of the national education curricula with a momentous imposition of dominant ideology running throughout the entire system. The aforementioned Cultural Revolution process also included an active censorship of all books, films, radio, television, newspapers and even dress code to root out what was deemed as the manifestations of Western culture in Iranian Society<sup>733</sup>. It has to be acknowledged that these could paradoxically be regarded as expected outcomes of the ideological delineation of the educational system with the prevailing religious underpinnings. Nevertheless the republican validity and efficiency of these educational policies should still be analysed with regard to their success in educating the people to recognize their basic rights as citizens of a republic whose constitution endorses various elements of popular sovereignty and individual liberty<sup>734</sup>.

As mentioned in Chapter 3, basic principles of republican liberty are echoed in the international universal charters of human rights, portions of which have been incorporated into the Islamic Republic Constitution as a signatory of various international conventions and charters. In 2010 an interesting research conducted by a group of researchers in Iran critically analysed a significant body of the school materials, particularly in the field of social sciences, in order to determine their efficiency and comprehensiveness in including basic public training on the principles of human rights as reflected in the Iranian Constitution<sup>735</sup>. This exceptional research provided a very interesting insight into the effectiveness of the school curricula to include essential public education on the important constitutional rights and duties. The outcome of this comprehensive survey is extremely revealing in unravelling the actual content of the curricula of the Iranian public school with regard to their sensitivity to including various republican principles as expressed in the Constitution of the Islamic Republic. see figure 6.2<sup>736</sup>.

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<sup>733</sup> Goldstein ibid

<sup>734</sup> See Ch.3 on constitutional provisions for individual liberties

<sup>735</sup> Rahmatollahi, H. et al (2010) The Reflection of the Constitution in the Textbooks: The attention to the issue of the nation's right in the contents of Iranian social studies school textbooks, in *Iranian Review of Constitutional Law*, nr. 12 year 6, Winter 2010, nr 12

<sup>736</sup> Ibid

| Constitutional Rights            | Soc. Sci.3rd elem. | Soc. Sci.4th elem. | Soc. Sci.5th elem. | Soc. Sci.1st Sec. School | Soc. Sci.2nd Sec. School | Soc. Sci.3rd Sec. School | Soc. Sci.1st High School | Soc. Sci.2nd High School | Soc. Sci.3rd High School | Pre-university | Total |
|----------------------------------|--------------------|--------------------|--------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|----------------|-------|
| Freedom of occupation            | 0                  | 0                  | 0                  | 0                        | 1                        | 1                        | 0                        | 1                        | 1                        | 0              | 4     |
| Freedom of movement              | 0                  | 0                  | 0                  | 0                        | 0                        | 0                        | 0                        | 0                        | 0                        | 0              | 0     |
| Freedom of justice               | 0                  | 0                  | 1                  | 0                        | 0                        | 3                        | 1                        | 1                        | 0                        | 1              | 7     |
| Freedom of expression            | 0                  | 0                  | 2                  | 1                        | 0                        | 1                        | 4                        | 0                        | 2                        | 1              | 11    |
| Freedom of religion              | 0                  | 0                  | 0                  | 0                        | 0                        | 0                        | 0                        | 0                        | 0                        | 0              | 0     |
| Freedom of Press                 | 0                  | 0                  | 0                  | 0                        | 0                        | 0                        | 0                        | 0                        | 0                        | 0              | 0     |
| Freedom of political parties     | 0                  | 0                  | 0                  | 0                        | 0                        | 0                        | 3                        | 3                        | 1                        | 0              | 7     |
| Freedom of access to information | 0                  | 0                  | 0                  | 0                        | 0                        | 0                        | 0                        | 0                        | 0                        | 0              | 0     |
| Freedom of privacy               | 0                  | 0                  | 0                  | 0                        | 0                        | 0                        | 0                        | 1                        | 0                        | 0              | 1     |

Figure 6.2 (number of times subjects treated)

This very eloquent piece of academic evidence clearly underlines a significant deficiency within the Iranian public education system to propagate various principles of constitutional liberty which, as argued above, should be the fundamental role of a republican educational system aimed at promoting and instilling the basic public knowledge on freedom as non-domination.

Indeed it is not difficult to observe a systematic failure of the Islamic Republic's educational system to raise public awareness regarding the basic elements of civic virtue and citizen's rights. Strikingly it appears that a significant amount of resources have instead been devolved for the promotion of religious doctrine. This includes, amongst others, such powerful institutions as the Authority to Promote the Prayer, the Islamic Propaganda Organization and the overarching Ministry of Culture and Islamic Guidance<sup>737</sup>. Various binding laws and directives have been released in the Islamic Republic which are directly aimed at promoting the Islamic culture at all societal levels including all public organizations of the system. For instance the law for the Promotion of the Culture of Prayer passed in April 1997, the law to Promote the Culture of Chastity approved in July 2005 and Cultural Ministry's guidelines on public culture are but a few examples of these comprehensive state efforts towards the inculcation of the Islamic

<sup>737</sup> See for instance the portal of the authority to promote prayer on: [www.namaz.ir](http://www.namaz.ir)

values and culture at all public and private spaces of the society<sup>738</sup>. These provisions entail that every single means of public communication and social media including any published materials to be approved by the Ministry of Culture and Islamic Guidance with inevitable result of a systematic exclusion of any alternative socio-cultural and obviously political views<sup>739</sup>. The official objectives of this Ministry, as reflected in its founding charter, include the promotion of Islamic revolutionary values as perceived by Khomeini and the “upholding of Divine Laws and enhancing Islamic ethics and human virtues...” amongst others<sup>740</sup>.

All these compelling observations lead one to conclude that whilst the educational system of the Islamic Republic should be credited with momentous efforts aimed at the promotion of literacy across the country, it has systematically failed on numerous expected republican objectives in any system advancing republican claims. The first point of concern regards the actual inclusiveness and openness of this system to all members of society without factoring in discriminatory criteria such as gender, religious beliefs or socio-political orientations. As I demonstrated above the Islamic Republic, with its overriding religious doctrine would in principle leave no space for any ungodly or un-Islamic sources of societal convictions. In practical terms, with some minor exceptions - such as various openings to some religions and a good track record on higher female education, due to other factors, such has been the case as there seem to be structural barriers and ideological obstacles in place which make the realization of any inclusive republican educational system extremely difficult if not downright impossible.

At the second level of analysis concerning the actual content of the Islamic Republic’s educational system, as I showed above, the situation seems to be even more unsettling with respect to the inclusion of the republican principles of civic virtue and constitutional liberties. It appears that all resources of the state have been directed towards the promotion of one single socio-political vision of the dominating elite, which has resulted not only in a spectacular failure in providing fair and equitable access to the

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<sup>738</sup> See the Cultural Ministry’s guidelines on public culture at <http://www.farhang.gov.ir/fa/intro/rules/rulea2>

<sup>739</sup> See for instance <http://www.economist.com/node/9621974>

<sup>740</sup> See the official portal of the Ministry of Culture and Islamic Guidance at: <http://www.farhang.gov.ir/en/profileofministry/responsibilities>

societal resources for all members of the public, but also seems to have itself been the engine of a momentous amount of *imperium* of the dominating state ideology. This would constitute a damning conclusion towards the most basic republican credentials of the Islamic Republic which appears to have systematically ignored the elementary principles of public formation to create active republican citizens. A closer examination of this essential element of the contestatory citizenry will constitute the subject of the final section of this research project.

### III. Contestatory Citizenry

As I have mentioned on numerous occasions, the republican *civis* (citizen) denotes someone in possession of his own liberty and not in *potestate domini* of unchecked powers<sup>741</sup>. I also echoed the famous republican conviction which argues that “to have republican freedom means living in a state in which the body politic does not move except by the will of the people”<sup>742</sup>. Indeed the entire ontological essence of the human societies was deemed to be an exclusive result of the active participation of human rational activity. Hence this original reading of the civic republicanism heavily reposes on the fundamental importance of the active participation of the citizens in all civil and political affairs of the polity, which is the fundamental message of the *vivere libero* principle of republican ideology<sup>743</sup>. It is evident that the republican insistence over the existence of good laws and proper institutions could not be materialized and sustained in the absence of this “human material” which forms the basic building block of all their theoretical provisions. As Pettit, with good reason, wrote “without widespread participation in the public forums, civic virtue and civility on a personal level, arbitrary interference cannot be minimized”<sup>744</sup>. Indeed some scholars have even gone as far as claiming that the central questions of the modern political philosophy have shifted away from having a good government towards having a good society<sup>745</sup>. Hence the obvious question that ensues here would be: how would these politically active agents register their views and interests within the republican state? What channels of representation are needed to be made available to them to make their voices heard and protect them

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<sup>741</sup> Van Geldern, M. and Skinner, Q. p.2

<sup>742</sup> Ibid

<sup>743</sup> See Ch.1

<sup>744</sup> Pettit, P. as cited by Maynor, J. (2003) p.56

<sup>745</sup> Bobbio, N. (1999) *Teoria Generale della Politica*, Turino: Einaudi Pub. p. XVIII

from being subject to the arbitrary interference which was equated with servitude? In order to provide a detailed analysis of these socio-political dispositions for the *vivere civile* and *vivere politico*, I will divide the argument into two main categories of “public forums”, which I take to mean the actual *rights* to public participation and contestation in the form of interest associations and political organizations, and “public tribunes”, which I interpret as the actual *means*” and channels of socio-political mass communication and expression.

## **a. Public Forums**

The most salient aspect of the republican constitutionalism, as I argued in Chapter 3 was its strive to embrace and encode basic principles of individual rights and principles of public sovereignty. These objectives were said to materialise through the provision of unambiguous laws with unconditional guarantees for the republican fundamental elements of liberty as non-domination. Hence two aspects of these constitutional provisions and their practical manifestations deserve further scrutiny in a system claiming to be feeding upon the republican values. These would encompass theoretical provisions and their practical implications on the republican society to uphold and protect the aforementioned concepts of politically and socially active citizenry. I will discuss these under two broad umbrellas of normative provisions and political parties to provide a clear image of the prominent aspects of these social forums central to the republican ideology.

