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The Constitutionalism of Ruhollah Khomeini's Theory of Guardianship

By

Nura Alia Hossainzadeh

A dissertation submitted in partial satisfaction of the
requirements for the degree of
Doctor of Philosophy
in
Political Science
in the
Graduate Division
of the
University of California, Berkeley

Committee in charge:

Professor Mark Bevir, Chair

Professor Kinch Hoekstra

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Professor Shannon C. Stimson

Summer 2016

Abstract

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Nura Alia Hossainzadeh

Doctor of Philosophy in Political Science

University of California, Berkeley

Professor Mark Bevir, Chair

In this dissertation, I study the political thought of a scholar and political actor who has long been viewed as a cultural Other: Ayatollah Ruhollah Khomeini. To understand Khomeini's thought, or the thought of any other culturally unfamiliar author, I argue that it is essential to engage in a historical study of the traditions of thought that the author interprets and elaborates. Through a study of many of Khomeini's political writings—written as early as 1943 and as late as 1989—I have determined that Khomeini was influenced by four traditions of thought: the Shi'a jurisprudential tradition of political theory, the Usuli legal tradition, the Islamic constitutionalist tradition, and more marginally, the Islamic mystical-philosophical tradition.

As a scholar of the Shi'a jurisprudential tradition of political theory, Khomeini holds that Islamic jurists must be granted a powerful role in government. The secondary literature fails to recognize, however, the way in which Khomeini's Islamic constitutionalist ideas impact his theorization of the political role of the jurist, and at times, it incorrectly presumes that the guardian is the mystic or philosopher depicted in the Islamic mystical-philosophical tradition. As a constitutionalist, Khomeini argues that consent and popular representation are necessary ingredients of legitimate government and that the *shari'a* can be supplemented or aspects of it even suspended by law drafted in a parliament. Khomeini's constitutionalism is based upon tenets of the Usuli legal tradition, which says that Islamic law is underwritten by principles from which can be deduced new law, law that is human and contestable.

The influence of the Islamic constitutionalist tradition on Khomeini's thought is most evident in his 1943 work, *The Unveiling of Secrets*, as well as in his post-revolutionary writings. Khomeini's more widely read work, *Islamic Government*, does not include manifestly constitutionalist themes, but I argue that it has been misinterpreted to espouse ideas that contradict Islamic constitutionalism. Khomeini's writings, as well as the institutions of government that were inspired by his theory, continue to be subjects of interest for conservative and reformist scholars and actors, and his writings are invoked for support for perspectives across the political spectrum. Beyond helping us to understand contemporary debates in the Islamic Republic, Khomeini's political writings are a source of concepts and arguments that may be marshalled and elaborated in novel Islamic theories of government and politics.

*To Grandpa and Nonna, Eugene Barlow Gilbert & Nora Bianchini Gilbert
who left as I was writing this
but whose memory and love helped to sustain me through the end of it*

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Last but certainly not least, I would like to thank my mom, who cultivated in me a love of learning and has entertained my questions about the universe since I was a little girl; my dad, grandparents, and sisters, whose love and support has been tangible and unwavering; and my husband Reza, who walked into my life only three years ago but who has given me an amount of support, encouragement, and love that could fill centuries.

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Chapter 1: Cross-Cultural Political Theory, Four Genres

Western political theorists have, since the mid-1990'sⁱ, become increasingly interested in studying works of political theory produced by authors who lived, thought, and wrote in unfamiliar cultural and intellectual contexts, works that are often, but not always, written in languages other than English but are certainly outside of the “canon” of political philosophy commonly taught to students in Western universities. Debates have emerged since this time about how to integrate these works into the discipline. While the traditional canon of political philosophy is dangerously narrow, the world of political philosophy outside of the West is vast and unfamiliar, inspiring debate on how, or whether, political theorists can ever communicate across cultural distances.

In this chapter, I argue that the beliefs of authors who write in these unfamiliar contexts can best be understood if we study their ideas historically. This entails examining how individual agents use their reason to differently interpret, modify, or perhaps reject the ideas they inherit from teachers. Traditions of thought are thus the object of study of historians, and traditions are constituted by ideas that evolve through time as pupils learn from teachers—where these teachers need not be formal teachers but instead any person, including friends, public figures, long-deceased philosophers, who transmits an idea—and these pupils become teachers themselves.ⁱⁱ

In this chapter, I contrast the historical approach with three other methods of interpreting culturally unfamiliar authors: first, what I call the positivist approach, second, the dialogical approach, and third, the pearl-diving approach. I critique positivists for explaining beliefs by reference to formal social and psychological laws and theorists of dialogue for often holding that cross-cultural understanding and agreement is limited, for often neglecting historical study in their engagement with the other, and for undertheorizing their interpretive methodology. I do not critique but instead distinguish my approach from the pearl-diving approach, which is not incompatible with the historical approach because pearl-divers study culturally unfamiliar texts for an altogether different purpose—rather than seeking primarily to understand culturally unfamiliar texts, they seek to use them instrumentally. However, if a pearl-diver claimed that he could both understand the beliefs of authors, without undertaking the necessary historical study, and then use their writings instrumentally, then his brand of pearl-diving would stand at odds with the historical approach. The historian maintains that historical study must inform any claim about the meaning of an author's beliefs. Crucially, I do not claim that the interpretive approaches of political theorists who have produced writings on cross-cultural political theory necessarily fit into any one of three categories I describe. In fact, the interpretive approaches of the authors I discuss in this chapter cannot be categorized neatly into any one category. Instead, I argue that many of the most prolific and well-known cross-cultural political theorists do, at times, examine the historical lineages of ideas, but then drift into interpreting texts by means of other methodologies.

Here, a note on terminology is in order. Often, the work of scholars who write on political theory produced in unfamiliar cultural contexts has been characterized as “non-Western” political theory, but because of the obvious difficulties of using the terms “non-Western” and “Western”—such as the internal diversity and ill-defined boundaries of West and non-West and the interpenetration of Western and non-Western ideas—I avoid using this term in this chapter. More commonly, this work has been characterized as “comparative political theory,” a label often adopted by scholars perhaps because the term mirrors another subfield in political science—comparative politics—which includes the study of non-Western government and politics, or perhaps because looking from the familiar to the unfamiliar is believed to always involve comparison (but then, political theory proper is often comparative as well).ⁱⁱⁱ I avoid using this term, too, not only because it is ambiguous, but because it is often misunderstood to imply that studying culturally unfamiliar texts must necessarily involve a comparative element, though many of the interpretive approaches I describe in this chapter, including my own, do not necessitate comparison in any systematic way. Instead, in this chapter, I use the term cross-cultural political theory, since this term implies no particular interpretive method yet can be associated with the questions that lie at the center of this chapter: how do we understand and interpret authors who write in contexts that were shaped by social and cultural customs, languages, intellectual traditions, experiences, and histories that are unfamiliar to us? Relatedly, if this context is familiar to the scholar—if the scholar happens to share much of the same background as the writer he studies—how does the scholar bring his reader to comprehend these authors?

But isn't this a question that political theorists ask all of the time? Don't even the most mainstream of canonical thinkers write in contexts that are unfamiliar in all or most of these ways? I agree, and I argue that the historical study that I describe and recommend should be undertaken by any scholar who seeks to translate an author's ideas, whether that author writes in historically or culturally unfamiliar times and places. The beliefs of authors who write in different time periods yet are within the boundaries of what one considers to be the “West,” I hold, must also be deciphered by including historical study in his scholarly exploration of and engagement with the author's works.

Andrew March and Diego von Vacano have recently written on what it means to study cross-cultural political theory, surveying various approaches in recent literature to understanding culturally unfamiliar texts.^{iv} This chapter can be distinguished from March and von Vacano's work in two ways. First, these authors are interested, on the one hand, in categorizing approaches to cross-cultural political theory according to the objectives that the cross-cultural political theorist wishes to achieve, whereas I am interested in categorizing approaches to cross-cultural political theory according to the argument made for how a culturally unfamiliar author can best be understood. Von Vacano lists “four normative paradigms”^v for doing cross-cultural comparative political theory, and March lists five “justifications” for doing, in his words, “comparative political theory.”^{vi} While cross-cultural political theorists do, in fact, often study culturally unfamiliar authors with different objectives in mind, and while the objectives that they

do have may impact the interpretive method they use to study these authors, I am interested in examining their interpretive methodologies rather than their objectives.

Second, although von Vacano also examines, in the second part of his article, “interpretive paradigms” of cross-cultural political theorizing,^{vii} and in this part of his article, he shares my question—I would suggest a different schema of interpretive paradigms than the ones von Vacano suggests. Whereas von Vacano begins with the work of individual authors and then creates a list of interpretive paradigms composed of those paradigms he finds in the work he studies—where one or more authors, therefore, are neatly categorized under each paradigm—I begin with ideal-types, interpretive methodologies that *could* be employed to understand culturally unfamiliar texts but are not *necessarily* employed by any particular author. In fact, I argue that the authors I discuss do not fit neatly into any one ideal-type. Because von Vacano abstracts from the work of particular authors to create his listing of interpretive paradigms, his paradigms are less inclusive than my ideal-types and more reliant on a how a handful of political theorists study culturally unfamiliar texts.

Dialogical Cross-Cultural Political Theory

One approach to understanding and engaging with culturally unfamiliar texts is a dialogical approach that draws primarily on the writings of Hans-Georg Gadamer. The most effective means of communication and understanding, according to this approach, is dialogue, where individuals struggle to open themselves up to meanings and ideas that are foreign to them. The scholar of dialogue holds that individuals are situated beings, thinking within a web of meaning. As a consequence of this situatedness, the dialogical scholar believes that at the start of a dialogue, an individual characterizes his interlocutor’s beliefs in a way that is inaccurate, since he perceives these beliefs in terms derived from his own worldview and the web of meanings to which he has access. The interlocutor—or more accurately, the text he reads, since these theorists describe a method of interpreting a text and not conversing with a person—will resist this characterization, and the scholar will come to realize views of the author he studies are not captured accurately by the terms that the theorist uses to describe them.^{viii} As mentioned earlier, it is possible that the theorist of dialogue shares the cultural background of the author she studies, and in this case, her task is different—it is not to use dialogue to achieve understanding herself but instead to bring her reader to understand the culturally unfamiliar author by walking the reader through a dialogical engagement with the text she studies.

The theorist of dialogue is attentive to two distinct and, at times, conflicting concerns. On the one hand, this theorist cautions against hastily concluding that understanding has been achieved, and on the other, the theorist cautions against hastily concluding that understanding cannot be achieved. The first propensity is tied inextricably to the theorist’s outlook on epistemology. Since beliefs are situated within an expansive web, comprised of ideas we acquire over our life time and which continue to change as time moves forward, understanding is an incredibly complex and difficult task that involves more than just a narrow focus on individual beliefs. Beliefs can only be understood by reference to the other ideas that are preliminary to or

outgrowths of that belief, informing and shaping the content of the belief itself.^{ix} Because knowledge assumes this form, understanding must always involve widening our examination well beyond the author's thoughts on a particular topic; we must situate the author's beliefs in a broader web of beliefs. Understanding is thus not achieved through comparing concepts familiar to a scholar (or to his audience) to the author he studies, since each of these sets of concepts are embedded in a vastly different web of concepts that impact their content. While two authors, for example, use the term "justice" in their writings, each author's understanding of this term is embedded in a vast context of belief, so that it is impossible to claim that two notions of justice are identical or even fully to explain the ways in which they are similar and different. Since understanding these webs of beliefs comprehensively is a tremendous task, understanding is always partial and incomplete. The theorist of dialogue reminds us of this incompleteness.

We must be careful, therefore, not to assimilate the concepts we seek to explain to our own (or concepts familiar to our audience), presuming cross-cultural overlap between concepts before we have undertaken the necessary exploration of the web in which these concepts are embedded. Insofar as we think and perceive in terms of our own webs of belief, our view of the other is obstructed, and it is only by dialoguing with a cultural other—or being guided through dialogue by a scholar familiar with that cultural world—that we can come to recognize that we misunderstand them. Dialogical theorists invoke Gadamer's view that there is a "horizon" beyond which we cannot see, that our beliefs and experiences delineate and circumscribe the world that we perceive and understand. When a scholar or a reader is not cognizant of this, many theorists of dialogue argue that his interpretation of the culturally unfamiliar is "hegemonic" since it imposes concepts on the author that he incorrectly presumes to be "universal."^x Anthony Parel says that Western authors often assume that the text they write are "products of universal reason itself," not having studied different modes of reason in the culturally unfamiliar and thus interpreting culturally unfamiliar texts on the basis of a reason that is not, in fact, universal,^{xi} while Fred Dallmayr says that he "has been made uneasy with a flattening out of difference."^{xii}

Theorists of dialogue caution us not only against hastily declaring that cross-cultural understanding has been achieved but also that cross-cultural agreement has been achieved. This second claim is based, in part, on the first—when we do not understand the holistic web in which beliefs are embedded, we cannot claim to agree with a certain belief—but it is also distinct from the first claim because theorists of dialogue often hold that members of cultural tradition often have normative commitments that they cannot abandon by virtue of their membership in those traditions. For example, Fred Dallmayr says in his article, "Beyond Monologue: For a Comparative Political Theory," that "every effort at understanding encounters limits or dimensions of difference that need to be respected,"^{xiii} though he grants that not every difference is tolerable. He stops short of saying that any *particular* difference is unbridgeable, but he assumes that an essential feature of the relationship between cultures is that there will always be differences that separate them, differences that cannot be mediated or overcome. This argument is often underwritten by the concern mentioned above—that we must not assimilate or exercise hegemony over the culturally unfamiliar, and the distinctiveness of the culturally unfamiliar must

not be ignored, minimized, or considered inferior from the outset. Dallmayr says that studying the culturally unfamiliar must involve “respect[ing] otherness without assimilation.”^{xiv} Culturally unfamiliar authors must not be presumed to be similar to us or to have come to the same conclusions as we have—or be expected to come to these conclusions, or adopt certain positions. Instead, through dialogue, we must aim to understand and negotiate areas of agreement and disagreement with a culturally unfamiliar author. Dialogue is a fruitful method of learning not only because individuals think within different webs of meaning and dialogue can illuminate these differences, but because individuals tend to be committed to certain values and principles, and dialogue is an effective way to determine what room these commitments leave for agreement between scholars of different traditions. If a scholar shares a cultural background with the author he studies—and therefore, in the view of the theorist of dialogue, must share certain of his normative commitments—the scholar may facilitate dialogue between the author he studies and his Western audience, exploring differences in normative commitments, the implications of these disagreements, and how these commitments may nonetheless leave space open for some agreement.

While on the one hand, the theorist of dialogue cautions against hastily presuming that understanding and agreement can be achieved, on the other, he is equally attentive to the prospect of actually achieving some level of understanding and agreement. The theorist endeavors to strike a balance between remaining hopeful about understanding and agreement while recognizing that there are always limits to understanding and agreement. To the theorist of dialogue, understanding involves a “fusion of horizons” where we may come to internalize aspects of our interlocutor’s horizon but in a way that never remains entirely unaffected by our own horizon of vision. Understanding is a fusion, and not an appropriation.^{xv}

The historical approach differs in two main ways from the dialogical approach. On the one hand, the historian would criticize the theorist of dialogue for a tendency to be too tentative in her explanations of the beliefs of culturally unfamiliar authors. The historian would agree that understanding cannot be achieved simply by matching our own ideas with those of the authors that we read; each of us, the historian recognizes, holds beliefs that are rooted deeply in the traditions of thought that are often part of an intellectual heritage that is distinct from the heritage of the author that we read. However, the historian would argue that the theorist of dialogue must be more nuanced about his claim that understanding is always a fusion. While at the very beginning of a study of a non-Western author, when we have barely made headway into understanding how traditions of thought impact an author’s beliefs, and we comprehend the authors beliefs using our own terms—infused with our own histories—then understanding may be accurately called a “fusion.” As we progress, or as we are guided through a dialogical engagement with a non-Western text by a non-Western scholar, understanding is less accurately described as a “fusion” and becomes more of an “impacted” understanding, an understanding that must still be untangled from concepts stemming from our own webs of belief but more and more becomes informed by the traditions of thought that influenced the author we study. As we move closer to what we see in the distance, the picture becomes less blurry.