## **i. Normative Provisions**

In Chapter 3 I discussed the important section of the Iranian Constitution concerning the “rights of the people”, in which numerous principles of individual liberty have been reflected<sup>746</sup>. As I expounded there, fundamental principles of individual freedom seems to have been systematically conditioned to such general and vague notions as “not being against the principles of Islam” or “not posing danger to the national security”<sup>747</sup>. Considering the fact that the sole interpreter of the Iranian Constitution is the Guardian Council whose republican credentials were discussed in the previous chapter, it comes as

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<sup>746</sup> Article 23 of the Iranian Constitution is a good example which states: The investigation of individuals' beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief

<sup>747</sup> See for instance Article 24 or 27 of the Constitution



no surprise to observe that the various dominating provisions, decrees and legal dispositions have been foreseen to regulate and even waive these basic rights. If one adds to this the fact that the judiciary system, as demonstrated previously, is heavily controlled by the *imperium* of the dominant ideology, the end results would be the obvious potentials and indeed effective violations of the principles of the individual liberty. This would extend to all forms of political action that might pose any threat or even question the principles of the Islamic Republic. In some cases the penalty of the transgressors could be raised to the capital punishment for such crimes considered as an instance of apostasy<sup>748</sup>.

Following the observations in Chapter 3 and 4, it has to be highlighted once more that one fails to identify any unambiguous normative endorsements of freedom of expression throughout the entire legislative dispositions of the Islamic Republic. It is evident that the simple recognition of being free to “hold a certain belief” would not suffice to guarantee the actual right to express those beliefs publically without any fear of consequences<sup>749</sup>. The previously discussed republican eye-ball test would most certainly fail on every level in such a comprehensive state of domination. Furthermore other basic principles of toleration of dissent fundamental to a pluralist republican system such as the entitlement to hold peaceful manifestations or membership of political parties appear to have all been systematically circumvented around the numerous “red lines” of the system with a considerable amount of ambiguity hence a significant potential for arbitrary interference<sup>750</sup>. The Islamic Republic’s laws seem to be extremely inadequate and at times even hostile to various principles of liberty and non-domination. Indeed by conditioning various basic articles of individual liberty to the *potestate domini* of prevailing hegemony of an overriding ideological doctrine, this has been turned into an actual vehicle to extend and consolidate the *imperium* of a state which has demonstrated a will to aggressively seek to dominate any diverging ideologies. Examples of such dominating legal provisions include various laws against “blasphemy” and “spreading corruption on earth” which also include acts of criticizing the regime or publishing

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<sup>748</sup> See for instance Article 26 of the Press Law dated April 2000 at <http://www.iranhrdc.org/english/english/human-rights-documents/iranian-codes/3201-the-press-law.html?p=6>

<sup>749</sup> See Ch.2 for more details

<sup>750</sup> See below discussion on the state’s red lines on the freedom of expression in the national press

material deemed to be non-compliant with the Islamic standards, which I will address in more detail in the forthcoming sections<sup>751</sup>.

## ii. Political Parties

It goes without saying that the political parties are one of the most palpable catalysts of public participation in the society's political life. The history of the modern political philosophy highlights the fundamental importance of these channels of social participation throughout the process of democratization of various nations<sup>752</sup>. From a teleological standpoint, in extended countries like Iran - with a high level of social stratification and various ethnic, religious and of course politico-economic interests, the existence of representation channels capable of reflecting these numerous interests, becomes even more significant. In spite of this pressing need for pluralist political representation in Iran, numerous regulations and restrictions have resulted in the objective reality that few political parties throughout the history of the Islamic Republic were actually established and able to survive the extremely unfavourable environment for political action. Even the so-called "loyal opposition" parties such as the Kargozāran party, the Islamic Republican Party and Mošārekāt Party all failed to obtain considerable success and popular base through mass adherence and conscription<sup>753</sup>. Other more secular parties such as the Jebheye Melli (Iranian National Front) or the Nehzate Azadi-e Iran (Freedom Movement of Iran) the former of which could be traced back to the Mosaddeq period and Iranian anti-Imperialist movements, were either completely outlawed or their activities were severely restricted and controlled<sup>754</sup>.

Various reasons have been cited to account for the inefficiency and lack of success of the political parties within the Islamic Republic of Iran. Most importantly these reasons include the historic-cultural deficit of the political partisanship and group associations

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<sup>751</sup> See the definition of *mofsed fel arz* at: <http://www.iranpresswatch.org/post/2737>

<sup>752</sup> See for instance Scarrow, S. (2005) Political Parties and Democracy in *Theoretical and Practical Perspectives*, National Democratic Institute for International Affairs. p.1 And Panebianco, A. (1982) *Modelli di Partito*, Milano: Il Mulino Pub. pp.2-4

<sup>753</sup> For an overview of the political parties of the Islamic Republic see [http://us-iran.org/sites/default/files/webform/userarticle-submissions/political\\_party\\_in\\_ir\\_iran.pdf](http://us-iran.org/sites/default/files/webform/userarticle-submissions/political_party_in_ir_iran.pdf)

<sup>754</sup> See for instance Brumberg D. (2001), *Reinventing Khomeini: The Struggle for Reform in Iran* Chicago: University of Chicago Press p.147

and other organizational shortcomings<sup>755</sup>. Interestingly this feeds precisely into the prevailing theme of this Chapter and indeed as I have argued on numerous occasions, one of the preoccupations of the republican state would be to inculcate, promote and instil principles, means and culture of political involvement of the citizenry. Political parties, interest groups, professional and economic organizations and guilds are all part of the republican vocabulary to return the principles of sovereignty to the people themselves. This observation once more highlights the validity of the republican prescription for promoting the *vivere politico* particularly for the marginal and minority sections of society who would alternatively be at the mercy of the *imperium* of the dominant factions and groups.

The Islamic Republic's record on this account does not seem to be very satisfactory. That is: not only the state does not create, encourage or promote the culture of political involvement of the citizenry, but also it actively prevents and dissuades various forms of popular manifestation of views and grievances, if these are not strictly in line with the guidelines of the dominating ideology. Even the state sponsored congregations and supporting organizations do not bear the name "party" due to the significant negative connotations that have been attributed to this term by the prevalent political narratives<sup>756</sup>.

Most strikingly even non-partisan participation in various interest groups or protest movements for various socio-political causes seems to have been highly unwelcome by the system. Even the right to sustain any cause publically seems to have been systematically violated by the Islamic Republic, something shown particularly after the 2009 elections with state crack downs on predominantly peaceful protest manifestations. Even the most basic public expressions of views or grievances have been harshly dealt with, the most prominent instances of which could be seen in the treatment reserved for the Labour Association Organization<sup>757</sup>, the One Million Signature Movements for the

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<sup>755</sup> Akhavan Kazemi, B. (2012) *Elate Nakārāmediye Ahzābe Siāsi dar Iran* Tehran Markaz-e Asnad Pub. pp.12 see also PhD thesis by Mohammihjaletaki, A. (2012), *Organizational Change in Political Parties in Iran after the Islamic Revolution of 1979*, Durham University

<sup>756</sup> Arjomand, S. (2009) p.65

<sup>757</sup> See for instance <http://www.roozonline.com/persian/news/newsitem/article/-63f2ac180c.html>

Abolition of Discriminatory Laws against Women<sup>758</sup> and the Reunion of the Families of the Executed Political Prisoners of Iran<sup>759 760</sup>.

## **b. Public Tribunes**

Unquestionably societies of the modern world are much more complex entities as compared to the ancient republican polities in which the means of communication and representation were limited to some public tribunes and forums which were made accessible to those who could claim to have citizen rights. Modern means of communication provide for a conspicuous potential for expressing individual views and concerns to a wider audience to which one might not be able to have physical access otherwise. In Chapter 1 the republican maxim of *audi alteram partem* (listen to the other part) was cited which was said to be one of the guiding principles of the so-called communicative reason in a democratic state based on the republican values. Traditional and modern means of mass communication would obviously form an indispensable channel for such basic procedural republican principles based on the negotiation of ideas and strive to arrive at compromised solutions to accommodate at times diverging viewpoints<sup>761</sup>. It goes without saying that the public means of communication undoubtedly play a fundamental role in this respect.

Traditional paper-based journalism in Iran has faced numerous challenges as one would expect to be the case in a developing country<sup>762</sup>. Nevertheless in the case of the Islamic Republic due to hegemonic dominance of an exclusive worldview this seems to have taken a further dimension of active persecution and invigilation that the journalists have been subjected to in the three decades of the Islamic Republic<sup>763</sup>. The recent figures show that Iran tops the world's list of exiled journalists fleeing for work-related

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<sup>758</sup> See the official website of this campaign at <http://www.feministschool.com/campaign/>

<sup>759</sup> See for instance the news of the crack down on such assemblies at: [http://www.bbc.co.uk/persian/iran/2010/05/100510\\_106\\_executions\\_react.shtml](http://www.bbc.co.uk/persian/iran/2010/05/100510_106_executions_react.shtml) or here <http://hira-news.org/2/00/1269-1.html>

<sup>760</sup> See statistics of such harsh treatment at: <http://www.campaignforequality.info/spip.php?article1700>

<sup>761</sup> See Ch.1 for details

<sup>762</sup> See reports of such problems at: <http://www.cpj.org/reports/>

<sup>763</sup> See for instance a report on the situation of the Iranian Journalist at <http://www.cpj.org/reports/>

persecutions preceding countries like Somalia, Ethiopia and Syria<sup>764</sup>. This bleak outlook extends to other means of mass communication such as radio and TV which are heavily monitored and frequently obscured if their contents are deemed hostile to the values and interests of the Islamic Republic<sup>765</sup>. All this amounts to the clear evidence of an unsupportive environment in which the basic international principles of the free flow of information seem to have been systematically ignored and violated. In Chapter 3 an overview of the relative articles of the Iranian Constitution was presented which in line with the international conventions and declarations, allow for a certain amount of press activity and free access to information. Nevertheless to reiterate what I mentioned previously, these basic rights have again been interpreted and conditioned to vague notions of not being detrimental to the interests of the Islamic Republic which once more has allowed for ample space for interpretation, in this case restrictive ones. One basic example of such violations of even the most constrained form of press freedom endorsed by the Iranian Constitution is a total disregard for the guidelines that the political and press offenses should be tried openly and in the presence of a jury in courts of justice. In the course of the current research on this matter, significant and persistent violations of this right by nearly all Iranian courts of justice were observed. In some cases extremely harsh verdicts appear to have been handed out even in the absence of the legal representatives of the journalists on trial<sup>766</sup>. This is even more aggravated by a nearly total blockade of foreign journalists and media sources and most importantly the human right watch organizations with the prevailing accusation of them being agents and spies of the “world arrogance” (western countries in particular the USA)<sup>767</sup>.

Modern media seems to be subjected to the same or even higher level of invigilation and control as a recent report on this matter demonstrated<sup>768</sup>. Various laws and decrees

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<sup>764</sup> See the relative reports entitled “Journalists in Exile” by the Committee to Protect Journalists at <http://www.cpj.org/reports/2013/06/journalists-in-exile-2013.php>

<sup>765</sup> See related news in this regard at: <http://www.theguardian.com/media/2009/jun/17/iran-bbc-jamming-bloggers-revolutionary-guard>

<sup>766</sup> See the interesting documentary by Maziar Bahari and Jon Stewart entitled *Censorship and Power* on the professional conditions of Iranian journalists at: <http://www.cpj.org/blog/2013/05/video-censorship-and-power-in-iran-with-jon-stewar.php>

<sup>767</sup> See for instance the Committee to Protect Journalists Reports at <http://www.cpj.org/blog/2013/06/iran-restricts-international-coverage-of-election.php>

<sup>768</sup> See the report entitled *Facing Boundaries, Finding Freedom*, by Iran Media Program Center for Global Communication Studies Annenberg School for Communication University of Pennsylvania, which can be consulted at: <http://iranmediaresearch.org/en/research/download/1444>

and numerous official and unofficial practices have been employed to stifle the access to the Internet and all related media contents. Several organizations, task forces and committees have been established to enact the parliamentary law of 2010 entitled “Computer Crime Law” which lay down detailed guidelines to confront all internet related acts of subversion or “diffusion of falsehood” in particular against the authorities of the Islamic Republic<sup>769</sup>. The authorities in charge of the executions of such norms include the Ministry of Communications, the High Council for Cultural Revolution, Islamic Republic’s Official Broadcasting Organization, Ministry of Intelligence and various other cyber police and watchdogs with extensive functional and executive prerogatives. Appendix IV demonstrates the complexity of the apparatus in place to monitor and invigilate the flow of web-based information and contents<sup>770</sup>. It has to be underlined that the government of President Rouhani in numerous occasions has promised to remove parts of these prevailing state control and invigilation over all means of mass communication and information, nevertheless the practical and tangible results of such public declarations are yet to be perceived in Iran.

Furthermore, besides these monitoring techniques and extremely violent legal punishments, the Islamic Republic seems to have pursued easier means of restricting access to electronic public information simply by limiting the bandwidth or completely blocking the access to unofficial sources of news and information. The above mentioned Computer Crime Law even states that those trying to use a higher bandwidth than the authorized one to access the Internet from inside Iran, or from outside in, could be punished by one to three years imprisonment, financial penalties or both<sup>771</sup>. In the run-up to the 2009 and 2013 presidential elections the Iranian Minister of Communications officially acknowledged that the access to the internet has been deliberately restricted through limiting the speed to Internet connection resulting in Iran being placed in 172<sup>nd</sup> place out of 184 countries in 2013 for “Household Download Index<sup>772</sup>. This has effectively stifled the private access to the sources not officially

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<sup>769</sup> See the content of the relative law at <http://peyvandha.ir/0-8.htm>

<sup>770</sup> The graph was prepared by the Iran Media Program and can be consulted at: <http://www.iranmediaresearch.org/en/research/pdf/1296>

<sup>771</sup> Article 24 of the Computer Crime Law which can be consulted at <http://peyvandha.ir/0-8.htm>

<sup>772</sup> See relative reports at: <http://persian.iranhumanrights.org/1392/05/communications/> and <http://www.netindex.com/download/allcountries/>

endorsed by the Islamic Republic authorities. In the recent years there have even been attempts to create an isolated “National Internet” to completely eradicate the circumvention techniques that the resourceful Iranians have devised to access the desired sources of information around the world<sup>773</sup>. All these would obviously constitute instances of arbitrary interference by either removing the available options or imposing punishments for certain choices which were all said to be blatant manifestations of domination inimical to numerous principles of the republican liberty<sup>774</sup>.

During my research I also encountered a significant amount of auto-censorship and “anticipated reaction” by the Iranian journalists to comply with numerous red lines set out by the government for the fear of potential consequences<sup>775</sup>. This appears to be the exact instance of an anti-republican practice of invigilation or indirect threats that waive basic principles of contestatory citizenry even in the absence of any actual interferences. In Pettit’s words which I cited in Chapter 1 the instances of state *imperium* include:

burdening the choice of the option with a penalty or wrapping my capacity for reasoned choice or giving me misleading information....I may be subject to the alien control of others without their actually interfering with me; if I think that the absence of interference in such a case means the presence of freedom, then I am deluded<sup>776</sup>

All these instance of invigilation, intimidation, actual intervention and severe punishment would underscore my remarks on the extreme violation of the republican principles of active citizenship that seem to have all but annihilated in the dominant political narratives of the Islamic Republic. It is easy to observe various levels of domination and state *imperium* in all aspects of the socio-cultural and of course political domains of the Islamic Republic accompanied by numerous potential and indeed actual instances of arbitrary interference in the lives of the citizens.

Thus the overall conclusion of all analytic observations in this chapter broadly confirm the claims put forward in the previous one that this system indeed presents all elements of an overarching hierocracy, or a *Theoarchy* (clerical oligarchy) as I would like to call it.

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<sup>773</sup> This is well reflected in the above cited report entitled *Facing Boundaries, Finding Freedom*

<sup>774</sup> See Ch.1 for more details

<sup>775</sup> Ibid

<sup>776</sup> See Ch.1 for details

## IV. Conclusion

All this empirical evidence and theoretical consideration would naturally lead to one simple conclusion, namely that within the constitutional, institutional and most importantly ideological structure of the Islamic Republic, not enough space has been foreseen for the existence of active participatory citizens. The republican principles of *vivere civile* and *vivere politico* seem to be in outright conceptual incompatibility with the prevailing political discourse with its exclusive claims to sovereignty. This has even resulted in a total prohibition of any form of peaceful manifestations of opinions with the common pretext that these could pose dangers to the fundamentals of the Islamic Republic or accusations of collusion with foreign powers - all customary strategies of all totalitarian states throughout the history<sup>777</sup>. Pervasive levels of invigilation, threats and actual physical confrontation and punishment have made even the restricted citizen's rights to participation and contestation – some of which are guaranteed in the Islamic Republic Constitution, *cum permissu* - that is conditioned to the discretionary will of specific dominating groups in the Islamic State with their pervasive political *imperium*.

Unsurprisingly one is left to conclude that the citizen's right to active participation in the political life of the society and the ability to actually dissent and contest the state's actions, have been systematically waived and trampled upon by the dominant ideology of the state and its exclusive doctrines of sovereignty. Hence the centrality of the politically active contestatory republican citizen does not seem to have any epistemological resonance throughout the normative and socio-political interpretations of the principles of the individual rights in the Islamic Republic. This would obviously form yet another significant shortcoming which poses a fundamental challenge to the very validity of every republican claim of a system whose most basic building block, i.e the politically active citizenry is systematically undermined or accorded with a negligible public voice. The significance of the public in *res publica*, denoting the "public" affair, seems to have been emptied of all its connotations in a system whose centre of allegiance is perceived to repose beyond and above the comprehension of the "subjects" of the divine rule!

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<sup>777</sup> See for instance Arendt, H. *ibid*



## Final Conclusions

This research project was meant to provide an innovative constructivist framework to evaluate the republican credentials of a political order with overriding religious underpinnings throughout its normative and institutional political doctrine of the state. Various comparative and analytic prospects were deployed to shed a better light of understanding into the complex and multi-layered mechanisms of interactions between a divine source of sovereignty and other locus of rights and legitimacy reposed on the civic republican humanist principles.

Chapter 1 proved to be the backbone of the entire research project as it provided a systematic attempt at mapping out the main principals of the republican ideology which could be regarded as the unifying thrust behind various modern day manifestations of this school of thought. Principal ideas of the prominent schools of the republicanism were scrutinized through an extensive research into the main theoreticians' written and oral utterances to provide a comprehensive overview of the basic principles that made up the foundations of the current republican framework of analysis. The entire normative and institutional principles of the freedom as non-domination were said to be unambiguously captured by the republican notions of *imperium* and *dominium* which were extensively deployed in a comparative political framework of study. These were served as the guiding line and theoretical threshold for the entirety of this project, keeping an eye open for the inevitable divergences between the "ideal" and the "real" manifestations of a representative republican democracy.

From there I proceeded by providing a diachronic and synchronic overview of the prevailing religious narratives within the dominant Shi'a political philosophy in order to scrutinize their implications and congruencies with the basic principles of the republican doctrine of state. In this attempt I strived to capture various viewpoints from across the religious and secular spectrum of the Iranian political establishments, the most prominent instance of which was the exclusive interview with Abolhasan Banisadr, the first President of the Islamic Republic and indeed the first person to occupy such a position in the entire Iranian history.