Theorists of dialogue often waiver between a progressive notion of understanding and an emphasis, instead, on the perpetual difficulty and incompleteness of understanding. Dallmayr, for example, says that Gadamer's writings "shun[ned] the telos of consensual convergence in favor of a nonassimilative stance of 'letting be'."^{xvi} Some theorists of dialogue have a more progressive notion of understanding than others; Habermas, for example, speaks of a "growing convergence" between self and other,^{xvii} while Dallmayr also says that we must have an "unlimited openness to horizons," implying that we must always be open to the prospect of increased understanding or deeper agreement.^{xviii}

While the historian agrees that consensual convergence is often not possible, the alternative is not simply to "let the culturally unfamiliar author be" in his incomprehensibility and his normative difference. Instead, the theorist of dialogue should aim to achieve an objective understanding of and/or agreement with the non-Western, or to lead her readers to achieve this objective understanding and/or agreement, recognizing that this will never be fully achieved. That objectivity cannot be pronounced once and for all should not prevent the theorist of dialogue from making objective understanding her aim. Otherwise, the theorist of dialogue circumscribes her ambition within a dialogue that is minimally progressive and hampered by prejudices that they believe may never, or seldom, be overcome. For fear that a scholar or a reader will not recognize cultural difference, assimilating unfamiliar ideas into his own repertoire of ideas and remaining unchallenged and unprovoked by difference, theorists of dialogue too quickly assume radical and virtually unbridgeable difference. Aiming to avoid one kind of mischaracterization, one caused by a narrowness of vision and a failure to appreciate difference, they inadvertently fall into authoring another kind of mischaracterization, one caused by an acute awareness of the possibility of difference, but then a tendency to exaggerate difference.^{xix}

Relatedly, the historian holds that just as scholars and readers may progress toward an objective understanding of an author's writings by studying the traditions of thought that inform the author's beliefs, he also does not presume that the authors being studied are wed to a belief in any single principle or tenet of a given tradition. Just because an author has manifestly been influenced by Tradition X does not mean he must be presume to hold Belief Y, held widely, but not universally, by those influenced by Tradition X. Similarly, the scholar who conducts the study, or his audience, is not necessarily devoted to a belief in Z, held widely by those influenced by a Tradition A. Just as scholars and their audiences may progress toward an objective understanding of culturally unfamiliar authors, in this way detaching themselves from the meanings that inhabit their intellectual worlds, they may also come to agree with culturally unfamiliar authors, in this way detaching themselves from the commitments that are widespread in their intellectual worlds. To the historian, membership in a tradition of thought does not indicate fidelity to any or all normative principles associated with that tradition. While traditions of thought influence thinking, they do not exercise a hegemonic hold over thinking, whether our own or the authors we study.^{xx}

Insofar as understanding of and agreement with the culturally unfamiliar is always limited, theorists of dialogue engage in a form of pearl-diving, a method of textual engagement

described below. When the culturally unfamiliar is foreign, incomprehensible, or normatively unacceptable, the theorist of dialogue no longer seeks to understand or engage or to help her audience understand or engage. She continues to study the author only because there are areas of the author's thought that she can understand and with which she can agree. Or, those areas of foreignness can help to provoke her own thought to move in new and interesting directions (even without her fully comprehending or embracing this foreignness.) Overall, the aim of her enterprise is not the achievement of understanding but the instead the achievement of aims that fall short of understanding but are valuable nonetheless.

While on the one hand, the historian would criticize the theorist of dialogue for her pessimistic outlook on the potential for understanding and agreement, on the other, the historian is also critical of theorists of dialogue who provide an account of how understanding and potentially *does* occur (and not just the ways in which these are inhibited), but do so insufficiently. Historical study must play a key role in any dialogue. While theorists of dialogue study the web of beliefs in which the author's arguments are embedded, they may put varying degrees of emphasis on conducting historical studies of traditions of thought to understand this web of beliefs or to facilitate their audience's understanding of this web. Theorists of dialogue may emphasize or recommend a variety of interpretive methods, such as "existential" immersion in the lifeworld of the author being studied,^{xxi} or perhaps a study of the social context in which the author wrote and by which he was influenced, but the historian would argue that it is crucial for the scholar to identify the traditions of thought from which the author derived his views in order to fully understand an author's beliefs. In this way, historical study is not at odds with the dialogical method—and in fact, dialoguing with culturally unfamiliar authors may be an effective way to understand and engage with them, as long as this dialogue involves historical study of the beliefs of our interlocutors as part of the process of dialogue.

More generally, scholars of dialogue are often unclear about their methodological approach. Leaving aside our skepticism for the idea that understanding must always be a fusion, we may speak using the terms of a theorist of dialogue and ask, what does a "fusion" of horizons entail, and what ensures that such a fusion will occur? Instead of describing their interpretive methodology in detail, theorists of dialogue often speak more abstractly about the form of engagement with the culturally unfamiliar—the dialogue—rather than the specific tools that must be used to probe the content of culturally unfamiliar ideas. Theorists of dialogue must be methodologically clear about the way in which they "hear" what their interlocutor is saying, and in the historian's view, "hearing" full what their interlocutor has to say must involve historical study of the traditions of thought that form the origins of the interlocutor's ideas.

Farah Godrej's Approach to Cross-Cultural Political Theory

Farah Godrej's approach to cross-cultural political theorizing is, in part, dialogical. In her book, *Cosmopolitan Political Thought*, she argues that theorists should engage in a dialogical manner with texts written by authors outside of their cultural traditions. Also like dialogical theorists, she argues that we must be aware of our own subjectivity and the way in which it

impacts our understanding of unfamiliar texts, and we must accept that there are certain normative positions to which our interlocutors and we remain committed—an inevitability that may lead us to choose not to engage in dialogue with interlocutors we believe are committed to ideas that we can never accept, or ideas that are so one-dimensional that they can never provoke us into thinking in new and interesting ways. The dialogical approach she recommends, she says, “rightly reminds us of the importance of the reader’s subjectivity, but also of the extent to which it is tied to categories and frameworks that may be entirely alien to the text one is encountering.”^{xxii} To mitigate the extent to which our understanding of culturally unfamiliar views is limited by our horizons of vision, she recommends, in what is the first stage of the dialogue, “existential immersion” in the culturally unfamiliar text and in the worldview of its author.^{xxiii} This involves more than just intellectual engagement with the text, but actually “learn[ing] to live by the very ideas expressed in the text.”^{xxiv} In the second stage of the dialogue, the scholar attempts to represent the culturally unfamiliar author’s ideas in terms that the scholar’s native community may understand,^{xxv} and in the final stage, the insight that the individual has gained from this immersion is brought to bear by the scholar on her own positions and the debates that she engages in within her own intellectual community.^{xxvi}

Godrej’s approach is historical insofar as she also argues that these stages of dialogical engagement must be preceded by historical study. Like the historian, and unlike many other theorists of dialogue, Godrej says that a study of a culturally unfamiliar author must begin with a historical study of the traditions of thought that influenced the author. Like theorists of dialogue, Godrej is attentive to the fact that when a scholar studies a culturally unfamiliar author, he removes the author’s ideas from their original context and studies those ideas by means of resources available to him. Godrej shares this insight with dialogical scholars, but like the historian, she emphasizes that it is important for an author to place the ideas she encounters and interprets within historical traditions. In fact, the “prerequisite” for interpreting across cultural boundaries, for taking ideas out of their original contexts and bringing them to bear on one’s own questions, “will be a firm grounding within the heuristic value of intellectual lineages. It will require a nuanced and fully informed respect for the shaping power of traditions over their own intellectual products.”^{xxvii} Though the historian would argue that individuals—and not traditions—have “shaping power...over their own intellectual products,” Godrej’s approach overlaps in a key way with the historical approach: she emphasizes that historical investigation is a prerequisite to fruitful dialogue.

As a theorist of dialogue, and unlike our historian, Godrej accepts the presumption that there are limits to our ability to engage with culturally unfamiliar texts; in particular, there may be commitments held by each partner in dialogue that each cannot abandon. Godrej says that she is not hopeful about engaging with orthodox, as opposed to peripheral or dissenting views. She recognizes that, on the one hand, if our aim is to “learn from ideas or texts that speak from beyond our traditions, then...we require a confrontation with their radical alienness, rather than with familiarity.”^{xxviii} However, her hope is not that we may learn just anything from these texts, but that this learning will help us to resolve “familiar dilemmas.”

If we pursue insight on familiar dilemmas, she says, we must choose interlocutors who are likely to provide us with this insight. The way in which we must choose our interlocutors, however, is a rather blunt tool. If we are motivated by the prospect of finding answers to questions we held before embarking upon our study of a culturally unfamiliar author, she says we must avoid dialoguing with any “orthodox” author. It may be more useful for us to study not the tradition’s orthodox center, which “often presents the scholar with alien, morally distinct and autonomous views,” and where authors are more likely to “be attached to the internal concerns of their tradition,” but instead the periphery of a tradition where it is more likely that we will “encounter plurality, synthesis, and the increasing familiarity of hybridized views, rather than the radical alienness of orthodoxy.”^{xxxix} Essentially, Godrej says that because their beliefs tend to be less alien, those thinkers who dissent from or lie at the boundaries of a specific tradition of thought are more likely to be interesting interlocutors, and we are more likely to find sufficient overlap with their thought to be able to engage in fruitful dialogue with them. Orthodox views are unlikely to be convincing to us, and therefore if our goal is “transcultural learning capable of probing the Westcentric context in a relevant way,” we often may find ourselves less interested in understanding and thinking critically about orthodox views.^{xxx} She accepts, however, that there may be times that orthodox thinkers make good partners in dialogue—“it may also be the case that there are other thinkers, texts or concepts across a variety of traditions that can be both radically alien in their deep orthodoxy, yet provide transcultural normative insights,” she says^{xxxi}--but she implies that it is more often the case that orthodox scholars do not provide us with these insights.

To illustrate her point, Godrej points to orthodox Hindu thinkers who believe in the Hindu caste hierarchy, arguing that dialogue with these thinkers on political matters is unlikely to be fruitful. Many orthodox Hindu thinkers cite the Manusmriti, a Brahminical text that outlines ritual behaviors of social interaction between members of different castes. What interest would a Western scholar have in studying an orthodox thinker who relies on the Manusmriti as an authoritative text, she asks? “It is difficult to see,” she says, “how an encounter between such interlocutors would be anything other than a face-off between the most simple basic doctrinal commitments of the given views, bringing into relief their most fundamental moral—and metaphysical—commitments.”^{xxxii}

While it may be the case that a Western scholar may find the orthodox thinker uninteresting and unconvincing, the historian would argue that this assumption cannot be made on the basis of his membership in an orthodox tradition of thought, prior to engaging in a historical study of the thinker’s writings. The historian would argue that predictions cannot be made about the fruitfulness of dialogue with a given author based on whether the author is considered orthodox, or based on any characterization of the author’s thought that is made prior to putting due effort into understanding the author’s thought historically. If a scholar committed first to a thorough historical study of an author, then the scholar would be able to more accurately discern whether dialogue can yield fruitful results, including by helping the Western author to gain insight on his own questions.

Just as the historian would argue that historical study must inform any decision to engage or not to engage with an orthodox author, the historian would argue that it cannot be assumed, before historical study, that authors who write on the periphery of traditions will necessarily be more interesting and similar to the scholar or would be a source of theoretical resources that are useful to the Western scholar. Godrej holds Gandhi up as an example of an author who writes on the periphery of the Hindu tradition. She argues that we may “creatively import” elements of his philosophy of non-violent living (*ahimsa*) to apply to our civic life; this philosophy of non-violence may serve as the basis for how multi-religious polities arbitrate truth claims.^{xxxiii} To make Gandhi more palatable and instructive, she says that we can set aside his metaphysical commitments. The Western scholar would not be interested, she assumes, in those elements of Gandhi’s non-violent philosophy that are tied to Vedic Hindu metaphysical assumptions. Most centrally, these include, first, the idea that metaphysical truth is so multifaceted that no one individual can grasp it and therefore all individuals must feel free to present their perceptions of truth, and second, the idea that an individual must act *dharmically*, in a way that is aligned with divinity, such that one engages in a non-violent manner with the world and the obstacles it presents, including in one’s political life.^{xxxiv} These metaphysical tenets need not be accepted by the Western scholar. Instead, the scholar can recommend the specific practices that Gandhi says both foregrounds and constitutes acting non-violently as they participate in public debate over the law. These practices include a willingness to critique one’s own view, to engage in rational negotiation, and, if necessary, to “suffer non-violently, undergo punishment, and invite legal sanction” for one’s views.^{xxxv}

What gives value to these practices, if Godrej holds that the metaphysical assumptions are dispensable to the civic virtue, if not the religious creed, of *ahimsa*? And while these practices would sound noble and worthy to most who hear about them, what do they mean concretely? For example, are there limits to the extent to which or the ways in which one may accept to suffer on behalf of one’s cause? To fully understand what it means to practice non-violence as a civic virtue and to discover the value of this virtue, perhaps we must turn to the metaphysical principles that underlie and inspire these practices. Before we can declare Gandhi to be a helpful teacher of civic principles and an interesting, thought-provoking, or inspiring interlocutor, we must engage fully with his intellectual heritage, including the religious tradition to which he was so committed. We cannot presume based on cursory knowledge of and preliminary attraction to certain elements of Gandhi’s beliefs that he will be a valuable partner to dialogue. We can only arrive at this judgment after engaging in some historical study of the traditions that form that basis of his views, including the metaphysical aspects of Hindu religious thought that underlie his political teachings. Godrej, like many other theorists of dialogue, insufficiently incorporates historical study in her recommended approach—in particular, she does not recognize that historical study must inform not only the dialogue itself, but the choice of interlocutor.

While Godrej recommends a dialogical mode of engagement with culturally unfamiliar authors and is therefore a theorist of dialogue, she also may be considered a pearl-diver. Insofar

as Godrej is concerned primarily with finding resolution to familiar dilemmas instead of understanding the dilemmas the authors themselves sought to address, she engages in a form of pearl-diving. Godrej is not necessarily concerned with understanding these texts as their authors intended them to be understood but instead is first and foremost in search of insight from new and previously unexplored intellectual terrain to resolve her own questions. She often does not engage in dialogue with the authors themselves but instead with fragments of their ideas, ideas that were fashioned as part of answers to the author's own questions. Godrej's picking and choosing of authors to engage with based on how much she expects to benefit from studying them—without having actually understood them as they understood themselves—makes her a pearl-diver. At the same time, since she engages in dialogue with the culturally unfamiliar author—even if, at times, this dialogue is not based on the views of the author as he understood them himself—she is a scholar of dialogue. While pearl-divers like Godrej are motivated to study an author for the intellectual benefits they derive from this study, regardless of whether the author actually held the beliefs they engage, a theorist of dialogue who values historical study is interested in engaging ideas the author actually held. Absent this historical study, dialogue is not truly dialogue with the author himself.

Positivist Approach to Cross-Cultural Political Theory

A second approach to cross-cultural political theory is the positivist approach. Few political theorists consider themselves—and are—positivist, but many theorists interpret texts, or recommend interpreting texts, in ways that are reminiscent of the positivist methodological ideal-type. This positivist methodology entails viewing texts chiefly as products of social or psychological forces, be they institutions, social categories, or a predictable way of exercising reason, just as positivism in the social sciences entails explaining choices made by actors in the political sphere chiefly by reference to social or psychological forces. Whether seeking to understand texts or the choices of political actors, positivists hold that most often, the beliefs of individuals are shaped by, or at least correlated with, these outside forces.^{xxxvi} For example, a positivist might claim that a person holds a belief X because she is a member of a certain class, where the positivist offers a reason for why members of this class tend to adopt this belief, or simply posits a correlation between membership in the class and belief without explaining why the former led to the latter. In both cases, the individual is said to hold the belief because the individual can be said to belong to a social category.