Unsurprisingly various principles of divine sovereignty, as presented by the prevailing political theology, were proven here to be at odds with the basic republican notions of individual liberty, if not *a fortiori* incompatible. Although a great number of the Shi‘a modernists have tried to accommodate numerous articles of sovereignty of the people in their political narratives, one could still trace a significant amount of inconsistency, resulting from a systematic failure to provide a clear and coherent conceptual discourse on these, at times mutually exclusive, sources of legitimacy. In any case as far as the Islamic Republic is concerned, it was empirically demonstrated that the dominant Shi‘a doctrine of the state would undoubtedly prove existentially incompatible with numerous republican notions of liberty.

Most strikingly, as it was highlighted in Chapters 2 and 4, it appears that even the republican ideologues of the Islamic Republic did not seem to possess a thorough understanding of various implications of the principles of republicanism and a sound understanding of all socio-political repercussions of such doctrines with regards to the religious principles.

After this initial process of defining the two sides of the ideological and theoretical components of the Islamic Republic, in line with the republican notion of the *imperium* of law and legal guarantees of equal rights and distributive fairness, the Islamic Republic’s Constitution was analytically examined from various normative points of view. This was prevalently a comparative study by analogy to other political systems around the globe bearing the name “Republic”. It was demonstrated that numerous articles of the Iranian Constitution, - whilst providing for basic notions of the individual liberty and popular sovereignty, appear to have conditioned and subordinated these to other overriding sources of sovereignty which are predominantly unelected, with little accountability, over which the population does not wield much effective power of supervision. All fundamental republican principles seem to have been left out or reinterpreted in the light of this prevailing normative supremacy of the religious dogma. This was clearly reflected in the first Article of the Iranian Constitution which reduces the role of the people to *ra‘ye mosbat dādan* (cast a positive vote) to the already established transcendental truth of the eschatological sources of the fundamental laws of the state.

Furthermore various stylistics aspects of the Iranian Constitution were shown to be interesting to consider as well. These provided an intriguing insight into the main theoretical convictions behind the articles of the Fundamental Law. Furthermore a considerable amount of ambiguity and even conceptual inconsistency within the Iranian Constitution and its manifestations in the ordinary laws was highlighted, which shed a serious shadow of doubt over the epistemological validity of such provisions with an insufficient level of predictability, clarity and impartiality of application. In addition numerous discriminatory laws underpinned by the religious dogma were identified, which violate a considerable amount of the individual and collective liberties as promulgated by all relevant international laws and conventions. These seem to have *ipso facto* undermined the basic values of equality before laws or subjected them to other ideological convictions promoting gender disparity or other discriminatory prescriptions particularly against the followers of other religions and beliefs. Consequently the final conclusion in this Chapter was an objective consideration that from a normative point of view, the Iranian Constitution, and many ordinary laws inspired by it, fail on numerous levels to unambiguously encode and uphold all principles of the republican liberty by guarding against the *dominium* of individuals or groups and *imperium* of the state itself over the republican citizens.

As regarding the theoretical and conceptual principles of popular sovereignty, Chapter 4 highlighted numerous shortcomings regarding the effectiveness of the popular sovereignty over the constitution itself in a pervasive lack of such rights as the constitutional abrogative sovereignty and the power of recall. It was argued that whilst a considerable number of the principles of social justice have been indeed incorporated into the political narratives of the leaders of the Islamic Republic, other basic theories of the common good and republican sovereignty seem to have been systematically subjected to the eschatological interpretations of the ultimate and absolute good as perceived by such ideologies. This again posed serious questions regarding the very viability and indeed conformity of the basic principles of popular sovereignty and republican liberty in the Islamic Republic, due to their prevailing rational procedural and negotiable nature as compared to the claims of metaphysical or divine perpetual truth.

Next a thorough analysis of the Islamic Republic's institutions was provided with regards to their teleological principles and actual records in upholding and protecting various principles of the republican liberty. This proved to be a very challenging and extensive project implicating numerous aspects of the layout of power in Iran and their theoretical and practical operations towards guarding against the *imperium* of the state itself. The significant body of evidence presented there supported the claim that the Islamic Republic state itself seems to have become a source of domination and *imperium* instead of providing the necessary protections against this danger. This irrefutable body of evidence was not only observed in the so-called *trias politica* or the traditional three powers of the state, but most manifestly in the overarching Office of the Leader with its pervasive prerogatives that extend to all aspects of the public and private spheres of the society. This repository of power with privileges of a *primus inter pares* authority seems to have been endowed with unlimited *arbitrium* to not only fully dominate all other powers of the state, but also to effectively control all means of public domination together with all socio-cultural elements of hegemony.

I further expounded that the very existence of such a layout of power would suffice to waive various principles of the republican doctrine on conceptual and epistemological grounds. Notwithstanding, the actual track record of such institutions readily reveals not only significant instances of tangible arbitrary interference by the state, but also cases of auto-censorship or the anticipated sanctions, which were said to be constituting instances of liberty *cum permissu* of the dominant authority. Hence all evidence presented here would unequivocally prove that the interference of the *potestate domini* in all socio-political affairs of society have gone way beyond the conduct of a benevolent master refraining from wielding his authority, which by itself was said to provided sufficient grounds to dissolve the very basic elements of the republican liberty.

I also agreed with some authors' views that in such systems, holding periodic elections and other limited republican institutions of the existing resilient authoritarianism, would also be better explained in light of the various concessions that the recombinants authoritarian systems have to make to justify and legitimize their total domination on all political spheres of the society. Moreover various manifestations of the institutional *imperium* of a *dictateur collectif* of a specific ideological group were

highlighted, which seem to be constantly spilling into a system of *dictateur militaire* with a variety of overt instances of the employment of the coercive forces of the state to promote these exclusive ideological convictions. Hence as demonstrated herein, any institutional analogy endorsed by the advocates of the Islamic Republic state with other modern day republican institutions and seats of public authority, notably the western democratic ones, should be taken *cum grano salis!*

And lastly I treated the most salient element of the republican *desiderata* i.e. the people themselves and their contestatory and participatory rights. As demonstrated there, numerous normative provisions of the Islamic Republic, systematically undermine basic rights of reclaiming and registering interests and views in a system where the most fundamental elements of republican forums and tribunes are either missing or have been subordinated to the comprehensive purviews of unelected sources of authority. An almost total lack of any impartial monitoring organs such as the independent auditors or native human rights watchdog institutions would all add to this momentous deficit of adequate public tools of checks and balances which would seriously undermine the efficiency of popular control over all seats of power. Furthermore various practices of invigilation, threats of consequences and of course actual imposition of violence were highlighted in this system that leave little doubt that the most basic principles of the republican ideology in reality do not subsist on any actual grounds in such a politically unfavourable exclusive environment.

All these theoretical and practical observations and examinations of various normative, constitutional and institutional credentials of the Islamic Republic would support the original assumption that this specific interpretation of the religious dogma would prove to be existentially incompatible with all principles of the republican liberty as non-domination. I hope to have empirically demonstrated in this specific context as well, the validity of the original assumptions of the humanist republican ideologues underpinned by the rebuttal of any metaphysical and eschatological sources of legitimacy that fall beyond the human reason. As it was critically evaluated, numerous fundamental republican narratives of the civic republicanism, in particular the notion of the liberty as non-domination, would prove to be at complete opposing polar ends with

respect to the claims of centrality of the transcendental eschatological assumptions of truth.

Thus my initial hypothesis seems to have been essentially validated in the light of the empirical observations that that the *res publica* of the Islamic Republic seems to be utterly devoid of any notions of *publica* which seems to have been systematically subordinated to the professed practices of the ontological priority of the divine sovereignty. This by itself provides sufficient grounds to conclude that the system subject to this research project is instead a *Theoarchy* as argued above. As demonstrated here, all means of the state seem to have been appropriated by a small college of the religious elites with measurable results, rather than by the collective rule of the Shi'a theologians, which in turn justifies the coinage of such a new terminology. Thus other hitherto utilized terms such as Constitutional Theocracy or simply Theocracy by some predominantly western scholars do not seem to be able to adequately capture all conceptual and institutional aspects of such a political order.

And finally it is my utmost hope that this framework of analysis could inspire similar projects on other political contexts in an attempt to comparatively scrutinize various aspects of compatibility of all defining principles of the religious ideologies, in particular the Islamic ones, with the most fundamental elements of the popular sovereignty. Wider Arabic and Islamic geo-political contexts would provide interesting grounds for relative field works based on an academic approach of analysis similar to the one devised in this research project.

I would like to close this project by returning again to Machiavelli and his subtle assertion in the seminal *Discourses* treatise concerning the centres of the political allegiance that: one could be a good republican and religious but not a good religious person and a republican, which still seems to be providing food for thought for all theoreticians of the political science centuries after their pronouncement. Hence various socio-political implications of the ecumenical narratives of the political theology still remain to be adequately examined as the relationship between the state and the religion in the 21<sup>st</sup> century seems to perpetually be as controversial as it appeared to the early political philosophers of the classical republican ideology.