When seeking to understand a culturally unfamiliar text, the positivist cross-cultural political theorist would approach the text in a way she suggests any text should be studied—first, by identifying a social force, such an institution or a social category, or a psychological force, such as a utilitarian notion of human rationality; and second, by deciphering the beliefs of the author by claiming that his social background or psychological propensity gave rise to and was a central factor in forming the nature of his beliefs. Seeking to understand a culturally unfamiliar text poses no unique challenge, insofar as texts are always explained in the same way, by exploring the social circumstances or psychological forces that shaped the author's thoughts. For

example, to understand writings produced by Ruhollah Khomeini when he was the guardian of the Islamic government in Iran from 1979-1989, a positivist scholar may rely, centrally, on, say, rational-choice assumptions about the behavior of politicians in office, assuming that Khomeini's political role, and the pursuit of self-interest it entailed, impacted significantly, and almost inescapably, his theoretical beliefs and his evolving theorization of Islamic government.

There are crucial differences between the positivist and historical method that I describe here. Unlike the positivist, the historian studies intellectual history and makes the individual's formulation of his own beliefs the central object of his study. Our historian does not presume that an individual's beliefs are shaped in a predictable way by sociological or psychological forces and these forces operate in the same way and produce the same effects on a set of individuals who share a key characteristic. The question that the historian seeks to answer is not what particular social or psychological factor explains an individual's ideas, but how the individual drew from, interpreted, contested, or modified traditions of thought to form his own beliefs, including by using his reason. (Since individuals are not always rational, it would be unrealistic, of course, to presume that individuals mold their own beliefs exclusively by use of their reason.) In the historian's view, an individual's beliefs are best understood not when they are traced to social or psychological forces, but when the individual is herself considered the central factor in explaining the belief she holds; she actively shapes her own beliefs,^{xxxvii} where traditions of thought form the raw material out of which she does this shaping.^{xxxviii}

Here, the positivist may argue that it is impossible to ignore the ways in which social and psychological factors may have an impact on an individual's beliefs, such that it becomes crucial to understand these factors if we are to understand these beliefs. The historian would agree with the tempered claim that individuals, in forming their beliefs, are influenced by social circumstances or their psychological make-up. The culturally unfamiliar author cannot be presumed to live in a vacuum, uninfluenced by the features of, or his place in, the society in which he lives. The author's thought certainly may have been influenced by any number of social or psychological factors.

Unlike the positivist, the historian believes that social and psychological factors do not lead narrowly to a certain set or range of beliefs. It is impossible to say that authors who were impacted by social factor X necessarily adopted certain beliefs, or were led to have certain propensities—such as, for example, a general dislike of hierarchy or a distrustful view of their peers—that in turn led to a myriad of other beliefs. Nor, in the historian's view, can social and psychological factors be presumed to be omnipresent through time; the way we conceive of them is influenced by our own webs of belief and the traditions of thought that have influenced us, and the way they are conceived by the authors is influenced by the same intellectual background and worldview. For example, while we may posit that individuals will always choose rationally, where utilitarian principles are the basis of their rational choice, we must allow that our conception of pleasure, and therefore our conception of what is reasonable, may be different from that of the author we study, such that the author may not appear, by our standards, to think reasonably at all.^{xxxix}

While individuals are often influenced by their societies or even their psyches, the historian emphasizes that it is crucial not to neglect that individuals are intellectual beings who may perceive and respond to social influences and who may choose to ignore or are influenced in different ways by psychological influences. It is the individual who interprets these factors by reference to her other beliefs and chooses how or whether these factors change her thoughts and beliefs. If the historian seeks to understand a culturally unfamiliar author, he must explore how the author came intellectually to adopt a set of beliefs, attentive to whether and how the individual was influenced by his society or by the features of his mind other than his intellect.

For example, the historian would argue that a scholar cannot prove that an author who is a member of a religious group was led to her pro-life position because of her social affiliation with this group. While her social identity may have impact her opinion on this matter, she may have been led to it for any number of other reasons, including sympathy for the unborn child, an intellectual understanding of her theological commitments, a belief that one must experience the consequences of one's actions, or an influential book she read in college. Moreover, her perception of the significance and meaning of "religious identity" may be different from the perception of the scholar who studies her and who presumes, for example, that religious identity creates ideological conformity or encourages obedience to a religious hierarchy.

Michael Freeden and Andrew Vincent's Approach to Cross-Cultural Political Theory

Michael Freeden and Andrew Vincent address interpretive approaches to culturally unfamiliar thought in the introduction to their edited volume, *Comparative Political Thought*. The approach that they defend shares features with the historical approach. First, they are critical of theorists of dialogue who they say move too quickly to try to create "a global network of mutual comprehension" in cross-cultural normative debates over political subjects. Before engaging in dialogue with culturally unfamiliar authors, the scholar must be sure that he has conducted a study of their beliefs. "We want to try and understand, explore, map, interpret, and analyze long before we can offer unifying global visions," they argue.^{xl} Similarly, the historian would argue that the theorist of dialogue overestimates the extent to which conforming to a method or structure of engagement, the dialogue, will facilitate understanding and emphasizes that historical study that must take place before normative engagement.^{xli} The historian would agree that when setting up ideas originating in different cultures against each other without conducting a thorough study of the ideas themselves, comparative political theory "engages in parallelisms rather than comparisons."^{xlii}

Second, Freeden and Vincent are similar to the historian in that they argue that political thinking must be studied historically and contextually. They argue that all political thinking share "inevitable features," and these features can be compared across cultures, serving as categories of comparison.^{xliii} When it is compared, political thinking must be contextualized; for example, when the category of comparison is "conceptual morphology," which involves a study of "the common and inescapable arrangements of decontesting, ordering, allotting relative weight and including or excluding concepts from a semantic domain"^{xliv} (for instance, this might involve

studying how political thinkers relate concepts such as freedom and equality to one another and how importantly they weigh these concepts relative to one another), Freedon and Vincent caution that the scholar must be attentive to the fact that “concepts are never found in isolation from each other....The conceptual, as well as the cultural and historical, environment of concepts thus serve as a significant context – as part of a broader semantic field – within which to decode any selected concept and the interrelationships among concepts.”^{xlv}

Freedon and Vincent are unclear, however, about whether the locus of their study is at the individual or social level. Often, it seems as if they assume that the individuals who are part of a given social or cultural group all exhibit the same type of “political thinking”; the objects of their comparison are not individuals, but social or cultural groups. Even when they speak of the importance of clarifying concepts by studying the conceptual webs and historical contexts in which they are embedded, it seems as if Freedon and Vincent assume that these concepts exist as part of a group language, and all individuals in a single group have a similar perception of both the concept and the context that shapes the concept. If Freedon and Vincent are arguing that membership in a social group determines the nature of an individual’s political thinking and individuals are heir to socially held beliefs, such that the political thinking of entire groups, and not individuals, may be compared to each other and thereby illuminated, then this would stand at odds with the historical approach, which makes the locus of its study the individual. However, if Freedon and Vincent wish to build a picture of political thinking in different societies by starting from the individual—by studying, for example, how individuals compare and weigh concepts against one another—and then making broad characterizations of political thinking in a given society based on studies of numerous individuals, then their approach does not stand at odds with the historical approach.

Often, it seems that Freedon and Vincent do locate political thinking precisely at the social level. When they try to give the reader a better idea of what it might look like to compare political thinking across cultures by giving examples of categories of comparison, one category they illustrate is “the presence of power in language.”^{xlvi} This would entail a comparison of “the rhetorical devices that a specified speech culture regards as particularly effective. Ratcheting up the intensity of language may involve rational argument, emotive expressiveness, threats, intimations of urgency and rhetorically aesthetic stylizing.”^{xlvii} Here, the object being compared is itself a socially-held belief—a belief shared by members of a given society about what makes speech powerful—and not, as other categories of comparison may be, features of thinking that can be located at the individual as well as the social level (for example, conceptual morphology). Freedon and Vincent assume that individuals who are part of particular social groups are necessarily constrained by socially-held standards when they judge the effectiveness and persuasiveness of a particular kind of rhetoric.

When Freedon and Vincent imply that by virtue of their membership in a particular social or cultural group, individuals come to adopt similar beliefs—whether they concern how concepts are compared to or weighed in importance against one another, or what manner of writing makes a statement convincing—they adopt positivist assumptions about understanding. Just as

positivists hold that all individuals are led by social factors to adopt similar beliefs, Freedden and Vincent argue that individuals in the same social grouping perceive meaning in a similar manner, and comparisons can be made between socially-held beliefs. While the historian would agree with Freedden and Vincent's criticism of theorists of dialogue for neglecting "understanding and decoding" in order to reach a point of "transcend[ing] differences"^{xlvi}—insufficiently exploring difference in their haste to discover sameness—the historian would hold that this "understanding and decoding" can only be accomplished by granting that individuals are agents capable of shaping their own beliefs and resisting and modifying beliefs that are popular with other members of their societies.

Still, isn't it quite common to find that individuals who are members of a particular social group do exhibit, in Freedden and Vincent's terms, similar "political thinking"? What is unusual about the idea of a "speech culture," in which there are socially held standards for what constitutes effective speech and therefore certain ways of speaking exert more power, in a given social context, than others? Wouldn't it be illuminating, therefore, to examine features of political thinking across cultures, in order both to better understand cultures more generally and individuals who are part of that culture more specifically? Our historian would not be opposed to exploring and comparing features of political thinking across cultures, as long as these features are studied in their historical context—as Freedden and Vincent recognize themselves—and as long as it is not presumed that these features always and inevitably appear in the political thinking of *individuals* who are members of that cultural group. We may approach a given author knowing that his thought may—and likely will be—influenced by the political thinking of other members of his society, but we must find evidence in the author's writings that indicate both that the author was indeed influenced by these socially held standards and how he chose to interpret or employ these modes of political thinking. For example, a scholar may observe that a Culture X tends to regard emotive political speech as powerful and effective. While this may be an interesting generalization, it is nothing more than a generalization until the historian demonstrates whether and how an Individual Y conceives of and exercises emotive speech in his political writings. The individual is a necessary part of our study—an individual who, nonetheless, may be influenced heavily by his society.

Pearl-Diving Approach to Cross-Cultural Political Theory

The pearl-diving approach came to exist as a reaction to political scientists who were positivist in their orientation toward studying the political world, disregarding historical concepts. This approach turns our attention toward texts to say that we may gather insights about questions that trouble us in our own political contexts by scouring the depths of textual material for pearls of wisdom. Pearl-divers are concerned with their own problems and questions, and hope, contra the claims of social scientists or rational choice theorists, that we may find a remedy for the problems of the political world in the inspiration we gain from the texts we read, rather than taking for granted that political outcomes are determined according to formalistic social scientific laws or theories about human behavior, such as rational choice theory.

Scholars who engage in pearl-diving do not hold that the authors of texts written far in the past or in different cultural contexts necessarily intended to provide answers for the particular questions that trouble us or necessarily intended to communicate the insight the pearl-diver has derived from their writing. These authors may indeed have addressed these questions or meant to communicate this insight, but whether or not the pearl-diver had this intent doesn't bear significantly on the pearl-diver's aim. Pearl-divers claim that texts can be interpreted by modern readers such that they can be found to offer insight to us, regardless of whether this interpretation is historically accurate. For example, while Plato may never have meant his allegory of the cave to be a reflection on the phenomenon of mass spectatorship, a contemporary scholar interested in examining this phenomenon may find that the allegory helps him to do this. The text, in other words, may generate meaning that was perhaps never meant to be articulated by the author of the text.^{xlix} As a pearl-diver, a scholar does not necessarily set out to discover how an idea came to be what it is now, having been shaped by an author who inherited it from a historical tradition. Instead, the scholar is oriented by the aim of perceiving meaning that is useful to him and may help to resolve his questions, whether or not the author of the text actually meant to communicate this meaning and whether the meaning he perceives originates in traditions of thought that influenced the author.

Pearl-divers are set apart from other cross-cultural political theorists because unlike all three other groups discussed in this chapter—positivists, theorists of dialogue, and historians—the pearl-diver does not aim to always give an account of an author's beliefs. While the theorist of dialogue, as discussed, is, indeed, hesitant to give an account of the author's beliefs that he defends as true and accurate, he is interested in understanding the author to the extent his epistemological perspective allows. The pearl-diver, on the other hand, pronounces that an Idea X can be derived from the author's writings without proving that the author intended to communicate this Idea X, and he makes an argument for how this Idea X can help to address political dilemmas that confront members of his own community.

If the pearl-diver recognizes that she has not presented a case that her interpretation of the text she studies is most accurate, a case for what the author she studies is likely to have believed, then her approach does not stand at odds with the historical approach. If the pearl-diver says that her aim is to derive ideas from a text that are not necessarily attributable to the author, or if perhaps she interprets the text at such a level of abstraction, or a level of detail, such that this interpretation cannot be attributed to the author, then her aim becomes different from, but not at odds with, the aim of the historian. If the pearl-diver were to make hasty statements about what an author meant in a particular statement, or were to fill in the details of an abstract idea, attributing them to the author, while providing evidence only that the author meant to argue for that idea in abstract, or were the pearl-diver to abstract from details that the pearl-diver finds in a particular text, attributing these abstractions to the author, without proving that the author abstracted from the details in this way, then the historian would urge the pearl-diver to provide evidence that the author held the beliefs that the pearl-diver attributes to him.

Andrew March's Approach to Cross-Cultural Political Theory

In his book, *Islam and Liberal Citizenship*, Andrew March engages, in at times, in pearl-diving. Though in other writings, March studies Islamic political thought using other interpretive methods,ⁱ in this book, he sets about a unique task: to search the writings of Islamic authors, authors who write largely in the juridical tradition, but across geographical spaces, time periods, and even traditions of thought, to piece together an Islamic argument for a theory of justice and citizenship that he believes may be called liberal. In his approach, March says that he takes inspiration from, but does not adopt in full, John Rawls' conception of "overlapping consensus" in *Political Liberalism*. This overlapping consensus on a liberal theory of justice and citizenship is reached by citizens who hold different comprehensive doctrines, a consensus that is not pragmatic, violating values held by each group of citizens in order to meet a practical aim, but principled, derived from values that emerge from their comprehensive doctrines.ⁱⁱ March claims that his conception of the overlapping consensus is less demanding than Rawls', insofar as Rawls is often vague about whether the overlapping consensus demands that its adherents accept certain substantive values—such as a commitment to individual autonomy, or a commitment to the idea that individuals have burdens of judgment, which impact their conceptions of the good, that they cannot be rid ofⁱⁱⁱ—while March says explicitly that we need not be a "comprehensive liberal to be in favor of liberal political freedoms."^{liii} March calls his method "justificatory political theory," a way of doing political theory that involves examining whether a given comprehensive doctrine contains the resources to justify, to its adherents, a given theory—in this case, a theory of liberal citizenship. March seeks not to find evidence that the tradition itself can be read to support this theory, but that a community of people—in March's case, Muslim minorities living in non-Muslim countries—can be convinced that their tradition would support this theory.^{liv} Because justificatory political theory does not aim to provide evidence for what a tradition says, but instead what a community can be convinced it says, March holds that justificatory political theory does not obviate the need for other, more scholarly ways of studying non-Western writings, including studies with "historiographical, anthropological, sociological, or genealogical aims."^{lv}

March's approach overlaps with the pearl-diving approach because his aim is not to illuminate the beliefs of a particular author or set of authors on a matter that they were explicitly concerned to address; instead, March searches their writings for the raw material out of which to construct a theory of justice that they never articulated and could never have articulated. The authors surely could not have had in mind, when sitting down to produce their works, the theory for which justificatory political theorists aim to find support. Authors' works are taken apart by the justificatory comparative political theorist, valued for the pearls of wisdom that can be derived from them, pearls that are combined with other pearls taken from other sources in perhaps vastly different contexts, all for the purpose of supporting or forming the content of a liberal theory of justice.