## Appendix I Transliteration Table

| Persian Alphabet Letter | Modern letter | Example                   | Transliteration              |
|-------------------------|---------------|---------------------------|------------------------------|
| ا                       | A             | اسب                       | Asb                          |
| آ                       | Ā             | آبادان                    | Ābādān                       |
| ب                       | B             | ببر                       | Babr                         |
| پ                       | P             | پر                        | Por                          |
| ت ط                     | T             | تنها / طوسی               | tanhā / tusi                 |
| س ص ث                   | S             | سیب / صابون / ثمره        | sib / sābun / samara         |
| ش                       | Š             | شهر                       | Šahr                         |
| ج                       | J             | جوان                      | Javān                        |
| چ                       | C             | چوب                       | Cub                          |
| ح ه                     | H             | هوا / حسرت                | havā / hasrat                |
| خ                       | X             | خوب                       | Xub                          |
| د                       | D             | در                        | Dar                          |
| ر                       | R             | رمز                       | Ramz                         |
| ژ                       | Ž             | ژاله                      | žāle (h)                     |
| ز ذ ض ظ                 | Z             | زرشک / ذوب / ضرر / ظفر    | zerešk / zob / zarar / zafar |
| ع                       | ‘             | علی / آراء / مسؤل / ارانه | ‘ali / ārā‘ / mas‘ul / erā‘e |
| ق غ                     | Q             | قضا / غلام                | qazā / qolām                 |
| ف                       | F             | فربا                      | Faribā                       |
| ک                       | K             | کمال                      | Kamāl                        |
| گ                       | G             | گرم                       | Garm                         |
| ل                       | L             | لاله                      | Lāle                         |
| م                       | M             | مادر                      | Mādar                        |
| ن                       | N             | نان                       | Nān                          |
| و                       | V             | ونک                       | Vanak                        |
| و                       | W             | مورد / توضیح              | mowred / towzih              |
| ی                       | Y             | یار                       | Yār                          |
| ا                       | E             | الهام                     | Elhām                        |
| ا                       | O             | امید                      | Omid                         |
| ای                      | I             | ایران                     | irān                         |
| او                      | U             | دوست                      | Dust                         |

## Appendix II Interview with Banisadr

Transcript of the Interview with first President of the Islamic Republic Abolhasan Banisadr.

Paris November 2012

**VNP:** *Mr Banisadr thank you very much for giving me this opportunity to discuss with you a few subjects of interest. You Mr Banisadr were one of the main ideologues behind the concept of the Islamic Republic, and one of the leading theoreticians who strived to demonstrate the compatibility of Islam and Shari‘a with republican notions - even before being elected as the first President of the Islamic Republic, and indeed the first president in Iranian’s entire history. My first question would be to ask you to illustrate for us, which Islamic laws and ideologies you sustain, to be compatible with the republican ideologies?*

**Banisadr:** Well I have to correct you there in that I was not an ideologue of the current Islamic Republic, I was an ideologue of the revolution. My real interest in this subject started when the London School of Economics asked me to deliver a lecture on the relationship between democracy and Islam - although I could not participate in the conference due to the complications of obtaining a VISA for the UK; this became the start of my research which went on for about 20 years, the result of which is a treatise on democracy. The terms I have used for democracy or the republic is *demokrasiye šowra‘i* (consultative democracy). The first volume is concerning the totalitarianism, since also in the west the democratic discourse started with a critique of totalitarianism, I mean from the Renaissance onwards. The second volume is concerning the guidelines for democracy and the pillars of democracy. In the first section regarding the *Demokrasiye šowra‘i* the focus is on human beings as the main pillar of study. What it is to be human, what are the rights of this human, are these rights innate? When we talk about “republic” the main question would be whether the citizens of such a community are entitled to participate in the administration of the state based on their *hoquqe zati* (natural rights) or based on contractual rights? To which I answer that this is based on innate rights. This is based on the assumption that based on the principles of *hoquqe zati* no one should dominate another person or have any superiority in the form of such things as *velāyat* etc. Therefore the republic is the realization of certain ideals which entail the disappearance of others. However as we stand now the humanity is very far from this ideal, it might be that this is only achievable in the paradise! As it stands now, people decide for each other. But how could this decision making be regulated? The guidelines are that the main priority is given to the protection of humans and human rights, *hoquqe zāti* of course. Additionally the second principle would be that amongst these basic human rights, two of them are more fundamental compared to others: these two are independence and liberty. A republic would not materialize if the citizens of a society do not have the independence in their decisions and the freedom in the choice of the type of decisions they make. The so-called *xodangixtegi* (autonomy) is the main pillar, the autonomy of a human being. I have provided 12 principles of independence and around 20 principles for liberty, of course only the main principles, those which are supposed to be observed in common democracies of today, something which is obviously not always the case. If you study in the UK I know that in England they call this independence “negative liberty”. Which means being independent from the state. However it is not only the state from which the citizen needs to be independent, this could be extended to anything that could influence his decisions,



hence to be able to decide and to be able to choose the type of decision. Another two pillars of a republic are *haqqe ešterāk* (the right to share) and *haqqe extelāf* (the right to dissent). Because if all human beings do not agree that they should all have an equal right in running the state, then the participatory democracy could not materialize. Therefore *ešterāk* (participation) is necessary. Furthermore if the right to *extelāf* (dissent) is not observed and a group or ethnicity declare to have exclusive rights on the making of decisions which others need to obey; then a republic cannot be realized either and we will fall into a dictatorship. Hence the *haqqe ešterāk* and *haqqe extelāf* are very fundamental. In a republic these rights would translate into the means of mass communication. However, the question of how these means of mass communication should be organized so that all these four principles of the republic could materialize is a question which has not yet been resolved in the human societies. These means are mainly at the service of the centres of power, which could be financial power, political parties etc. so the fact that the citizen of the republic is able to participate in three processes of thought *andišehā* (ideas) , *dānešha* (knowledge) and *ettelā'āt* (information) is not happening now. As these have been turned into specialized tasks and those in charge of them follow certain guidelines to inculcate certain ideologies, this could be very well observed during the elections. However as we said it is the human beings who need to hold the reins of these processes. In Iran both previously during the Shāh and we are experiencing this too now. They used to use the term: *Rādio Bāzār-e Banisadr* (Banisadr's market Radio) which had to transform into a mouth to ear system! This has always been my proposal that each Iranian should feel the obligation to break through the censorship.

*VNP: You mentioned various currents of thought and political elites who collaborated with you during the revolution; which obviously included both religious ideas and secular ones; my question is do these currents within the Iranian Revolution and later Islamic Republic had different understandings of these republican principles you just outlined? - Principles such as popular sovereignty. What were the different perceptions?*

**Banisadr:** All others were against these concepts. Our problem back then was that those who believed in *velāyat jamure mardom* (popular sovereignty) were a very small minority! I prefer to use the term dominion (*velāyat*) instead of sovereignty as the word sovereignty contains the notion of power, but the term *velāyat* does not contain such connotations. It denotes equality, fraternity, liberty etc.

*VNP: Based on these affirmations how does it happen that you were still hopeful to combine these two opposing perceptions? (Belief in and rejection of popular sovereignty) The ideas seem to have existential incompatibilities. When you refer to Khomeini's treatise since the time of Najaf for instance, he clearly delineates his perception on the repositories of sovereignty. Through such notions as velāyat-e faqih, he clearly delineates where is the repository of sovereignty in his proposed political system based on the Divine sovereignty. Therefore how were you and other republican ideologues of the Iranian Revolution hoping to bring together these existentially different ideologies?*

**Banisadr:** The hope was there and endorsed by the Iranian nation. And for our part we went around the country and tried to illustrate these notions. Concepts like the importance of freedom, the principles of a republican system, the need for their constant participation and that without such participation a tyrannical system could materialize in the country. Furthermore I have to underline that Mr Khomeini has changed

his views on the *velāyat-e faqih* no less than five times. The version which was declared in France and was the one taken as definitive by us, had nothing of the *velāyat-e faqih* in it, it was indeed the *velāyat* of the people. Also please bear in mind that he was not the first theologian to advance such ideas (people's sovereignty). During the Constitutional Revolution; three main marja' of the time namely Ayatollah Khorāsani, Mirza Rašti and a third one, I think was Māzendarāni, who sent a telegram to Mohammad Ali Shāh declaring during the Greater Occultation that the *velāyat* belongs to the people. And this was the exact term they used: "*velāyat mota'alleq bā jomhure mardom ast*" (dominion/sovereignty belongs to people). Mr Khomeini was against this doctrine initially. You can see this in the Ayatollah Montazeri's memoirs in which he states that when the Ayatollah Motahhari and I went to visit him, he declared that he is against the *velāyat-e faqih*. But in Najaf he used to teach *velāyat-e faqih*. I went to Najaf back then to bury my deceased father and went to see Khomeini and told him that the idea of *velāyat-e faqih* that you have put forward would instil the Shāh's regime forever in Iran. This city of yours (Najaf) which has been a centre of Shi'a thought for centuries, is so filthy and badly organized that no one would accept to risk his life to remove the Shāh and replace him with a religious figure based on this model. To which he replied that he only mentioned this concept of *velāyat-e faqih* so that the people like me and Motahhari would come up with a solution for Iran. Then I asked him to put this in writing and he did which we later published in Europe. So in France we were talking about the *velāyat* of the people. In fact the constitutional draft that we prepared was exactly based on this idea of people's dominion. But then in the *Majles Xobregān* (Assembly of Experts) he played a trick. He inserted the *nezārate faqih* (supervision) of faqih, which I have to add, was not pushed through easily and we put up serious resistance. But in the end we convinced Ayatollāh Montazeri to accept only the oversight of faqih. But then they did a *coup d'état* and in particular after the Iran-Iraq war he advanced the idea of *velāyat-e faqih*. So originally he endorsed the popular sovereignty and even told the Spiegel newspaper, in clear terms that the only criteria is the popular vote: *mizān ra'ye mardom ast*, and that we want a republic like the French Republic.

**VNP:** *But even in the moderate ideas you mentioned like those put forward by the likes of Khorāsāni and Nā'ini, the people are never declared as being the true holders of sovereignty? These scholars regularly used the terms such as sultan Ja'er and similar notions which at best need to be supported during the Occultation, as long as they do not act against Shari'a laws.*

**Banisadr:** Those ideas belong to the era before the Constitutional Revolution. Constitutional Revolution means you should not tolerate these things. As I said during the Constitutional Revolution they clearly told Mohammad Ali Shāh that he does not count and that the sovereignty belongs to the people. Otherwise what is the point in having a Constitutional Revolution at all? But even back then there was a group Noxbegān who believed in the sovereignty of the experts, but in that telegram that I mentioned, these three scholars clearly declare that the dominion belongs to the people.