March begins his book by outlining the tenets of an Islamic theory of justice that he believes is compatible with liberalism. This liberal and Islamic theory involves principles concerning residence in a non-Muslim state, loyalty to that non-Muslim state, recognition (of fellow non-Muslim citizens as equals) and solidarity (with non-Muslim citizens).^{lvi} March refrains from asserting that the entire tradition of Islamic thought unequivocally supports each of these principles. Instead, he recognizes what others have recognized—that Islam is a “polyvalent” tradition^{lvii}—but this does not keep him from finding writings—even short statements—in this tradition that support his theory of justice, even while other writings may contradict it. He hopes to convince his audience that the support that he finds within the tradition for these principles outweighs any lack of support or explicit disavowal by other sources. Crucially, March does not argue for a “correct” understanding of a given author or tradition of thought, but merely for the possibility that a community of interest may be convinced to believe that their religious tradition provides support for a pre-given theory of justice, or that multiple authors may be interpreted to collectively provide support for this theory. Insofar as he recognizes that his interpretations of various authors, and of the tradition as a whole, may not be accurate, he engages in pearl-diving.

To illustrate March’s method, I examine his justification of one of the two principles of solidarity with non-Muslim citizens in the theory that he seeks to justify from within the Islamic tradition. This principle says that it is permissible to share social, economic, and civic goals with non-Muslims.^{lviii} March first cites Quranic verses that exhort believers to care for all those who need care without limiting this group to Muslims or even members of Abrahamic religious faiths, and he says that exegetes have not “tended” to read in such a limitation and interpret the verses as speaking of obligations only to the welfare of Muslims.^{lix} Moreover, some exegetes have read the verses not as vaguely calling on Muslims to care for those in need but as expressly urging Muslims to care for all humans—Muslim and non-Muslim alike—who are in need. These scholars include Seyyed Qutb, the thirteenth century Maliki jurist and exegete al-Qurtubi, the contemporary Qatari scholar Ali Muhyi al-Din al-Qara Daghi.^{lx} In addition to citing Quranic verses, March says that there are other Islamic “values and orientations” that “serve to give this exhortation to charity a more comprehensive philosophical foundation for affirming solidarity and mutual concern with non-Muslims.”^{lxi} For example, we find these values in discussions by Muslim authors on the Islamic duty to “command the right and forbid the wrong,” where scholars say that Muslims often must join forces with non-Muslims to bring about positive change for their society.^{lxii} Here, March cites authors such as Mawlawi, a contemporary (but deceased) Islamic scholar, who says that ultimately Muslims must come to feel “affection” or “innate love” for non-Muslims,^{lxiii} and Tariq Ramadan, who says that reforming legal, economic, social, and political systems are as much the duty of Muslims as non-Muslims.^{lxiv}

Opposing values have also been articulated in discussions on these topics; for example, a Salafi scholar, March says, would believe that commanding the good and forbidding the wrong entails “direct confrontation of sin or scandalous behavior, such as in the infamous Danish cartoon incident,”^{lxv} an act that contradicts liberal principles. Still, March says, the existence of

such countervailing values does not mean that our project has failed; “the point is that the goods Muslims are commanded to pursue [out of concern for the welfare of Muslims and non-Muslims alike] *include* a wide range of secular goods, including education, economic prosperity, public health, and public order, as part of the general Islamic conception of welfare. Although the aims of ‘commanding the right and forbidding the wrong’ can justify the pursuit of illiberal aims in a non-Muslim society, this does not detract from the strength of their support for the pursuit of *other* aims compatible with political liberalism” (emphasis is his).^{lxvi}

In March’s discussion of just one tenet of his liberal theory of justice, we see that March seeks not to pronounce an opinion on what “Islam” says on the matter, but instead on what various Muslims have said on the matter, and these opinions have often been contradictory. Moreover, he examines the thought of no single scholar in depth, instead pulling out ideas from the scholar’s writing that be used as a philosophical basis for the tenet of the liberal theory of justice that he seeks to defend. He does not indicate how, or whether, these ideas are part of a broader or more detailed argument—what does Mawlawi mean, for example, when he says that Muslims must feel “affection” or “innate love” for non-Muslims; does he give any indication of what civic or political duties these feelings imply? What particular “legal, economic, social, and political reforms” does Tariq Ramadan believe Muslims should participate in advancing, and are there particular causes in which Muslims are religiously prevented from participating? March is not concerned with these questions; in this project, he does not examine, in full, the writings of the scholars he cites. To the extent that March recognizes that he is interested narrowly in ideas that can be used to support the theory he wishes to construct, and that this narrow interpretation may fall short of accurately describing the beliefs of the author he studies, and certainly falls short of serving as evidence that the author himself sought to articulate the liberal theory of justice that March defends, then March engages in pearl-diving.

At the same time, March does wish for there to remain some association between the ideas he derives from Islamic texts and the authors of these texts. In a weak way, he does something other than pearl-diving; he does aim to give an account of an author’s beliefs, but only by focusing on certain statements and often neglecting contradiction or ambiguity in the author’s work, or ignoring broader arguments of which these statements are a part. To the extent that March does insist on associating beliefs with authors, he departs from the pearl-diving approach. Furthermore, because March aims to present interpretations that his audience can be convinced are accurate, his approach must be distinguished from the pearl-diving approach, in which there is no interest or concern for convincing an audience that an interpretation is plausible. In *The Republic*, Plato was likely not making an argument about mass spectatorship, and the pearl-diver would grant this without hesitation but maintain that something about mass spectatorship is learned when we read *The Republic*. March, by contrast, seeks to provide evidence that a Muslim community can be convinced that his interpretation of their tradition is plausible.

Wouldn’t the historian oppose, on principle, such cherry-picking of ideas and instead urge March to examine the ideas he cites in more historical depth? Doesn’t March, in a way, mistreat the texts and authors he studies by not seeking to truly discover what they are saying?

March does not, however, share the historian's aim; he is clear from the start that he does not seek to make a scholarly case for an interpretation of a given text. "The first aim of justificatory political theory is not truth, but plausibility," he says. "We are aspiring to the most plausible interpretation of an ethical or cultural tradition, where plausibility is measured in terms of a reception of a given claim by the discursive community toward which it is directed."^{lxvii} March does not seek to make a case for the most accurate interpretation of the ethical tradition in question, but instead present an interpretation of the ethical tradition that can both support his theory of justice and would be considered plausible by Muslims and liberals. Though March's method of argumentation, which involves isolating ideas in various writings and being unconcerned with the historical origins of those ideas, would not, to the historian, be an acceptable means of deciphering an author's beliefs, as long as March recognizes that he has not presented a compelling case for meaning of these beliefs and seeks only to convince a given community that this interpretation is plausible, then his approach does not stand at odds with the historian's approach. Not every scholar would be comfortable with March's interpretation of texts in a way that is compelling not to other scholars, but to a public audience, in order to achieve a political aim, but this would be a subject of discussion in an article on the aims of—rather than the interpretive methods used in—cross-cultural political theory.

Historical Approach to Cross-Cultural Political Theory

Thus far, I have defined the historical approach against other ideal-type approaches, seeking to illuminate this approach by distinguishing it from and comparing it to other approaches to culturally unfamiliar thought. I have also sought to illuminate this approach by pointing out the ways in which scholars of culturally unfamiliar thought, such as Michael Freeden, Andrew Vincent, Farah Godrej, and Andrew March, study culturally unfamiliar texts historically. However, part of my aim has been to describe when and how these authors move away from the historical approach, in ways that may or may not be incompatible with it. The historical approach, I argue, avoids the pitfalls of the positivist and dialogical approaches by positioning the individual author as the central object of study, an individual who crafts his own ideas, though he may be influenced by, but must not be presumed to be helpless before, social and psychological pressures. Centrally, this approach emphasizes the importance of examining the intellectual influences on an author by conducting a historical study of her ideas.

What would a historical study of cross-cultural political thought look like in practice? Diego von Vacano's study of race in Latin American political thought relies centrally on historical studies to interpret authors, and his book, *The Color of Citizenship*, helps us to comprehend what it means to study beliefs historically. In this work, he examines the thought of four authors who are part of a Latin American tradition of thought on race. von Vacano chooses to write about these four authors because he says that they are useful in helping us to understand a "synthetic" concept of race,^{lxviii} one that entails analytically that race is a "dynamic construct that must be understood in historical contexts and is shaped by historical factors";^{lxix} as well as

normatively and philosophically that “the concept of race is not fixed or categorical but fluid and mercurial,” and therefore that “no one [race] is superior to the other.”^{lxx} While each of the thinkers he studies helps to build the synthetic concept of race by challenging previous paradigms that are based on inter-racial domination or dualistic racial categories, it is the last of these four thinkers, Jose Vasconcelos, in whose thought the synthetic concept of race culminates. Vasconcelos pieces together features of thought on race that were articulated by authors before him, arguing that racial categorizations can be transcended by individuals who perceive others not through their race but through a notion of aesthetic beauty that is not merely skin-deep.^{lxxi}

Von Vacano’s study of each of the four authors he studies is rich with references to figures who influenced the author and discussions of how the author contested, elaborated, or accepted the ideas of the figures who influenced him, as well as biographical details that are relevant to understanding the evolution of each author’s thought. For example, in his chapter on Laureano Vallenilla Lanz, he begins by describing Vallenilla’s early education—which was “European-inflected”—and early activities—such involvement with a journal that attracted positivist scholars (Vallenilla would be influenced by positivism) and was concerned with the problem of violence in societies composed of diverse socio-economic and racial groups (this problem inspired him to develop a conception of race that would not impede the formation of a unified national identity)—and his eventual decision to move to Europe, where he “found a nourishing environment where he met many Venezuelan, Colombian, and Mexican thinkers” but also where “European ideas in Vallenilla’s nascent approach to race grew more significant.”^{lxxii} Instead of using his own vocabulary and concepts to describe Vallenilla’s political thought, von Vacano pulls apart elements of Vallenilla’s thought, tracing each element to intellectual figures whose ideas Vallenilla accepted, elaborated, shaped, and applied in new contexts. His view that race was socially-constructed, for example, had origins partly in the thought of positivists such as Ernest Renan and Hippolyte Taine (d. 1893), who saw society as produced by social forces and not individuals. His view that a strong state must mediate between social (and racial) groups has origins in the notion of the democratic Caesar in the work of Edouard Laboulaye and Hippolyte Taine’s notion of the “necessary gendarme state.”^{lxxiii} These are just a few of a long list of influences, in addition to the two influences that von Vacano focuses on—Simon Bolivar and Niccolo Machiavelli^{lxxiv}—whose ideas von Vacano describes in order to clarify Vallenilla’s thought in terms that would have been familiar and available to Vallenilla himself. At times, however, von Vacano limits his reach into history, circumscribing his interest within the more historically-proximate influences on Vallenilla without exploring the “influences on the influences” on Vallenilla—for example, moving deeper into history to examine the brand of positivism that had such an important impact on his thought—but a study of these more distant influences would perhaps have been beyond the feasible scope of his work.

Not only is von Vacano’s study of each of the four authors historical, but he presents the synthetic concept of race through a historical narrative. The concept, he says, grew and developed over time in three historical periods, where writers in each period, including the writers he studies, draws on and rejects ideas propounded by thinkers in the previous period.

Though he depicts these four authors as part of a single tradition of thinking, insofar as they were each in turn contributors to traditions of thought that developed as a reaction and corrective to previous traditions, he does not make the case that each of these thinkers engaged significantly the previous thinker directly, except in the case of Vallenilla Lanz, who was greatly influenced by Bolivar. Chronologically, Bolivar follows Bartolome de Las Casas in the tradition von Vacano depicts, but while Bolivar admired Las Casas' condemnation of the Spanish treatment of the Indians in their colonial ventures,^{lxxv} it is not clear that Bolivar is responding directly to other elements of Las Casas' thought. While Vasconcelos was engaged generally with countering republican thinkers such as Vallenilla Lanz, it seems that Vasconcelos never addressed Vallenilla directly.

Von Vacano conducts a historical study of the synthetic concept of race not by providing evidence that each author, each of whom contributed to the evolution of the concept, was directly concerned with developing the ideas of a previous thinker, but instead, less precisely, claiming that each author engages generally with ideas that define a previous period. Though he argues, for example, that the final thinker of the tradition, Vasconcelos, draws on the same Catholic universalism of the colonial period,^{lxxvi} and he defines Catholic universalism through the writings of Las Casas, he does not claim that Vasconcelos drew on Las Casas directly. He seems to have chosen the thinkers he discusses based on theoretical connections between their ideas rather than evidence of their study of each other's writings. While Las Casas, for example, has a concept of universalism that accepts that people of different races may be biologically or even morally different from each other but are nonetheless all human and should consider themselves part of a greater whole,^{lxxvii} unified in their allegiance to the Catholic Church, Vasconcelos is not influenced directly by his concept of universalism. Still, von Vacano depicts Vasconcelos' concept of race as a synthesis of the universalism of the colonial period—a universalism he defines through the writings of Las Casas—and the national particularism of the republican period—a particularism he defines through the writings of Bolivar and Vallenilla.^{lxxviii} Rather than studying Vasconcelos' blend of universalism and republicanism through the writings of universalists and republicans that he did not study, the historian should focus on the individual scholars, and not traditions of thought more broadly and abstractly, who influenced him.

Conclusion

The study of culturally unfamiliar texts is still relatively uncommon in political theory, and studies of which interpretive approaches most help us to fully understand culturally unfamiliar texts are more uncommon still. This chapter has reviewed four ideal-type interpretive approaches: positivist, dialogical, pearl-diving, and historical, and has argued that the historical approach avoids the pitfalls of positivist and dialogical approaches and therefore yields more accurate interpretations of the beliefs of culturally unfamiliar authors, where accuracy is measured by how well the scholar is able to comprehend the content of the author's beliefs. These beliefs originated in ideas that were passed on from teacher to pupil in traditions of

thought—though these need not be formal teacher-pupil relationships in institutional settings—evolving and changing as each pupil differently interpreted or contested the views of his teacher.

Historical study, I argue, is distinct from, but does not stand at odds with, the pearl-diving approach. Since the aim of the pearl-diver is first and foremost to derive insight from a text and not to discern the nature of beliefs held by an author, the pearl-diver need not conduct a historical study of an author's beliefs if illuminating these beliefs does not further his primary aim. As long as a pearl-diver maintains that that he does not claim to accurately represent the authors he studies without historical study—just as March, when he engages in pearl-diving, says that he aims not to make a case that the Islamic authors he studies actually believed the ideas he attributed to them—then the pearl-diving approach is not at odds with the historical approach but instead should be considered a different genre of study altogether. March is unlike pearl-divers insofar as he is concerned that his interpretations of texts are plausible to a given community. Still, he is, at the same time, unlike a historian because is not concerned with presenting historical evidence that his interpretations are accurate; he aims at plausibility, and not truth.

This chapter critiques the positivist ideal-type for describing beliefs by positing that they came to exist and acquire their content chiefly as a result of social and psychological factors. While the positivist, like the historian and unlike the theorist of dialogue or the pearl-diver, is not hesitant to make bold claims about meaning, the positivist approach differs fundamentally from the historical approach because historian believes that beliefs are influenced and not determined by social and psychological forces. Michael Freeden and Andrew Vincent 's cross-cultural political theory becomes positivist when they study political thinking at the social level, where individuals are said to exhibit a particular kind of political thinking by virtue of their membership in a social group that shares ways of thinking. If Freeden and Vincent were to conduct their studies of political thinking at the individual level, granting that individuals may learn from and develop their ideas as a result of their encounter with, but are not driven to think in a certain way by, their social environment, their approach would be compatible with the historical approach.

The dialogical approach differs from the historical approach because historical study of traditions of thought is not an essential feature of this approach and because cross-cultural engagement is said to entail limitations that arise from unbreakable normative commitments and dramatically different worldviews. Though some theorists of dialogue hold that dialogue must include historical exploration of an interlocutor's views, all historians would emphasize the importance of this historical exploration and would urge the theorist to be less hesitant about making claims about meaning and more hopeful about coming to agreement with authors from even the most alien of cultures. Theorists of dialogue such as Farah Godrej, discussed earlier, should be open to studying even thinkers who are orthodox and have allegiances to central tenets of these orthodox traditions. Only after a historical study of these thinkers can the scholar decide that it is unlikely that she will come to normative agreement with the thinker through dialogue. Instead of emphasizing historical study, theorists of dialogue argue that dialogical exchange is an ideal form of inter-cultural communication because partners in dialogue are careful not to impose

their own meanings on ideas they encounter in dialogue. While not denying that dialogical exchange can help to facilitate understanding, the historian would urge the theorist of dialogue to provide a more detailed theoretical account of how partners in dialogue may probe each other's beliefs and how beliefs that are embedded in a vastly different web of meaning may be understood. Historical study, in the historian's view, is an essential part of the process of understanding.

I have sought to illustrate the historical approach, on the one hand, by comparing and contrasting this approach with the three other approaches I discuss. I have also sought to illustrate this approach by describing the work of one author who seeks to understand culturally unfamiliar thought primarily through historical study. This author, Diego von Vacano, clarifies a "synthetic" concept of race by tracing how the concept evolved historically. He studies four Latin American thinkers who helped to move the concept through history by disputing or refining the ideas of their intellectual predecessors, resulting in the articulation of a concept of race that was produced by a dialogue across time. Though he does not always provide evidence that each of the four thinkers he studies was influenced directly by the previous one, he holds that each thinker came under the influence, more broadly, of traditions of thought to which the other thinkers belonged. His historical study of each individual thinker is more cogent, as he seeks to rearticulate each thinker's views on race using terms and concepts found in the writings of the line of scholars who preceded the thinker in the same tradition of thought.

As must be clear to the reader, this chapter falls far short of providing an exhaustive review of the work of cross-cultural political theorists. Instead, the chapter outlines four ideal-type interpretive methods, claiming that work in cross-cultural political theory exhibits features of one or more of these ideal-types. The aim of this chapter has been to encourage cross-cultural political theorists to recognize the importance of studying the traditions of thought that form the background of any author's beliefs, abandoning the problematic features of the positivist and dialogical approaches and a brand of pearl-diving that makes claims about meaning while neglecting historical study. Though this historical study may be a tremendous endeavor, it is a necessary first-step toward engagement with and understanding of unfamiliar worlds.

Chapter 2: Intellectual Background to Khomeini's Political Thought

Since the Islamic Revolution in Iran in 1979, literature has proliferated on the primary leader of the revolutionary movement and Islamic Republic—Ayatollah Ruhollah Khomeini. Many scholars who interpret Khomeini's political thought argue that it can best be classified as part of an Islamic mystical-philosophical tradition of political philosophy. Hamid Dabashi, for example, says that Khomeini's political leader was the "philosopher king in the Platonic understanding of the term...Khomeini maintained that people do not know what is good for them."^{lxxix} Vanessa Martin says that in Khomeini's thought "ideally it is the philosopher-jurist who understands both the *shari'a* and its hidden meanings and is thus most qualified to rule,"^{lxxx} and in a different work, she says the '*arif*, the seeker of mystical knowledge of the divine, "is entitled to be *rahbar* [leader] of the community."^{lxxxii} Similarly, Abbas Amanat says that Khomeini's guardian has a charismatic authority, an authority which has "a mysto-philosophical core colored on the outside by Shi'ite legal trappings."^{lxxxiii}

While it is true that Khomeini draws on the Islamic mystical-philosophical tradition of political philosophy, I argue, in this chapter, that he does so in a limited way. Two distinct themes are central to this tradition: firstly, those who have achieved mystical or philosophical knowledge of the divine are most qualified to exercise political authority and implement and interpret the law. Secondly, this political leader must be concerned with drawing on his mystical or philosophical knowledge to create a political order that facilitates the moral, spiritual, and intellectual flourishing of citizens. This chapter will argue that the first theme does not appear in Khomeini's thought. While those who have religious knowledge are able to exercise political authority, they are not to do this by themselves, nor must their knowledge be derived from philosophical argument and mystical experience. In fact, Khomeini says explicitly that the political leader is not to be a mystic or philosopher; instead, he is a jurist, and his knowledge of the law, and not of philosophy or mystic truths, qualifies him to be given a political role.

Insofar as he is concerned for the ethical and spiritual flourishing of citizens, above and beyond their obedience to the law, Khomeini draws upon the second theme of the mystical-philosophical tradition. Though Khomeini's political leader cannot utilize philosophical or mystical insight to promote the flourishing of individual citizens, Khomeini says vaguely that the political leader should provide spiritual and ethical guidance to the public for this purpose. Throughout, however, the emphasis in Khomeini's theory not on the need for the political leader to nurture and guide citizens ethically and spiritually but instead on the way in which the implementation of Islamic law creates the material conditions that are the prerequisites for individual flourishing.

Instead of writing primarily within the mystical-philosophical tradition, Khomeini is much more indebted to three other traditions of thought. First, he draws on a tradition of legal thought called the Usuli legal tradition. As an Usuli scholar, Khomeini viewed law not as a code to be implemented but a system that must be set into motion. Unlike scholars of the Akhbari

school—which rivaled the Usuli school—Khomeini and other Usulis believed that what is found explicitly in the traditional texts could not be considered the only sources of law, and that the principles of the law could be used to formulate new law for new circumstances—a process called *ijtihad*. Since legal norms could become applicable, through *ijtihad*, to contemporary questions, the law became more broadly relevant, including in the political sphere. This meant that the Islamic jurist had an enhanced social and legal role, and even, in Khomeini’s view, a political role. However, Usuli principles did not give the jurist absolute and unquestionable authority. In the Usuli view, the law derived by through a jurist’s *ijtihad* was an approximation, and not a determination, of the divine will, and therefore the jurist’s authority could be contested and disputed. Usuli principles also enabled Khomeini to make constitutionalist arguments. Khomeini and other constitutionalists believed that parliament could be involved in drafting law that supplemented yet still served the principles of the *shari’a* and even suggested that the parliament could determine that the *shari’a* needed to be suspended in the service of its own principles.

In addition to the Usuli tradition, Khomeini was influenced significantly by a second tradition of thought: the Shi’a jurisprudential tradition of political theory, a tradition that saw jurisprudence as central to governance and sought to clarify the political role of the jurist. Many authors argue, correctly, that Khomeini draws on the Shi’a jurisprudential tradition in his political thought. Scholars like Hamid Enayat, Said Amir Arjomand, and Norman Calder say that in Khomeini’s view, sovereign and absolute political authority belongs to the jurist during the absence of infallible authority, but neither constitutional law nor popular will can limit his authority. Enayat says that Khomeini’s government is “hieratic” and “is meant to be government for the people; it is certainly not government by the people,” for “it is in the nature of any hieratic government to be patriarchal in form.”^{lxxxiii} Said Amir Arjomand argues that Khomeini believed that a hierarchy of religious clerics should rule single-handedly “on behalf of God,”^{lxxxiv} and much more radically, Gregory Rose says that “the jurist is positioned to guarantee institutional conformity to the agenda for restructuring consciousness.”^{lxxxv}

These authors, however, skim over the elements of Khomeini’s theorization of the jurist’s authority that are derived from the Islamic constitutionalist tradition, the fourth tradition of thought that influenced him significantly. Primarily in his post-revolutionary writings, as well as in an earlier work, *The Unveiling of Secrets*, but also in *Islamic Government*—writings that I study in Chapters 3, 4, and 5 of the dissertation—Khomeini emphasizes themes from an Islamic constitutionalist tradition of thought that emerged in the late 19th and early 20th century. The inclusion of a parliament in his prescription for government and his insistence that a legitimate government must have acquired the consent of its subjects has its roots in arguments made by constitutionalist scholars, many of whom were actively involved in the constitutional movement that culminated in Iran’s Constitutional Revolution of 1906.

Biography

It will be instructive to begin with an account of Khomeini's biography in order to understand his intellectual trajectory. Khomeini was born on September 24, 1902 in the small town of Khomein, about 100 miles to the southwest of Qom. He was born into a family with a long tradition of engaging in religious scholarship. His father, Sayyid Mustafa Khomeini (d. 1903), had studied in Isfahan mainly with Mir Muhammad Taqi Mudarrisi and then studied in Najaf and Samarra under Mirza Hasan Shirazi (d.1894),^{lxxxvi} who became famous for issuing a religious edict (*fatwa*) against the use of tobacco after the Qajar king, Nasir ad-Din Shah (d.1896), granted a concession to a British company for the production, sale, and export of tobacco in Iran. It is certain that one of two of Khomeini's father's primary teachers, therefore, Ayatollah Shirazi, did believe that the jurispudent must act to promote religious principles in a political realm controlled by secular authority. How do the intellectual associations of Khomeini's father help us to clarify the origins of Khomeini's thought? Khomeini's father could not have had a direct influence over Khomeini's intellectual formation, since he was killed when Khomeini was only five months old. However, Khomeini was first educated by a family member who was able to know his father^{lxxxvii}—his elder brother Sayyid Murtaza,^{lxxxviii} later known as Ayatollah Pasandideh (d. 1996), who taught him classical Arabic grammar and syntax.^{lxxxix}

In 1920-21, Khomeini was sent to the Iranian city of Arak to pursue his religious studies, and there he studied logic, jurisprudence, and classical Arabic. One of the principal religious scholars of the day, whom Khomeini admired, Ayatullah Abd Al-Karim Ha'iri (d.1936), had taught there since 1914. Khomeini's time in Arak was spent studying not with Ha'iri, however—since he was not yet advanced enough—but first with Shaykh Muhammad Gulypaygani, with whom he studied logic, and with Aqa-yi Abbas Araki, with whom he studied one of the principal texts of Shi'a Ja'fari jurisprudence,^{xc} *Sharh al-Lum'a*, written by Shaykh Zayn al-Din al-Amili (d. 1558).^{xcii}

A year after Khomeini's arrival in Arak, Ha'iri left Arak to teach in Qom; about four months later, Khomeini followed, studying jurisprudence with Ha'iri there.^{xcii} In Qom, Ha'iri would revive the seminary system, which had long been overshadowed by the seminaries in Najaf, and which would then produce scholars who would later play a seminal role in the Iranian revolution.^{xciii} It is important to note that Ha'iri, though politically quietist himself, was a student of Mirza Hasan Shirazi, the scholar who led the tobacco boycott.^{xciv}

Later, in 1946, Khomeini would teach upper-level classes in jurisprudence and principles of jurisprudence, using Akhund Muhammad Kazim Khurasani's (d.1911) *Kifayat al-Usul*.^{xcv} Khurasani wrote a foreword to a book on constitutionalism, entitled *Tanbih al-Umma wa Tanzih al-Milla* [*Exhortation of the Community and Purification of the Nation*] (pub. 1909), written by Mirza Muhammad Husayn Na'ini, describing the book with words of praise. As will be discussed later in this chapter, both Khurasani and Na'ini were important supporters of the constitutional revolution in 1906, and Na'ini wrote a book on Islamic constitutionalism.^{xcvi} The

jurisprudence that Khomeini studied in Arak and taught in Qom, as well as the principles of Islamic constitutionalism, reappeared in his political writings, as I will argue.

Although Khomeini was a scholar in jurisprudence, his deeper interest lay in Islamic mysticism (*'irfan*) and philosophy. According to Algar, “despite the proficiency he swiftly gained in *fiqh* (jurisprudence) and *usul* (principles of jurisprudence), [Khomeini] appears always to have been convinced that the study of the law does not exhaust the riches of Islam and that the ultimate concern of religion is situated on a quite different plane from the legal.”^{xcvii} Khomeini indicates in a short autobiography published in 1934 that he spent most of his time in Qom studying and teaching the works of the philosopher and scholar of *'irfan*, Mulla Sadra (d. 1641), that for several years he had been studying gnosis with Mirza Muhammad Ali Shahabadi (d. 1950), and that he was attending classes with Ayatollah Ha'iri on jurisprudence. According to Algar, “the sequence of these statements suggests that *fiqh* was as yet secondary among his concerns.”^{xcviii}

Primary among his concerns when he was in Qom, then, was to understand *'irfan* and philosophy, subjects which were often the object of “hostility and suspicion”^{xcix} in the seminary system and which were usually absent from the seminary curriculum. Khomeini's first teacher in philosophy was Mirza Ali Akbar Hakim Yazdi (d. 1926), who himself was a pupil of the great philosopher, Mullah Hadi Sabzavari (d. 1878). Another of Khomeini's first instructors in philosophy was Sayyid Abu'l Hasan Qazvini (d. 1976), a scholar of both peripatetic^c and illuminationist^{ci} philosophy. The scholar in *'irfan* who most influenced Khomeini's thought was the above-mentioned Mirza Muhammad Ali Shahabadi, with whom he studied the *Fusus al-Hikam* of the philosopher and mystic Ibn Arabi.^{cii}

In addition to instructing him in gnosticism, Ayatollah Shahabadi was likely a source for Khomeini's conception of Islam as a religion concerned with politics. In a work primarily on gnosticism, called *Shadharat al-Ma'arif*, this scholar argued that Islam is an inherently political religion. Though Shahabadi did not argue for guardianship by the jurist, he stated clearly that “most of the fundamental laws of Islam are political in nature, such as laws of purity, fasting, prayer, zakat [charity tax], hajj, and jihad.”^{ciii} Ayatollah Shahabadi may be considered part of the Shi'a jurisprudential tradition of political theory insofar as he agreed that the Prophet left a law that now would need to be implemented by Muslims if they desired to live, in their political lives, as true Muslims. Khomeini was undoubtedly influenced by his mentor's political views, as well as his political actions; Shahabadi was one of the few religious scholars to voice his protest against Reza Pahlavi, the first of the Pahlavi dynasty.^{civ} According to Algar, Shahabadi and Khomeini developed a close relationship in Qom—one that was not only academic, but personal; Shahabadi was Khomeini's spiritual guide.^{cv}

Khomeini went on to teach *'irfan* and philosophy in Qom to a select group of young scholars, including the section on the soul in *al-Asfar al-Arba'a* (pub. 1628), a book written by the mystic philosopher Mulla Sadra (d. 1640), as well as Sabzavari's *Sharh-i Manzuma*. His first four books—*Sharh Du'a al-Sahar* (1928), *Sirr al-Salat* (no date), *Adab Al-Salat* (no date), and

Misbah al-Hidaya ila al-Khilafa wa'l-Wilaya (1930)—were concerned with mysticism and marshaled to a significant degree the mystical terminology of Ibn Arabi.^{cv}

Tradition One: Usuli Legal Tradition

The Usuli legal tradition was a crucial resource for Khomeini as he developed his political theory. Contemporary scholars trace the Usuli school to the 11th century, in the works of classical scholars such as Sheikh Mufid (d. 1020) and his students, Sheikh Murtada (d. 1044) and Sheikh Tusi (d. 1067),^{cvii} though the earliest reference to a group of scholars labeled “Usulis”—and their rivals as “Akhbaris”—can be traced only to the 12th century.^{cviii} In its early form, between the 8th and 11th centuries, Shi’a jurisprudence involved simply assessing how sure a scholar could be about the authenticity of *hadith* (narrations of speech or action engaged in by the Prophet or one of the twelve “imams” who succeeded him as a political or spiritual leader). The tradition entered a new phase when Sheikh Mufid wrote *al-Muqni’a*, which included his own interpretation of *hadith* rather than just the reproduction of *hadith* reports. In his book *Al-Fusul*, Mufid argued that the intellect (*aql*) should be used as a tool of jurisprudence when there is no *hadith* that applies specifically to a case at hand. Sheikh Mufid’s students, Sharif al-Murtada (d. 1044) and Sheikh al-Ta’ifa al-Tusi (d. 1067) affirmed and developed Sheikh Mufid’s work in this area. Usuli principles were further developed by early scholars such as Muhaqqiq al-Hilli (d. 1277) and Allama Ibn Mutahhar al-Hilli (d. 1325), his nephew, who accepted and elaborated on the concept of *ijtihad*.^{cxix} The latter al-Hilli constructed a theory of *ijtihad* that depended upon a distinction between *‘ilm-i qat’i* (certain knowledge) and *zann* (probable knowledge); *ijtihad* could produce no more than *zann*, and Usuli scholars from Muhiqqiq al-Hilli onward conceived of legal norms derived through *ijtihad* as probable, and not certain, knowledge.^{cx} Lay believers could and should be governed by the reasoned suppositions (*zann*) of the *mujtahid*. Religious knowledge, and in particular, the law, was contestable and human.