**VNP:** *To wrap up this question can I confirm that in your opinion there is a section of the religious camp who truly sustain that the religious principles are completely compatible with the republican concepts or at least tolerate the republican ideas?*

**Banisadr:** If you refer to the Quran, because my idea of participatory democracy is actually a research through the Quran, there you would not find even a single word regarding *hokumat* (state), *dowlat*

(government), *saltanat* (monarchy) etc. there is not even one single verse there in this regard. Some scholars sustain that it could not be reasonable that the religion has been so silent regarding the most important human affair which is government and state. However in practice this is the case. So they have gone after various *hadith* and *ravāyat* to justify their ideas.

**VNP:** *but there are indirect references such as to ololamr or “to establish God’s rule on earth” which are very general terms of course*

**Banisadr:** No they cannot use those concepts either. They have only used those two hadith which they attribute to Imam Sādeq. So what we have in the Quran is the principles of *demokrasiye šowra’i* (consultative democracy). There we have the principle of democracy, the principle of human rights, which is one of the most complete lists of human rights. I have carried out a research on this as well. And also a philosopher who lives in the UK has carried out a complete comparison of the human rights articles in the Quran with the Universal Declaration of Human Rights, and he too has come to the conclusion that those reported in the Quran are much more complete, which is indeed the case. In particular the human rights mentioned in the Quran are innate rights of the human but those reported by the Universal Declaration of Human Rights are mainly contractual rights such as the right to private ownership. All the previous rights that I mentioned are in the Quran. And in addition to this there is also the notion of *šowrā* (consultation) which means the popular participation in decisions. So if you think in that primitive society, the first society, if you consider only the written history as they say, there might have been such examples in other ancient societies too such as Indian, Persia, Rome, Greece etc. But the only truly documented one is the one in the Quran and the information we have on the Medina society which has such a system in place, based on the Quran, even the Prophet himself is an elected figure. He did not say that I am a prophet therefore I have *velāyat* over you. He is indeed an elected figure. In the assemblies wherever there was a divergence of opinion, others asked him whether this was his personal idea or God’s words, and if he replied that it was his personal idea then the majority rule was considered.

**VNP:** *But do you accept that many of the Islamic principles and ruling of the Shari’a are in contradiction with the principles of independence and freedom that you mentioned before? For instance gender equality, the laws of heritage, testimony or the minority rights which all seem to be in open contradiction with the republican principles you outlined?*

**Banisadr:** One thing is what we have in the Quran and one thing is the actual evolution of the Islamic ideology throughout history. For instance Islam has mutated multiple times. Once for example as a result of the influence of the Greek philosophy, Islam has lost its identity. Which means it has tried to adapt itself with the current discourse on power of the time with those dominant ideas, and the latest example of such an adaptation is the Iranian Constitutional Revolution in which it has tried to adapt itself to western liberalism. But before this it has adapted itself multiple times with Aristotelian philosophy, with Plato’s philosophy. If you read the works of Nezāmolmolk, there is nothing Islamic in it, it is all Greek philosophy. So what we have in practice is a version of Islam which has been deprived of its essence and adapted to power relations of the time and this version is obviously not compatible with any notions of liberty. However, the version of Islam based on the Quranic guidelines and the rights it has considered for human beings and the consultative systems it has advocated - which has been what the Prophet has done in

his lifetime as well, has not been seen in any human society since, unfortunately. And I am not sure if it will ever be realized in any society, but the principles are there. The instances you mentioned such as the gender inequality etc, do not exist in the Quran. There is only the quality of rights. There are now recent researches in genetics which have demonstrated that men and women are genetically different. As one is naturally made for being a mother and the other for being a father. This fact has been endorsed by the Quran too but it considers certain privileges for women such as the superiority for being a mother, which is something (being a parent) that is present in the opposite sex too but stronger in women. So there are *fazilat* (privileges) for being a mother in women and privileges for being a father in men and when these two combine an ideal setting for the growth of a human being is created. By human beings we mean the independent, free and powerful human. But in this relation if we have the interference of power then these gender privileges will not be able to work. There might be a family but the foundations are based on power relations hence both men and women lose their privileges. Therefore the Quran is very sensitive to the presence and the lack of this power relation between individuals. The Quran is always watchful so that this relation of power does not materialize in any type of human relations.

**VNP:** *But there are numerous other incompatibilities such as the rights of other religious minorities?*

**Banisadr:** The Quran explicitly mentions “*lakom dinakom va liya din*” (your religion for you and my religion for me).

**VNP:** *However, minorities for instance are required to pay the religious tax of jaziya, imposed on non-muslims.*

**Banisadr:** *Jaziya is only for wartime, when there is a winner and a loser.*

**VNP:** *But our problem here is that all these concepts are clearly reflected in the Iranian Constitution as well.*

**Banisadr:** We did not have these in the first draft of the constitution.

**VNP:** *But these are reflected there anyway and also that the only dignified role considered for women seems to be that of motherhood. But it does not consider women as an individual with equal rights independently from the role she plays within the family.*

**Banisadr:** As I explained before, if there is a relation of power, then motherhood will be turned into a duty. Whereas based on the Quranic teachings this is a *fazilat* (privilege) and not a duty. It is a right and a privilege. But if you impose this on them: that since you are a mother you need to stay at home and refrain from participation in society and follow my decisions, then this is something we do not have in the Quran. Indeed it is quite contrary. The Quran says that since she has these privileges, there should be certain rights associated with these so that these potentials are realized without being subject to various pressures. You mentioned heritage. In the Quran, women inherit more than men. But it has formally mentioned men taking two shares to one compared to women, but if you look closer here we are not talking about the men and the women, we are concerned with the family. Since based on Quranic law men should pay the *nafaqa* (maintenance) hence he has to receive for himself, for the wife and for the children. In the Quran women have no duties. That is the portion of heritage she receives she does not have to spend any of it. Therefore considering everything she receives more and in addition she has all the guarantees, plus the fact that if she works at home she can claim compensation for it. Even if she works

outside as well, she can claim a compensation for milking the babe, or doing the housework. Now how many other societies do we know in which women have all these rights? So all these arrangements are provided so that there is no domination for men against women. But then this Islam which has been turned into a relation of power in all of today's societies does not have any compatibility not only with a consultative democracy but even with the most basic forms of republics. For instance in the Sunni Islam they say you always need to obey the ruler, as you also mentioned. But in Shi'a this is not acceptable. And the *sultan ja'er* (unjust ruler) should not be obeyed. But these days we see that the Sunni countries have done contrary to this conviction. And all the uprisings there are actually against their religious teachings. As they always believed that they had to obey the unjust ruler as God has decided so.

**VNP:** *So in Shi'ism in your view there are parallel convictions then. And in Iran, we have a version based on the power relation as you defined which has got a very specific definition of power relations could you elaborate more on this please?*

**Banisadr:** This is actually a Greek ideology, based on the Aristotelian philosophy, to be exact it is a mixture of Aristotle and Plato's philosophies. These ideologues have defined a concept of *velāyat-e faqih* in which they consider an absolute *velāyat* for one individual which is actually denying the existence of God. Even Ayatollāh Montazeri, very recently though, declared that the absolute guardianship of the *velāyat-e motlaqeye faqih* (jurist) is actually heresy, the denial of the existence of God. As Mr Khomeini talked about *velāyat-e motlaqe* (absolute), so if we suppose that God has given this right to this person, that He has given him the right to monopolize the power, because all the rights allocated to the leader in the Iranian Constitution are exclusively useful in the employment of power, and this is something that Iranians usually neglect, for example the use of the armed forces of Pāsdārān, it is obvious that Pāsdārān could only be used to employ force, or the right to appoint the head of the judiciary system, which means that the judges who need to be independent, are now subjected to one person who has all the powers, yet another means of employing the force.

**VNP:** *you gave a very eloquent example there, if for instance we consider the history of Islam the position of the judge has always been monopolized by the religious figures, it is said that the prophet himself was also not only a head of the state but also acted as a judge etc, but one of the most basic principles of republicanism is the separation of power and in particular the independence of the judiciary system which has been significantly highlighted by all theoreticians of the republican thought.*

**Banisadr:** As I said before one part of my research has been dedicated to the legal system in the Quran. I have found twenty principles in the Quran which need to be observed in the process of judgment. In today's legal systems maybe 6 or 7 of these are observed. And in the Islamic societies none of these are observed! So there is a book (the Quran) which the Muslims do not use unless in their funerals or marriages, only for formalities I mean. But if they decide to work based on these guidelines they need to observe these principles. And of course the independence of the judges is one of those principles.

**VNP:** *Based on these observations what is your definition of an Islamic Republic? What are the differences, if any, with the secular Republic then?*

**Banisadr:** I never employed such an expression, this was a term coined by Khomeini. Because I believe that the religion can never come together with power. If in a system we have the combination of religion

and government, this would result in the corruption of both the religion and the government. This is an obvious conclusion. In fact as I mentioned the Quran never talks about government. Religion should only define the liberty and independence. If a religion was turned into the proclamation of independence and liberty it would be incompatible with the definition of power. Therefore there could not be a *dowlate dini* (religious government) and on the other hand you can not have a *dine dowlati* (government religion); both these are unrealizable concepts. Mr Montazeri for instance once said that our objective was to have a religious government but what we got was a government religion! This comes as no surprise as the government means power but religion is an ideology. And if this ideology is in the hands of a government, it obviously exploits it to achieve its own ends, this is obvious.

**VNP:** *Do you think then there is a similarity between the current system in Iran and the medieval religious systems in Europe?*

**Banisadr:** Back then there was complete totalitarianism. Church was a totalitarian system. In Iran although they wanted to they could not establish such a system. Conceptually the notion of *velāyat-e faqih* is the same totalitarian idea. The same Pharaoh system that the Quran rejects. But luckily the Iranian culture and the modern day societies did not allow the establishment of such a system in Iran.

**VNP:** *I would like to find out about your practical problems in advancing republican ideas. We know that you encountered numerous obstacles in performing your duties as the first elected Iranian president. A position which would have entailed numerous presidential functions and duties which were hindered in various ways. Could you tell me which practical problems you encountered acting as the head of the executive system of the government?*

**Banisadr:** In my research entitled totalitarianism, one section is dedicated to the pillars of a totalitarian system and another section to the actual experience we had in Iran. A totalitarian system could have up to 18 pillars of power, based on the level of totalitarianism. So in Iran we employed many provisions to remove these pillars so that the government turns into a lawful government, grounded in laws. Hence in every step of the way we were hindered by them. For instance the means of mass communication is one of those pillars. If these are controlled by people and there is a freedom of information and exchange of thoughts, then a totalitarian system could not materialize. But if these are controlled by the dominating power then it becomes possible. And this was a daily struggle for us, and at the end they closed down everything and made a *coup d'état*!

**VNP:** *Were there any systems/concepts that you managed to successfully put in place? Were there any ideals, concepts or institutions that you actually managed to achieve back then? Ideas which you think still persist in the Iranian society today?*

**Banisadr:** One such thing is the freedom of public debate, which has become a lasting practice in the Iranian society. Another one is the mass participation in the flow of information and ideas. And that for the first time in the Iranian history, the pillars of power have been identified, and in order to achieve a free society these pillars need to be removed and replaced by the rule of law. This was unprecedented in Iranian society. Things like the judiciary system, the means of mass communications, national budgets and financial issues, political parties and political organizations in the society etc, and the fact of

identifying the pillars of power, and what to do to tackle these issues, some of which were what we actually experienced back then.

**VNP:** *As you mentioned you had a daily struggle as the representative of the republican section of the Islamic Republic to advance your ideas which eventually ended in actual physical clashes and consequently the elimination of one section of the ruling system. In recent years we still see such conflicts going on. In fact even the formal president who is selected and accredited by the religious authority itself finds it difficult to exercise the very limited authority he has got as the head of the executive system. What is your opinion of this?*

**Banisadr:** The incompatibility between republican principles and the *velāyat-e faqih* are not resolvable. As they have granted this office of *valiy-e faqih* some absolute authorities and he is not accountable in front of anyone. All these authorities are exclusively useful for the employment of power. Now this president has some authorities to do something beneficiary for the people, these two would obviously be in conflict with that authority. Even if Mr. Khamenei himself one day becomes the president of Iran - that is being the president and holding the *Valiye Faqih* position at the same time, he can not do much as this will cause an internal conflict. As in the quality of the president he has to look after various social issues and be in charge of such things as internal and external policies, social policies etc, but at the same time in the quality of *Valiye Faqih* he has to stop himself from having these authorities. For instance if one has said to Khomeini that you have the right to express your opinions freely, this was not anything significant and could have been done even without a constitution, but if one had told him that you are entitled to control all the mass media in the country, this is problematic as the mission of the public mass media is free flow of information without censorship but if he is in charge of such an organization this means that the mass media will be subject to censorship. Because he should have considerations for his regime as he is the protector of the current system. So whatever he finds to be against the system he bans through censorship. Now imagine that there is a president who wants to give some information on the actual situation of the country. The leader will order the president not to release such information and he must obey. We heard recently that the president (Ahmadinejād) has announced that he wants to visit the prisons, the *Valiye Faqih* stops him, whereas this is a right of every ordinary citizens to be able to go and visit the prisons to see if human rights are observed there as every individual should have sovereignty in his own country. Whereas here we see this right is denied even to the president. So it is not accidental that throughout the Islamic Republic's history, Mr Khomeini had conflicts with me, after me he had conflicts with Khāmenei then the president of the country. Khāmenei reportedly said once that he used to go to the rooftop of his house to cry in silence as a result of these conflicts with Khomeini. Of course he did not have the courage to stand up to him. Then after this the leader had conflicts with the next president Hashemi Rafsanjāni, then with the successor Mr Khātami, and now with this last one (Ahmadinejād) who has been appointed by himself and he cannot yet tolerate him. This is due to the existential incompatibility that there is in this system. President of the republic, even an unlawful one, has to deal with the affairs of the people. Now there has even been proposals to remove the office of the presidency altogether and create a parliamentary system. But even that will not resolve the conflict. Let's suppose a prime minister was chosen by the parliament, the title is not important, so if the parliament

chose an individual in that quality, will he be able to perform his duties? Of course he will still have conflicts with this *Valiye Faqih* . So the only solution is the elimination of *velāyat-e faqih*.

**VNP:** *If the concept of velāyat-e faqih is removed from the Iranian Constitution and politics, do you think there could be a solution to the problems and conflicts of the Islamic Republic?*

**Banisadr:** What do we mean by the elimination of the *velāyat-e faqih*? The elimination needs to address the issues I explained before. That the human rights are endorsed in the Constitution, the right to popular sovereignty needs to be inserted in the Constitution. So first there should be a popular sovereignty, and the entire Constitution to be based on this pivotal rule, then yes we could have a democracy. It will become a republic as it is customary in the world. It might not be completely in line with our ideals, but our ideals are there to indicate the direction or the path. Those ideals might not be even practical today but those are there as a pattern and a guiding light.

**VNP:** *In your discussions you referred to the current social uprising in the region, the so-called Arab Spring. What similarities and differences do you see? There again we have on the one side a religious camp some of whom with strong religious convictions, such as the Salafies and on the other hand we have the democratic forces who seem to be in a frontal conflict. Are there any similarities here with the Iranian situation?*

**Banisadr:** There are major differences and a few similarities such as the fact that these are all popular uprisings but even here they are not as extensive as the Iranian Revolution. There in Iran we had a common social conscience which guided the revolutions based on the principles of independence and freedom. These concepts are still unknown in the Arabic world. Based on their religious teachings (Sunni) they are used to obey whoever holds the reins of power. So they are still unaware of the concept of independence in the process of decision making in their collective conscience. So it will be extremely easy to rebuild the tyranny there. In our case our government has moved forward as compared to theirs. Previously the local tyranny was based on three internal pillars and one external pillar. The first pillar was the monarchy and tribal systems and the army, the second was the clergy and the religious institutions, as in our system the religious institutions are not controlled by the government and have independence. The society has always undertaken the costs of the clerical system to keep them independent to be able to use them as the protectors of their rights against the tyranny of the ruling system to limit its aggressiveness. The last internal pillar was the great land owners in the villages and *bāzārs* in the cities. So out of these three main pillars, the last one (landowners) was removed by the *Shāh's* regime, the monarchy itself was removed by the Iranian Revolutions. So only one internal pillar is left that is the clergy - which is not a homogenous class as the traditional clergy do not approve of the current religious system. The external pillar is its international relations, conflict or peace relations with the West and with China and Russia. So in reality it is a single pillar regime. And the regimes which are based on one single foundation are not stable ones. They will collapse sooner or later, the strongest example of such a system was the Russian Empire which underwent the same process. It eliminated the church, removed the great landowners and removed the monarchy as well then it turned into a political party heading the bureaucratic system and the army, against the religious institutions. So although it was an empire and strongly dominating, it collapsed. This is the process that western countries have undergone too. But in the west the assumption



has been that they rely on popular sovereignty. Therefore they are based on a republican system which is a stable system because it is thought the people are indestructible.

**VNP:** *Based on these observations you will predict then that we will be moving towards a system in which the popular sovereignty will be gradually prevailing?*

**Banisadr:** Definitely this will be the case.

**VNP:** *But all the examples at hand show a return to the basics and in many cases the loss of the very limited freedoms they (Arabic countries) have obtained in these years.*

**Banisadr:** Yes this is true, in my view they need to experience beforehand lots of things before appreciating the value of certain ones. If you think about it these have been the societies who did not have a guiding ideology and this is very important. One could not establish a republic without having a proper definition of the concepts. It requires its specific guidelines. You see now this shortage in Egypt, in Tunisia etc. I do not trust the religious factions who have come to power in Egypt. As these have only one perception of power from Islam which as I said has nothing to do with the Quran. All these years they have only thought about seizing the power. This is true for the Muslim Brotherhood, we do not even talk about the Salafists. These have never thought about the independence and freedom of human beings. They have only thought about power. But these are well organized. These were not the ones who made the revolutions, but others did not have a guiding ideology, an alternative, and an organization. Therefore they lost the game to these groups, which was not unexpected. During these uprising I had an interview with the news channel France24 who asked me if I had a message for these countries. I replied that Egyptians and Tunisians need to immediately come up with their political alternatives. If not, the vacuum is always filled with power. This has been the rule since eternity. The vacuum is always filled with the oppressing power. So if they do not have a political alternative for the collapsing regimes; their regimes will fall but they will not gain sovereignty. So now Mr Morsi has substituted Mubarak. He would either go down the path leading to where the religion's place should be that is only inside people's heads and not in government, or alternatively if religion enters the government it becomes a tool in the hands of the government which will follow the Iranian experience.