The principal rival to the Usuli school, the Akhbari legal tradition, which was founded by Shaykh Muhammad Sharif Astarabadi (d. 1624)^{cx} and was the predominant school in the 17th and 18th centuries, said that the Muslim community in any era must rely on legal norms found explicitly in the “akhbar,” or *hadith*.^{cxii} This meant that Akhbari scholars often could not produce law that applied to questions that arose in new contexts, limited as they were by texts that spoke to particular circumstances that perhaps did not exist in the present day or were at least less prevalent. To the Akhbaris, there was no place for a *mujtahid*, since they denied the legitimacy of *ijtihad*,^{cxiii} of defining principles of the law and deducing law from these principles. The results of *ijtihad*, they argued, could only be *zann*, and not certain knowledge, and therefore these derived laws could not have authority over the lives of lay believers; only the clear and explicit ordinances of the *akhbar* had this authority.^{cxiv} The *akhbar* was understood more literally, and lay believers could themselves interpret and apply the *akhbar* to their own lives.^{cxv} The role of

the mujtahid was simply to determine which *akhbar* were authentic (*sahih*) and thus authoritative and which were not (*da'if*).^{cxvi}

During the interregnum between the Safavid (1501-1736) and Qajar (1785-1925) dynasties in the 18th century, the Akhbari school had become predominant in the 'Atabat, (the shrine cities of modern-day Iraq—Najaf, Karbala, Samarra, and Kazemayn—traditional centers of Islamic learning), perhaps because after the fall of the Safavids, the '*ulama*^{cxvii} were excluded from participation in the Shi'a state, and they were more prone to theorize their function and role in a way that did not strongly imply a need for them to be deeply involved in the courts or in government.^{cxviii} By the end of the 18th century, the Usuli school had become the predominant legal school in the 'Atabat and beyond, in large part due to the scholarly efforts of Muhammad Baqir Bihbahani (d. 1803).^{cxix} The relevance of Usuli law to everyday life made the Usuli legal school more accepted; unlike the Akhbari school, the Usulis prescribed a way of interpreting law such that it became larger than the text in which it was embodied and could speak to a broader array of circumstances.^{cxx}

Khomeini drew from this tradition a rationalistic conception of the law. When new law could be derived through *ijtihad*, it became more widely applicable, applicable beyond the narrow range of rulings found explicitly in the classical texts, and applicable to questions that would be faced by governors at the head of a state. One can more easily argue that the *shari'a* must be the basis of government when the *shari'a* is grounded in principles that can serve as the basis for laws that must be applied to new conditions.

Since the mujtahid, according to the Usuli view, engaged in this *ijtihad*, does this mean that Usulis like Khomeini are inclined to give the mujtahid absolute political authority? Khomeini did not conclude that a more widely applicable *shari'a* meant that jurists would alone have the right to govern. This position is partly explained by Usuli principle of *zann*, or reasonable supposition. Since *ijtihad* only produced *zann*, and not certain knowledge, this meant, in Khomeini's view, as in the view of other Usuli scholars, that the divine law could only be sketched roughly by the mujtahid. Though the practical impediment of a lack of law is overcome by the deductive Usuli approach to law, the use of deductive reasoning and the attention to general principles called for by this approach made the derivation of law less mechanical, more theoretical, and consequently, more contestable. What legal principles could, in fact, be derived from an explicit legal command found in the Quran or *hadith*? Can and how should these principles be coherently applied to legal questions we face in our own time?

To Usuli legal scholars, any explanation of the principles of the law could potentially be inaccurate; moving beyond the text made the Usulis more wary of their conclusions. In many instances, they submitted, it would be impossible to discover the true intent of the Lawgiver. This means that one should accept the legal rulings of a scholar without having accepted beyond a doubt that the scholar is correct, because such a level of certainty can never be reached; the ultimate result of the scholar's endeavor could only be the most probable meaning or application of a *hadith* or the Quran, and this limitation was recognized by the scholar himself. Both scholars and laypeople should understand that a scholar who exercised *ijtihad* to uncover the principles

behind a classical text and apply it to a given circumstance was making no claim to having discovered the truth of the text; at most, he could only claim that he was presenting the most likely meaning and the most likely application of a classical text.^{cxxi} The idea of “probable” divine law became crucial to Khomeini’s political theory. If the law of any given jurisprudent was only, at best, an approximation of the divine law, the law would be recognized for its human quality and could be subject to contestation in institutions such as a parliament.

This does not mean, however, that only experts in the law could participate in debates over the meaning and application of the law, since only they were capable of *ijtihad*. Khomeini could envision non-experts participating in government because of the rationalistic nature of the Usuli legal methodology. The nature of the debates, which did not center just on traditional texts, was such that it could be participated in by more than just legal scholars. Others had the capacity to think about theoretical matters such as the connection between principle X and situation Y, although legal scholars had greater familiarity with texts from which the principles were derived. The Usuli perspective on law opens the possibility that government by Islamic law is not a task that must be undertaken exclusively by legal experts; institutions such as a parliament or an executive branch could be opened up to non-jurisprudents, who could contribute, at the very least, their ability to reason, or at most, their expertise in other fields, to facilitate a consideration of the law beyond what was found explicitly in the Quran and *hadith*.

The Usuli approach to the law also allowed for Khomeini to argue that the law would even, at times, need to be suspended in order for principles of the law to be served. This happened when actual circumstances meant that implementing the law would make it work contrary to its principles. Khomeini argued this point after the Revolution in his speeches, statements, and correspondence, when he said that parliament could determine the need for law that suspended a provision of the *shari’a*, although by the end of his life, he gave final authority on this matter to a separate body, as will be discussed in Chapter 5.

Tradition Two: Islamic Mystical-philosophical Tradition

As described in the biography above, Khomeini was well-acquainted with and had a deep interest in the Islamic mystical-philosophical tradition of political theory. Scholars of the Islamic mystical-philosophical tradition familiar to Khomeini included Farabi (d. 950), Suhrawardi (d.1191), Avicenna (d. 1037), Ibn Arabi (d. 1240), and Mulla Sadra (d. 1641), who in turn are influenced by Plato (d. 348-347 B.C.). These scholars drew on classical Islamic sources, and often, on the writings of ancient Greek philosophers. Khomeini also recognizes the influence of Plato on these philosophers. Both Suhrawardi and Mulla Sadra, he says in *The Unveiling of Secrets*, “proved some of Plato’s theological points,” and Suhrawardi was “on the path of Plato.^{cxxii} They wrote that the Perfect Man was an individual who had developed an intimate understanding of God or metaphysical truth through intellectual and spiritual development.^{cxxiii} While Farabi explicitly argued that the perfect man be given political authority,^{cxxiv} scholars often interpreted Avicenna, Ibn Arabi, and Mulla Sadra also to hold that the perfect individual be

given this authority as well.^{cxxv} Khomeini had, well within his reach, scholarly material that he could have used to create a political philosophy that said that the deepness of one's spiritual knowledge entitled a person to political leadership, but he chose not to. While Khomeini does believe the political leader should have certain discernible spiritual and ethical qualities, he says explicitly in *Islamic Government* that the authoritative sources do not indicate that he should be a philosopher or mystic.^{cxxvi}

Instead of arguing that a leader with a philosophical or mystical understanding of the divine must be allowed to govern, Khomeini's focus, in his political works, is on the law, the government's duty to implement it, and the roles of jurists and non-experts in the fulfillment of this function. Scholars of the mystical-philosophical tradition of Islamic political theory would certainly not deny the importance of implementing the law, but unlike these scholars, Khomeini does not make the philosopher or mystic the implementer of this law and the head of government.

Theme #1 of the Mystical-Philosophical Tradition: Leadership by a mystic or philosopher

Khomeini's thought does not adopt the first theme of the mystical-philosophical tradition: that the polity must be headed by an individual with mystical or philosophical knowledge of the divine. Each of the scholars of the mystical-philosophical tradition that Khomeini studied envisioned that leadership would most naturally and most rightfully be exercised by an individual who possessed knowledge of metaphysical reality. Khomeini does not, however, adopt this view of leadership in his political writings. As will be described in greater detail in future chapters, political authority for Khomeini is fractured and divided and is not given wholly to a single individual because of his intellectual and spiritual achievements. Government, for Khomeini, is not reserved exclusively for those who have achieved wisdom or who make it their primary occupation to achieve wisdom.

In Khomeini's view, the political leader is the jurist—a figure with jurisprudential knowledge, and not the knowledge of a mystic, saint, or philosopher, the sort of knowledge held by the philosopher or mystic who appeared in the writings of philosophers such as Farabi, Avicenna, Ibn Arabi, and Mulla Sadra. While Khomeini's guardian was morally upright, he did not necessarily become so by traversing the same intellectual or spiritual journey as the philosopher or mystic, a journey that perfected his thought and action together and at the same time. What follows is an account of the qualities of the political leader in the view of each of the scholars of the mystical-philosophical tradition that Khomeini studied.

In the view of Farabi, the individual most suited for political leadership, is *al-insan al-kamil*, the "perfect man." He says in *The Virtuous City* that only one who is both a philosopher and a prophet, who has developed both the rational part of the soul, which enables him to philosophize, and the "representative"^{cxxvii} part of the soul, which enables him to receive prophetic inspiration, is the ideal political leader of the Virtuous City. The representative part of the soul, subordinate in all of us to the rational element of the soul, is, in the soul of the prophet,

along with the rational part of the soul, capable of receiving impressions delivered to it by the divine. Still, Farabi emphasizes primarily the intellectual qualities of the political leader, and as argued by Mahdi, prophecy, and not philosophy, is an indispensable condition for political leadership.^{cxxviii} “The Perfect Man,” according to Walzer in his commentary on *The Virtuous City*, “...[is] a theoretical philosopher in the Greek meaning of the term, who may be supported by prophetic-visionary gifts which reside in his representative faculty.”^{cxxix}

With this perfect man at its head, the just political order is structured in hierarchical form. “When it happens,” Farabi says, “at a given time, that philosophy has no share in government, though every other condition may be present in it, the excellent city will remain without a king, the ruler actually in charge of this city will not be a king, and the city will be on the verge of destruction.”^{cxxx} He compares the organization of the just state with the working of the human body, with each part performing that task that it is most suited, by its natural capacity, to perform. In this political hierarchy, the lower should be preoccupied with imitating and serving the higher; there should be no contrasting aims, no tug-of-war between elements of the city that have different concerns or ideals. The excellent city is one “in which people aim through association at cooperating for the things by which felicity in its real and true sense can be attained,”^{cxxxi} says Farabi.

An additional philosophical influence on Khomeini may likely have been Avicenna, whose ideas were central to the curricula of the seminaries throughout the Islamic world for almost one thousand years, from the 11th to the 19th century.^{cxxxii} Avicenna should be counted among those philosophers studied by Khomeini who likely envisioned a political role for the philosopher. In Book 10 of his work, *Shifa’*, or *Healing*—one of the few places in his works where Avicenna discusses political philosophy^{cxxxiii}—he says that practical philosophy, which includes political science, the organization and management of the household, and ethics, is distinguished from theoretical philosophy, which, practiced by a “prophet-lawgiver,” concerns understanding and illuminating the purposes of the sacred law.^{cxxxiv} Because practical philosophy presupposes the results of theoretical philosophy—how we behave morally and how we organize social and political institutions depends not just upon understanding the law, but understanding the purposes the law serves—those who are most familiar with truths derived from theoretical philosophy, Avicenna seems to imply, are also best qualified to engage in practical philosophy, to apply their theoretical knowledge to the political realm, and to be the ones to implement this practical knowledge by governing.^{cxxxv} But who is to engage in practical philosophy and to exercise political leadership if the foremost practitioner of theoretical philosophy, in Avicennan terms—the Prophet—is absent? Avicenna has been interpreted by philosophers such as Al-Tusi (d.1274) and Ibn Khaldun (d. 1406) to be arguing that it is the task of the philosopher of theoretical matters to take up the duties of the prophet-lawgiver,^{cxxxvi} so that “a given law or prophetic legacy can be transformed into a ‘divine polity’.”^{cxxxvii}

To understand Khomeini’s perception of the political guardian we must distinguish his guardian from not only Farabi’s and Avicenna’s perfect man, but from the perfect man who was described by two scholars who were arguably of even more interest to Khomeini: Mulla Sadra

and Ibn Arabi.^{cxxxviii} These scholars were critical of the epistemology of peripatetic philosophy practiced by both Farabi and Avicenna, which was based upon discursive reason. Instead, Ibn Arabi wrote on the subject of *'irfan*, which seeks to represent “mystical knowledge by presence” in linguistic terms.^{cxxxix} *'Irfan*, in other words, is the language of the mystic, and philosophy has a second-order relationship to mystical knowledge, in that philosophy engages in “logical, semantic, and epistemological justification of the truth and falsity of mystical statements and paradoxical assertions.”^{cxli} Mystical knowledge itself, however, can never be fully captured by the language of *'irfan*; it is a state of reality, above the subject-object division that perforates other forms of knowing, as intimate and as real as the knowledge we have of our own states of mind.

Both Mulla Sadra and Ibn Arabi believed that no knowledge of the divine truth could be complete without the experience of the divine through knowledge by presence. According to both philosophers, the spiritual wayfarer would experience what is described by Ha'iri Yazdi as an “introvertive journey of ascent and extrovertive journey of descent.”^{cxlii} In his return to the human community, he is obligated to take on a role of leadership, where this practice of leadership is as much a part of the individual's journey as his private ascent to knowledge of divine truths. However, in both Mulla Sadra's and Ibn Arabi's works it is not clear that this leadership must involve political leadership.

As Khomeini does in *Islamic Government*, Ibn Arabi discusses, in a short treatise on sainthood and prophethood,^{cxlii} the prophetic *hadith* that says that “the *'ulama* [the scholars or knowers] are the heirs of the prophets,” along with a saying that he attributes to Sheikh Abd al Aziz Mahdawi (d. 1224), which is also a *hadith*: “the *'ulama* of this community are like prophets of other communities.”^{cxliii} In this treatise, Ibn Arabi seeks to prove that the prophet's knowledge is preserved by these “knowers,” or “saints,” men who have trained themselves to acquire mystical knowledge. In his explanation of the prophetic *hadith*, he says that “since the knowers were the closest to the prophet in terms of affinity [*nasaban*], they became heirs to the prophets in respect of ‘condition’ [*hal*], ‘action’ [*fi'l*], ‘saying’ [*qawl*], and ‘knowledge’ [*'ilm*], both outwardly [*zahiran*] and inwardly [*batinan*]...”^{cxliiv} In his interpretation of Sheikh Mahdawi's saying, Ibn Arabi says that the *'ulama*, or the knowers, of today, who have knowledge of “that which is related to this world; to the Next world; and to God,” can be compared to—or have a role that is similar to—the prophets who were sent to past communities.^{cxliv} Ibn Arabi never says explicitly that the knowers inherit political duties from the prophets, so even if there was evidence in Khomeini's writings that the political leader must have mystical knowledge, Khomeini could not have drawn upon Ibn Arabi's works to articulate this idea. Moreover, Khomeini's political leader is not the “knower” that Ibn Arabi describes here; though the “knowers” are not entitled to renew or abrogate the sacred law in the manner a prophet may have in the past, the scope and substance of their knowledge clearly surpasses the jurisprudential knowledge that Khomeini requires his guardian to have.