**VNP:** *A trend of socio-political scholars such as Arvand Abrahamin sustains that in Iran the real conflict is not between the religious ideology and republican notions. What we have there is the actualization of populist ideologies disguised in religious vest.*

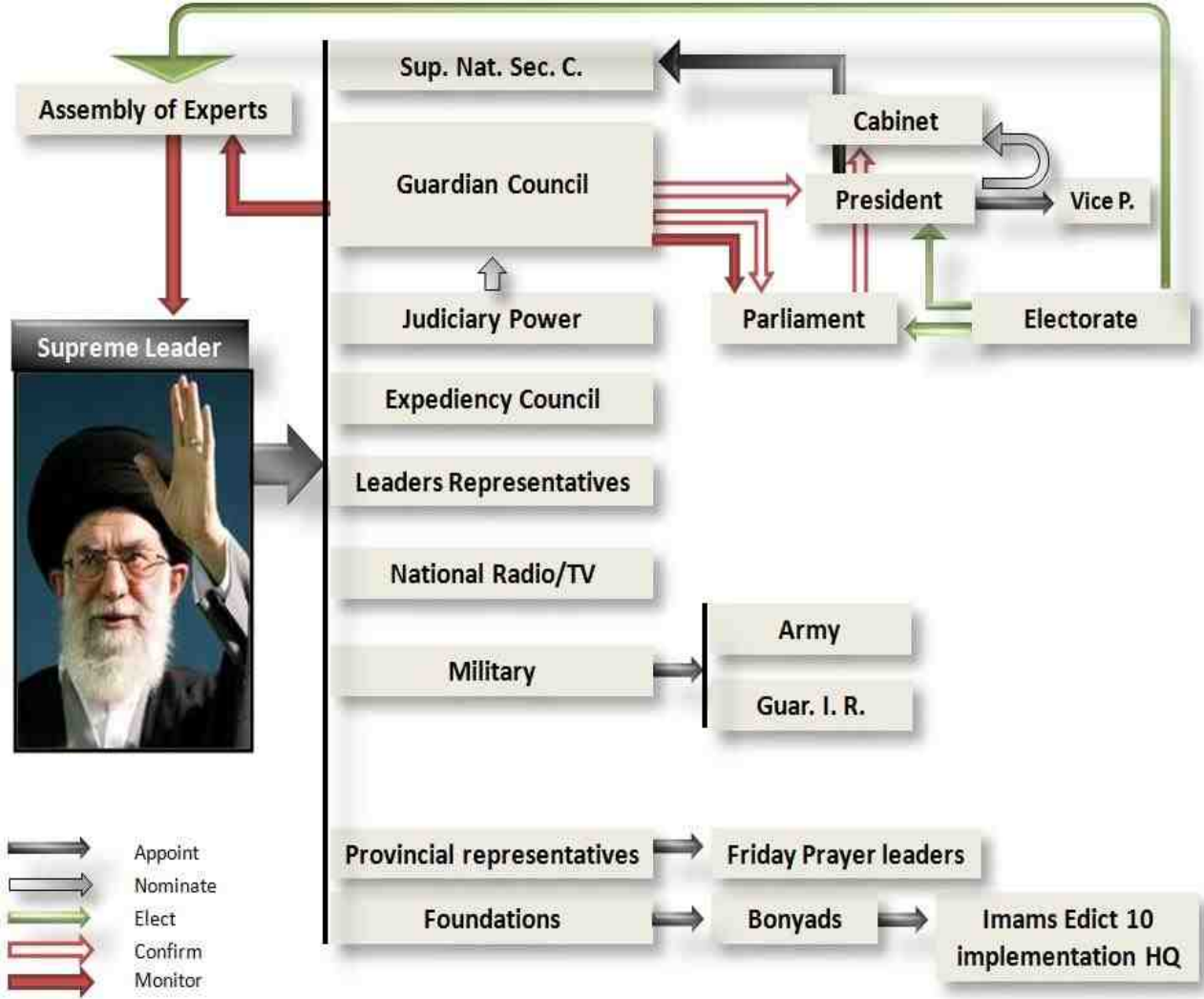
**Banisadr:** I have dedicated a chapter of my research to the idea of populist propaganda. There is no doubt that Khomeini had used populist strategies to deceive the people. But the important question will be when did he use this populist deception? When he was here in France he could not use the populist language. Paris is the crossroads of intellectual ideologies and international information. If he attempted to use such strategies they would have immediately unveiled his deception. So his populist strategies were handy in Tehran because it is accompanied by a stick there. If someone ever denounces the populist deceptions he will be hit on the head by that stick. But in France if he dared to use such language and strategies he would be publicly ridiculed and have to stay in France forever. Here he only emphasized on the notion of freedom. There is nothing of populism in declaring that the sovereignty belongs to the people. This is only affirming a right. When he was explicitly asked about the nature of the republican system that he had

in mind, he replied that it would be a republic like France. Here there is no deception as a Frenchman knows what a republic is and how the French Republic is. But in Tehran things changed. The first practical challenge was the question of the *hejāb* (women's Islamic veils). I went to see him and said that you mentioned in France that the women are free to choose their clothing? He replied: that was a *maslahat* there (precautionary dissimulation). I replied this is a Machiavellian strategy, even Machiavelli did not act like this. Machiavelli said that you have to act covertly, as if you have not done anything. Not this way that you said something yesterday and today you say something completely contrary. Like his other discourse which is available online in which he regrets not having acted in a "revolutionary manner" and executed all the opposition members in prison. These are of course populism and he can be sure that no one can reply back saying: "if you had said these things the first day, they would have taken you to a psychiatric hospital instead of making you a leader"! But of course no one dares to say so as the club-wielders of the regime would silence them immediately. So populism is not a language that you can use anywhere. Of course it could be used even in the west such as the extreme right in the French elections used such a language, and other parties too. But here it was critically analysed. I am not saying that this criticism completely removed the effects of that populist demagogy, but it certainly reduced the effects. We saw that in the US elections Mr Mitt Romney used this language a lot, but in the end he was not elected. So the more a democracy is effective, the more the populism become inefficient. Populism has been shown to work more effectively when the society is in a certain difficult situation and needs quick forceful solutions. Such as during Hitler's time when Germany has lost the previous war and there was high inflation and many social problems, so he needed to create an imaginary enemy in the form of the Jews and promise to resolve all problems. So in a free society when things work properly the populism can not work. So the conclusion is that yes Khomeini used populist strategies. By the way it is also true that even their version of traditional *fiqh* could still be compatible with democracy, as I mentioned the Quran has nothing to do with their version of *fiqh* which is based on the Greek philosophy and the language is the language of power. But yet it will not interfere with the democracy as in order to interfere with the republican ideas it should deny any free will by the human beings and deny him all powers of will and decision making. Imagine a Stalinist system which believes in the historical predestination declaring that human beings could at most act in line with the predetermined historical destiny. By these declarations you can effectively turn the proletariat party into a stick with which to hit others on the head, but the traditional *fiqh* would not be compatible with this.

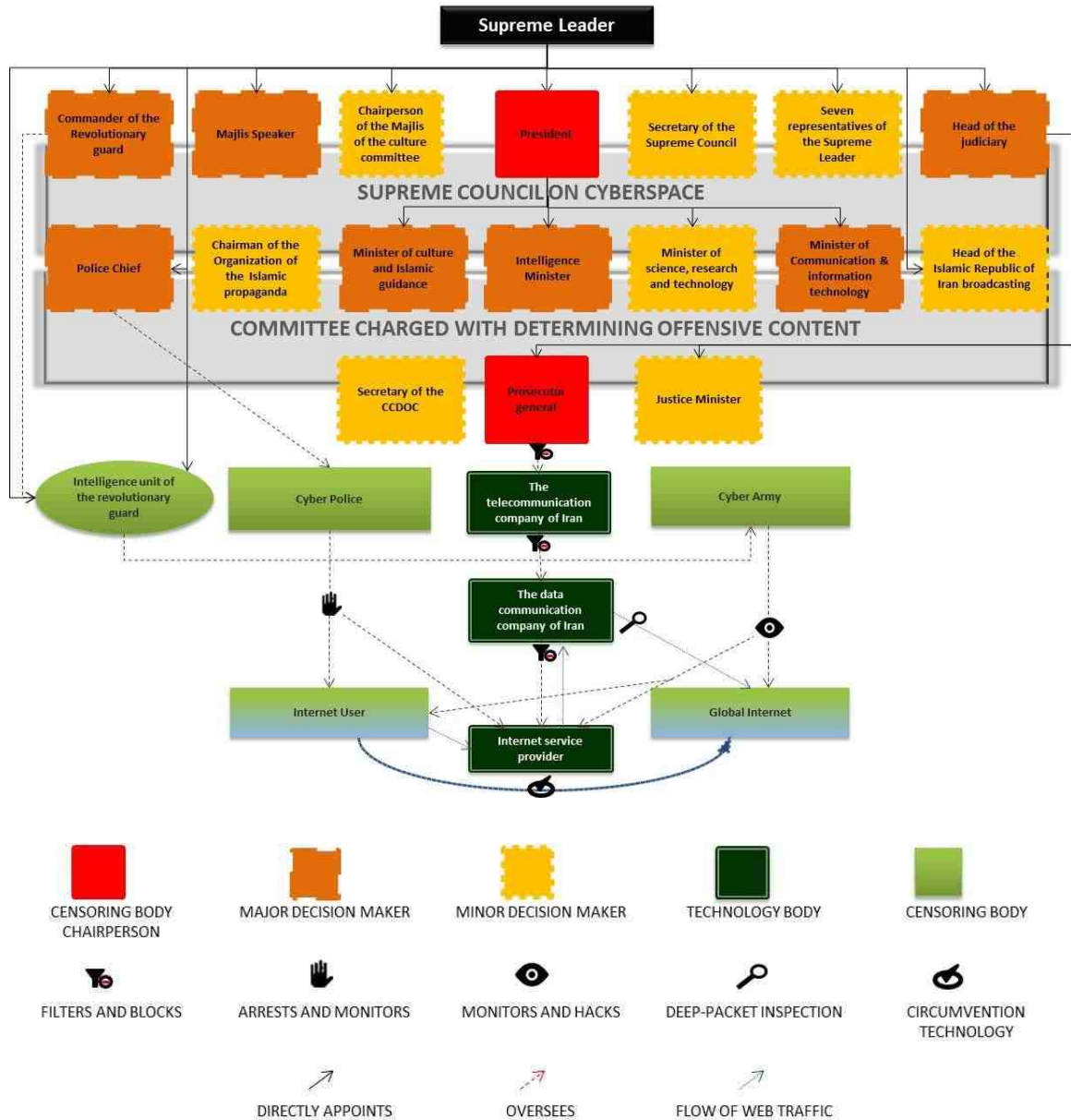
**VNP:** *Thank you very much Mr Banisadr for your time and extensive replies to my questions*

Vahid Nick Pay, Paris November 2012

# Appendix III Institutional Power in the Islamic Republic



# Appendix IV Internet Control Structure<sup>778</sup>



<sup>778</sup> See page 270 for source

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