Mulla Sadra, influenced by both Farabi and Ibn Arabi,^{cxlvi} is also a scholar of the mystic journey to the divine who was studied in great depth by Khomeini. Mulla Sadra believed, like

other scholars of the mystical-philosophical tradition, that the perfect man must struggle to acquire an awareness of being and existence through mystical transcendence,^{cxlvii} but he argued that experience of the divine should be integrated with rational understanding of the divine.^{cxlviii} Thus, he defended Avicennan methods of philosophy from trends of gnostic irrationalism he perceived at the time of his writing. Sadra's philosophy also challenged the clergy of his time, who hesitated to attribute meaning to religious texts that went beyond the literal; Sadra insisted that philosophers and mystics who interpreted the intention behind the religious "symbols" and "normative principles" revealed by the prophet lawmaker could thereby develop an understanding of law that was fuller and more divine.^{cxlix} Even though Mulla Sadra, like Ibn Arabi, argues that the mystic has access to a higher form of knowledge than the jurist, he does not say that the mystic must exercise a role in government.

Like Ibn Arabi and Mulla Sadra, Khomeini is a scholar of mysticism, leading some scholars to claim, as discussed, and some scholars have argued that Khomeini believed that the mystic is entitled to exercise political authority. However, in his book *Misbah al-Hidaya* (pub. 1931) (*The Lamp of Guidance*), in which Khomeini recounts the four journeys that Mulla Sadra had said must be undertaken by the mystic in search of divine knowledge, as well as in his political works, we see that this is not the case. Khomeini's interest in Ibn Arabi's and Mulla Sadra's mystic philosophy is evident in *Misbah al-Hidaya*, which is relevant to our understanding of Khomeini's political works because it describes an intellectual and spiritual development that the political ruler in *The Unveiling of Secrets* and *Islamic Government* need not necessarily have achieved; it is the story of reaching the utmost possible closeness to God through a quest for intimate, mystical divine knowledge, and this may be achieved not only by the appointed prophets, but by mystics who live after the last prophet. It is in the fourth mystical journey that the wayfarer attains the "rank of law-giving,"^{cli} Khomeini says; this is the journey "from Creation toward Creation by means of Truth."^{cli} In this stage, he comes to understand "what benefits and harms them [the objects of creation], and how they are to return toward God, and what can draw them toward God. So he informs them of everything he knows and of whatever is an obstacle in the journey toward God; and it is in this time that he attains legislative prophethood."^{clii} By undertaking the fourth journey, the mystic becomes capable of not only perceiving the divine truth but of teaching it to his community and formulating law that will facilitate his community's journey to the divine.

At the end of his account of the mystical four journeys, there is an indication that these four journeys—including the entirety of the fourth—may be undertaken by one who is not a prophet. "Know, my dear," he says, "that these journeys sometimes offer themselves to the complete friend of God—even the fourth journey, just as they offered themselves to Maula Amir Al-Mu'minin [Imam Ali, the first of the imams] and his infallible progeny, blessing be upon all of them."^{cliii} He says that there are "friends of God" who will be or have been offered the opportunity to undertake all four spiritual journeys, though these friends of God cannot discover new law. Finally, later in the text, he addresses a "spiritual friend" in a section that he marks "Conclusion of the Book and Advice to Friends," saying that in no way would it be proper that

“you uncover these secrets for those who are not of their [the secrets’] kind...since inner knowledge of the *shar’ia* is of a divine quality, and present among the secrets of God, and it must be kept out of reach and out of the sight of strangers, since their enlightened thought, their precise contemplation, does not reach this level...”^{cliv} There are, in other words, rare spiritual men, who can understand the law of God by undertaking the fourth journey, but they must not reveal what they discover to those who are incapable of understanding it. Since Khomeini recognizes that there are some rare individuals who may have the capacity to undertake all four journeys, it seems possible that these rare individuals would be capable of and responsible for political leadership. After all, the journeying of the wayfarer in the fourth journey entailed guiding men toward God, and why should the wayfarer be prevented from offering expertise on political affairs as well as affairs related to other spheres of activity?

We cannot conclude from this text, however, that Khomeini believes that the select few who have made it to the fourth journey should undertake political rule. While the Prophet was the political leader of the early Muslim community, there is no mention of political duties that modern men will have while they complete the fourth journey. The fourth journey, by its nature, involves offering guidance to ordinary believers, but Khomeini is not specific enough to say that the mystic should be given political power in order to offer this guidance. Khomeini does not say that intellectual and spiritual refinement entitles one to political leadership. Khomeini will be much clearer, however, in *The Unveiling of Secrets* and *Islamic Government* about whether the mystic or philosopher is entitled to political rule; in these two writings, his political leader is not a mystic or philosopher but a jurist.

The most detailed account of the qualities of the political leader is found in Khomeini’s *Islamic Government*. In this work, Khomeini is consistent—and, at one point, explicit—in his position that the leader is not to be a philosopher or mystic. Khomeini reproduces a speech given by Imam Hosein, the third imam and grandson of the Prophet, where we may find proof, he says, that the jurist must have political authority. “The administration of affairs and the implementation of law,” the Imam says, addressing the *‘ulama*, “ought to be undertaken by those who are knowledgeable concerning God and are trustees of God’s ordinances concerning what is permitted and what is forbidden.”^{clv} In his interpretation of the Imam’s words, Khomeini argues that the Imam did not mean, in this speech, that “the administration of affairs and the implementation of the law” is a task that must be undertaken by the twelve imams; this is not a speech in which the Imam is arguing for his right to political authority. Instead, the Imam is speaking of political authority after the occultation. Nor, he says, does he mean that this task must be undertaken by philosophers or mystics; he says that authority devolves upon scholars of jurisprudence. Khomeini says:

The Imām (‘a) could have said at this point: “What is my right has been taken away from me, but you have not come to my aid,” or, “The rights of Imāms have been taken away, but you have kept silent.” Instead, he spoke of those “knowledgeable concerning God” (*al-‘ulama bi-‘llah*), meaning the religious

scholars (*rabbaniyun*) or leaders. Here he is not referring to the philosophers or mystics, for the person knowledgeable concerning God is the one who is learned in God's ordinances. It is such a person who is designated as a religious scholar (*ruhani* or *rabbani*), naturally on condition that spirituality (*ruhaniyyat*) and orientation to God Almighty be fully apparent in him.^{clvi}

The governing jurisprudent, in Khomeini's view, must be more than simply a jurisprudent—he must have “apparent” spiritual qualities, and he must be “oriented toward God.” Thus, there is a concern not only that political leaders have knowledge of God's ordinances, but that they are spiritual, too, at least to the degree that others may perceive it. Even here, where he says that political leader must be spiritual, Khomeini does not say that he must be a philosopher or mystic.

Elsewhere in *Islamic Government*, Khomeini also emphasizes that the jurisprudent must be proficient in the law and an ethical human being, rather than that he must have exemplary spiritual qualities. In Chapter 3 of *Islamic Government*, called “The Form of Islamic Government,” he lists four qualities that the jurisprudent must exhibit prior to assuming office: intelligence, administrative ability, knowledge of the law, and justice. He then goes on to say, just shortly afterwards, however, that the two “fundamental” qualifications for the leader are knowledge of the law and justice.^{clvii} While knowledge of the law is only one of four essential qualities, none of the other three qualities that he mentions are indisputably and exclusively obtained through the philosophizing described by Farabi and Avicenna or the mystic journeys described by Ibn Arabi, Mulla Sadra, or even Khomeini himself in *The Lamp of Guidance*. One might suggest that justice is a quality most fully attained along with philosophical or mystical wisdom, but Khomeini goes on to specify that justice simply means “excellence in belief and morals” and does not say that the leader must share the beliefs and the morality of a mystic or a philosopher.^{clviii} In a footnote to his translation of this work, Algar says that “‘the quality of justice’ that is demanded of a religious scholar includes not only the practice of equity in all social dealings, but also complete abstention from major sins, the consistent performance of all devotional duties, and the avoidance of conduct incompatible with decorum.”^{clix} While the jurisprudent must meet certain spiritual and ethical standards in addition to having jurisprudential knowledge, Khomeini does not describe these standards in a way that would lead his interpreters to believe that they can only be achieved through philosophy or through undertaking the mystic journey.

Furthermore, Khomeini says that there are only certain forms of knowledge that the jurisprudent must have mastered in order to exercise political authority; namely, “knowledge of the law” and the knowledge that is required to act justly. He also says that there are certain forms of knowledge the jurisprudent need *not* have: “Knowledge of the nature of the angels, for example, or of the attributes of the Creator, Exalted and Almighty, is of no relevance to the question of leadership. In the same vein, one who knows all the natural sciences, uncovers all the secrets of nature, or has a good knowledge of music, does not thereby qualify for leadership or

acquire any priority in the matter of exercising government over those who know the laws of Islam and are just.”^{clx} While for a philosopher or mystic, knowledge of the nature of angels, or the attributes of God—attributes which the mystic struggles to imitate on his journey to the divine—is necessary, here Khomeini states that the jurispudent who holds political authority need not have this sort of knowledge; it is just as unnecessary for having the capacity to govern as scientific knowledge or knowledge of music. In *The Lamp of Guidance*, Khomeini says that after the wayfarer reaches the essence of God through the first journey (called “The Journey from Creation toward Truth”^{clxi}) and becomes united with that essence,^{clxii} he enters the second journey, the called “The Journey from Truth toward Truth by means of Truth.”^{clxiii} In this journey, he endeavors to understand all the names of God; he reaches a level of knowledge of all the names, except those names which God Most High has decreed would be known only to himself, and when he reaches this place he has acquired all-encompassing guardianship.”^{clxiv} Thus, in *The Lamp of Guidance*, it is the spiritual elite who learn God’s names. In *Islamic Government*, Khomeini’s expectations of the guardian are lower than his expectations of the journeyer in *The Lamp of Guidance*.

Finally, not only is Khomeini’s leader not a mystic or philosopher, but Khomeini says he cannot govern alone. In *Islamic Government*, Khomeini says that not only must the jurispudent govern by his jurisprudential knowledge, but experts in other fields are to cooperate with the jurispudent in government. In Khomeini’s view, as in the view of scholars of the mystical-philosophical tradition, knowledge is a crucial prerequisite to government, but unlike in this tradition, this knowledge is of diverse forms. Khomeini says that all “officials, provisional governors, and administrators” need not be jurisprudents, but “they should know the laws pertaining to their functions and duties.”^{clxv} Later, he says that “knowledge and expertise in various sciences” are necessary for “executive and administrative functions.”^{clxvi} These other governors must also, like the jurispudent, exhibit ethical qualities; he says that government must be entrusted to those who are “honest, intelligent, believing and competent.”^{clxvii} Through a close study of *Islamic Government*, we find that not only is Khomeini’s political leader not a mystic or philosopher but instead a jurispudent—one who has knowledge of God’s ordinances, but not the knowledge of a mystic or philosopher—we also find that the political leader does not have the knowledge to govern alone. In addition, we find that he is spiritual and ethical, though not in the same way as a mystic of philosopher.

Theme # 2 of the Mystical-Philosophical Tradition: Leader has concern for ethical and spiritual well-being of citizens

Thus far I have discussed how Khomeini’s political leader is not the perfect man in the mystical-philosophical tradition. However, Khomeini’s political thought overlaps, in part, with the Islamic mystical-philosophical tradition. In particular, like many of the neoplatonic philosophers and mystics who came before him, Khomeini says that the governor is not simply

the implementer of the law but he must also utilize his ethical and theological knowledge in government, though without forcing his subjects to adopt certain views or types of behavior.^{clxviii}

This is a position held by scholars of the mystical-philosophical tradition, who argue that the mystic or philosopher is valued not simply for his ability to implement the divine law, but for his ethical and theological insight, both on matters related to the law and on matters that he is faced with when governing that do not have precedent in the law. In other words, both his knowledge of the law and his knowledge of ethics and theology allow him to govern in a way that leads to a flourishing polity and the flourishing of individual citizens. While scholars of the mystical-philosophical tradition emphasized that the philosopher or mystic guides his subjects using means other than simply his legal knowledge, however, Khomeini's emphasis is on the ability of the leader to implement the law and thereby make possible the flourishing of individual citizens. The emphasis, in other words, in Khomeini's writings, and particularly in *Islamic Government*, is on the effectiveness of the Islamic legal and political system in securing goals that contribute to, but are not sufficient for, the attainment of individual flourishing. The Islamic legal and political system is primarily concerned with creating a society in which an individual is given certain rights and is obligated to perform certain duties, and while respecting these rights and fulfilling these duties may make it possible and more likely for members of society to achieve their moral, spiritual, and intellectual potentials, ultimately citizens need to do more than obey the law in order to flourish—and what more they need is found in realms of religious knowledge other than the legal.

Insofar as Khomeini says that the political leader is to have knowledge of the law and must see to it that it is implemented, without requiring that the leader possess philosophical or mystical insight on the law or bring this insight to bear on his governing, he strays outside of the mystical-philosophical tradition and speaks as a scholar of the jurisprudential tradition of political theory. The influence of the mystical-philosophical tradition on his thought becomes apparent, however, when he articulates an idea foreign to the jurisprudential tradition and specific to the mystical-philosophical tradition; he says that the political leader must be charged with utilizing his non-legal knowledge in matters related to ethics, theology, and spirituality in order to facilitate the flourishing of his subjects. In particular, he offers them words of ethical and spiritual guidance to help them to find happiness and become virtuous. He maintains that the leader need not be a philosopher or mystic, but he recommends that the leader provide guidance not only in matters related to the legal dimension of Islam, but also in matters beyond this dimension, in matters crucial to ethical and spiritual development. He says that the political ruler must be one who “guides men to the teachings, doctrines, laws, and institutions of Islam,”^{clxix} a concern that extends beyond simply the implementation of the law.

Government does not simply enforce the law but acts in the capacity of a guide, and moreover, a guide not exclusively in legal matters but in understanding the teachings and doctrines of Islam. While on the one hand, in Khomeini's words, government “prevents cruelty, oppression, and the violation of the rights of others,”^{clxx} it also should be a resource for those who seek ethical and spiritual development. While government must not force individuals to

adopt beliefs, it may offer guidance to those beliefs. Government is not simply an arena in which Islamic law is clarified and formulated, but it must provide citizens with knowledge that is pertinent to ethical and spiritual development.

Still, the emphasis in Khomeini's political works is not on the possibility that either the ruler or the divine law will be a resource for us as we struggle to fulfill our potentials, but that the ruler simply implements the law, and more specifically, that the law implemented by the ruler will serve our basic needs. Many of the traditions that he discusses in his works speak specifically to states of social welfare that are necessary but not sufficient conditions to achieve happiness. He quotes a tradition attributed to Imam Ali, the first imam, which says that a government must not allow to the masses to remain hungry and deprived while the elite few live a life of "gluttony and self-indulgence."^{clxxi} There is an emphasis, too, in the traditions Khomeini mentions on the importance of Islamic law because of its function in defending "the frontiers of Islam" from outsiders.^{clxxii} Throughout the text, Khomeini focuses on concerns that are more basic than those concerns that preoccupied his philosophical predecessors, concerns related to physical, rather than moral or spiritual, well-being. However, Khomeini does value those aspects of the law that impact the morality of individual citizens, and he believes that the ruler has a role in encouraging morality using non-legal means.

Tradition Three: Shi'a Jurisprudential Tradition of Political Theory

While I have argued that we find one theme of the mystical-philosophical tradition in Khomeini's political theory, his theory primarily has origins in Shi'a jurisprudential theorizations of the political roles played by jurists in the absence of infallible authority. Discussions of political authority in the absence of infallible authority began after the occultation in 941 CE of Muhammad Al-Mahdi, the last of the twelve infallible imams—who, as mentioned, according to Shi'a belief, were the successors to the Prophet Mohammad's political and spiritual leadership, inheritors of the same, perfect understanding of Islam possessed by the Prophet. This year marks the beginning of the Greater Occultation (*Ghaybat Al-Kobra*), which will last, according to Shi'a belief, until shortly before the end of time; in this period, the Imam does not establish regular communication with the Muslim community and is in fact absent from the physical plane, in a state of suspension between the physical world and the world beyond the physical. By contrast, during the Lesser Occultation (*Ghaybat Al-Sughra*), which began in 874 C.E., the Imam communicated with the Muslim community through a series of four named intermediaries.^{clxxiii}

In the physical absence of the Twelfth Imam during the Greater Occultation, the world is not left without guidance. The Shi'a doctrine of the imamate entails more than just a belief that twelve infallible individuals were the rightful successors to the Prophet's religious and political leadership of the Muslim community; in fact, it says that God will never leave humankind without a source of guidance, even after the occultation of the Twelfth Imam. Since the occultation of the Twelfth Imam, Shi'a scholars had held that those who were most familiar with the teachings of the imams should succeed them in their various roles in the community, though

there were varying opinions on which of these roles fallible scholars could assume.^{clxxiv} Khomeini becomes yet another in a long line of scholars who presented an argument for why the jurists (*fuqaha*) should act, in some respect, as successors to the imams, placing Khomeini squarely within this jurisprudential tradition. In particular, Khomeini was more typical of scholars writing in the nineteenth and twentieth centuries in arguing that jurists should succeed the imams not only in their role as scholar-jurists and judges, but in their (rightful, though not always actually exercised) role as political leaders. Khomeini focuses primarily on Shi'a *hadith*, instead of more recent scholarship, to argue that the jurist is to have political authority during the occultation.

In this section, I will describe both the arguments of scholars who said that jurists were entitled to fill the void of political authority left by the Twelfth Imam and the arguments of scholars who are part of the same Shi'a jurisprudential tradition of political thought but who believed that jurists do not succeed the Twelfth Imam in his capacity as political leader. I will discuss both those scholars whom Khomeini directly referenced in his political writings along with others, whom Khomeini did not mention by name, but who were influential scholars in the jurisprudential tradition of political theory or cited the same *hadith* as Khomeini in support of their arguments for the prerogatives to be exercised by jurists.

According to most scholars who wrote in the centuries of Shi'a jurisprudential political theory before the Safavid era, a period that began immediately after the occultation of the last imam in 941 and ended in 1501, the jurists would become the Imam's successors, but their authority was limited to ensuring that certain ordinances of the *shari'a* that had been explicitly articulated by the Prophet were implemented, as well as acting as judges when disputes arose in matters governed by the *shari'a*. For example, Shaykh Mufid (d. 1020), Shaykh al-Tusi (d. 1067), Sharif al-Murtada (d. 1044), and Allama Al-Hilli (d. 1327), all of whom were studied closely by Khomeini, argued that the imams had granted the Shi'a *ulama* the authority to implement the *hudud*—prescriptions explicit in the *shari'a* for punishments for crimes—during the occultation.^{clxxv} Many scholars of this period also stated vaguely that the political leader must act within the boundaries of the *shari'a* but stopped short of giving the jurist any political role, let alone one that gave him power over the executive. Mufid, in his *al-Muqn'ia*, argued that the temporal ruler (*sultan al-zaman*) can be just only if he upholds the norms of the *shari'a*, a statement that may imply that a religious specialist be involved in supervising the sultan's decisions.^{clxxvi} In addition, Sheikh Tusi, a student of Sheikh Mufid, also says that the just ruler (*al-sultan al-adil*) must act in accordance with the law of the imams, and Muhaqqiq al-Hilli (d. 1277) argued to the same effect that a just ruler would uphold *shari'a* law.^{clxxvii}

As a general trend, it may be said that as time progressed, scholars theorized an expanding realm of public duties and functions for the jurists. In the early modern and modern periods, scholars began giving the jurist a political role.^{clxxviii} While early Shi'a jurists asserted that the *shari'a* could be implemented in the absence of infallible authority, early modern and modern jurists were much more radical in their claims. No longer were the

jurisprudents simply implementers of certain provisions of the *shari'a* or vaguely given the role of ensuring that government did not violate the *shari'a*.

Many early modern and modern scholars often referred to two *hadith*—both of which Khomeini also discusses as evidence for his argument in *Islamic Government*—to argue that the *fuqaha* should have political authority by virtue of their position as successors to the last imam.^{clxxxix} The two *hadith*, widely accepted by scholars as authentic based on their chain of transmitters, were the *hadith* of Umar ibn Hanzala and the *hadith* of Abu Khadija. In the first *hadith*, Umar ibn Hanzala narrates Imam Ja'far as-Sadiq's response to a question Ibn Hanzala had posed; Ibn Hanzala had asked the Imam what two Shi'as should do when they have a legal dispute (particularly one regarding a debt or inheritance), and whether they should seek the intervention of the ruling authorities. The Imam responds that the ruling authorities are illegitimate, and instead the Shi'a should “seek out one...who narrates our traditions, who is versed in what is permissible and what is forbidden, who is well-acquainted with our laws and ordinances, and accept him as a judge and arbiter, for I appoint him as a judge over you.”^{clxxx} The second *hadith* commonly cited as evidence for the jurispudent's political role during the occultation is the *hadith* of Abu Khadija, which is similar to the *hadith* of Ibn Hanzala: not the “tyrannical ruling power,” but one who is “acquainted with our injunctions concerning what is permitted and prohibited” should act as “judge over you,” according to Abu Khadija's narration of the words of Imam Sadiq.^{clxxxi}

Many scholars, including Khomeini, made an argument based on these *hadith* that the jurisprudents were successors to the last imam and had political authority, though some, unlike Khomeini, allowed a parallel role for the king.^{clxxxii} One scholar, of the Safavid era, uses the *hadith* of Ibn Hanzala to argue that the jurispudent was the “general deputy” of the Imam. This scholar, Ali Al-Karaki (d. 1533), helped to bring the concept of general deputyship into intellectual prominence when he accepted the official position of “*na'ib amma*,” or “general deputy” of the Imam, conferred upon him by Shah Tahmasp in 1532. The term “general deputy” was contrasted with the idea of specific deputyship (*al-niabat al-khassa*) of named representatives of the Imam, whose location was publicly unknown, during the Lesser Occultation. The concept of general deputyship entailed that jurists, as a whole, and not any particular jurists, must put into effect—albeit as best they can—the will of the absent Imam, but on a practical level, to Al-Karaki, it meant that the jurist, in government, occupied the chief juristic position and became the supervisor of all religious institutions, such as religious endowments (*awqaf*) and the Friday prayer.^{clxxxiii}

Aqa Sayyid Ja'far Ibn Abi Ishaq Kashfi (d. 1850-51) also referred to the *hadith* of Ibn Hanzala to argue that *mujtahids* and rulers shared political leadership, and like Al-Karaki, said that the jurists were “general deputies” of the Imam.^{clxxxiv} Kashfi, who was on good terms with Fath Ali Shah, held that it is not only permissible but advantageous to the state for non-*mujtahid* kings and *mujtahids* to both contribute their expertise to a joint rulership of the state. If a monarch is not a *mujtahid*, he argued, then the king must follow the rulings of a *mujtahid* as he

exercises political control.^{clxxxv} His position, though, is atypical of the Qajar *'ulama*; most were on unfriendly with the Qajar monarchs and believed that they ruled illegitimately.^{clxxxvi}

Mirza-yi Qomi (d. 1816) adopted a more adversarial stance against the shah, arguing, like other scholars, that the *hadith* of Ibn Hanzala made the jurist the general deputy of the Imam, but also that the just *mujtahid* must give the sultan permission to collect land taxes, or else they are not lawful, and when the jurisprudent does not have political power, a subject is compelled, in a highly undesirable situation, to obey the “oppressive caliph.”^{clxxxvii} Finally, Shaykh Muhammad Hasan Najafi (d. 1849), author of *Jawahir al-Kalam*, cites both the *hadith* of Ibn Hanzala and Abu Khadija to claim that the authority of the jurists should “extend to every field except where the imams knew of his inability to exercise authority, such as in jihad for the propagation of faith”; they had “comprehensive guardianship” (*wilayat al-amma*).^{clxxxviii} Najafi’s political theory thus disproves Amanat’s stance that “no Shi’ite jurist before [Khomeini] ever extended legal *wilaya* to include public affairs, let alone the assumption of political power.”^{clxxxix}

Khomeini interpreted both the *hadith* of Ibn Hanzala and Abu Khadija to mean that utilizing the force of the state to settle a dispute when that state itself is not bound by Islamic law will never justly resolve the dispute. In other words, if one seeks recourse from a judge who is under the authority of an illegitimate government, one has clearly sought recourse not only from the judge as an individual, but from the state apparatus that has appointed him, pays his salary, and implements his ruling. The true authorities are those with knowledge of *hadith*, and therefore justice would not be served by seeking the ruling of a judge who has no knowledge of the Islamic sacred texts, or of a judge who perhaps has this knowledge but can be controlled by those who do not—as was the case through most of Islamic history, when it was ultimately the head of state who issued judicial appointments and dismissals.^{cx} If the outcome of a dispute brought to court is to be just, government as a whole must be just. While both of these *hadith* stop short of saying explicitly that the jurisprudent should be involved in other branches of government besides the judicial, they do, in Khomeini’s view, indicate that the jurisprudent should have independent political power and cannot, in Khomeini’s words, simply be the “agents” of the executive power.^{cxci} Their knowledge must reign supreme and cannot be compromised by an executive power who does not have this knowledge. Khomeini’s political interpretation of these *hadith* is less common; many Usuli scholars interpreted the *hadith* of Ibn Hanzala to sanction no more than the legitimacy of *ijtihad*—of the authority of *mujtahids* to issue legal rulings on newly arising questions because of their knowledge of “our traditions...our laws and ordinances.”^{cxcii}

One more recent scholar of the Shi’a jurisprudential tradition, whose writings Khomeini refers to for support for his argument in *Islamic Government*, is a scholar of the Qajar era, Mulla Ahmad Naraqi (d. 1830). Scholars have argued that Khomeini’s theory of guardianship of the jurisprudent has origins in Naraqi’s book *Awa'id Al-Ayyam*, published in 1829.^{cxci} Kazemi Moussavi argues that Naraqi’s method of justification of *vilayat-i faqih* was “revived” by Khomeini and that *vilayat-i faqih* can be found in Naraqi’s work in “lucid form.”^{cxci} This method involved the quotation, in his book *Al-Awa'id Al-Ayyam* (written in 1829), of nineteen different *hadith* to prove that the jurisprudent should exercise the authority of the Imam in

occultation in all its dimensions, including the political.^{cxcv} However, Naraqi's theory must be distinguished from Khomeini's insofar as Khomeini's theory, as I will argue, would require the inclusion of a parliament and non-jurisprudential authority.

In *Islamic Government*, Khomeini discusses Naraqi's argument for guardianship of the jurispudent, citing him as an example of a scholar who gave the jurispudent more than a judicial role; he says, at one point in *Islamic Government*, that Naraqi believed, like him, that the jurispudents are entitled to exercise all of the functions of the Prophet,^{cxcvi} and at another, that Naraqi argues, like him, that all the extrinsic^{cxcvii} functions of the Imam devolve upon the jurispudent.^{cxcviii} Finally, in addition to Naraqi, Khomeini cites the scholar Muhammad Husayn Kashif Al-Ghita (d. 1954), who believed that religious scholars were the deputies of the Prophet and the Imam in occultation, even in the political realm.^{cxcix}

In addition to articulating a political role for the jurispudent in the modern period, scholars developed the theoretical infrastructure of the modern institution of *marja'iyat*. Toward the beginning of the 19th century, scholars first began making the argument that individuals incapable of *ijtihad* themselves should choose to follow the legal rulings of a *mujtahid*, called a *marja'*, that they deemed to be most learned, '*alam*. The act of following a *marja'* was called *taqlid*, and accordingly, the jurispudent was known as a *marja'al-taqlid*.^{cc} The first *marja'*, Shaykh Muhammad Hasan Najafi, was recognized in 1846 when other well-known jurispudents who were also contenders for the position passed away before him, and he was unmatched among the '*ulama* in his prestige, teaching, and ability to finance students.^{cci} At times, there was more than one *marja'*—there were multiple "*maraje*"—and lay Shia believers could choose between them. All *maraje'* acquired their positions when they were recognized by generality of the '*ulama* as worthy of the position.^{ccii} The development of the institution was dependent upon the rise of the Usuli school (discussed above) of jurisprudence, since the scholars of this school of law gave mujtahids the authority on legal questions and argued that the *shari'a* had significant scope—including unprecedented questions—because new law could be deduced rationally based on its principles. Mujtahids could not have acquired the authority entailed by *marja'iyat* if not for tenets of the Usuli school, which gave them the authority to issue legal rulings on a broad range of questions, even on matters not traditionally addressed by the *shari'a*.^{cciii} Accordingly, the Akhbari '*ulama* rejected the need for *taqlid* of a *marja'*.^{cciv}

The concept of *marja'iyat* was not essentially political, however; most of the *maraje'* were politically quietist, refraining from issuing legal rulings in matters that came under the jurisdiction of the state (with a notable exception being Ayatollah Shirazi, who issued an edict mandating the boycott of tobacco, discussed below). Still, the concept is an important aspect of the intellectual context to Khomeini's theory of guardianship. Though the *marja'* did not necessarily exercise political authority, the institution centralized juridical authority in the hands of one or a limited number of learned jurists and the theory of *marja'iyat* posited that ordinary Shi'a should follow the rulings of a single jurist, much as Khomeini's theory centralized political authority in an Islamic government and gave the jurispudent held a prominent position in that government.

Clerical Activism during the Qajar Era

Theorizing the institution of *marja'iyat* and a political role for the jurispudent were symptomatic of the intellectual radicalism of the Qajar era. During the Safavid era, scholars were much more ambivalent toward the political establishment,^{ccv} in part because many scholars were given positions in state bureaucratic institutions,^{ccvi} as well as positions as Friday prayer leaders,^{ccvii} though many others refrained from any connection with the state, considering it illegitimate, despite being nominally Shi'a.^{ccviii} The Safavids portrayed themselves as a religiously legitimate government, emphasizing the king's position as head of the Safaviyya sufi order, claiming (erroneously) that the Safavid kings were descended from the 7th imam,^{ccix} and depicting their kings as divine.^{ccx}

By contrast, in the Qajar era, the state made no claim to Islamic legitimacy and the clergy adopted a position more straightforwardly and unambiguously opposed to the state than in the Safavid era. The *'ulama* gained increased strength during the interregnum between Safavid and Qajar rule, which lasted from the Afghan invasion of the Safavid capital of Isfahan in 1722 and ended with the ascendancy of the Qajars over competing tribes in 1795. During this period of instability, marked by a string of short-lived governments, the *'ulama* were a stable force in Iran, and this enhanced their prestige and authority.^{ccxi} No longer subservient to a state that claimed to have foremost religious authority, the *'ulama* independently developed an Islamic political theory^{ccxii}—increasingly, one in which they had a crucial legal or political role.

This trend continued in the Qajar era, when the clergy evolved into an influential social bloc that attained power at least in part because of their regaining of control of the religious endowments and the collection of religious taxes.^{ccxiii} As in the Safavid era, the Islamic jurists had control over the religious (*shar'*) courts, in a dual system of religious and secular (*'urf*) courts (the latter of which dealt with legal issues not addressed by the *shari'a* and nominally functioned according legal precedent). During the Qajar era, unlike in the Safavid era, the religious and secular courts often competed against each other, since their jurisdictions would at times, overlap and be disputed and since the religious courts lacked the power of enforcement. This often became a source of conflict between the state and the *'ulama*. The Qajars struggled to expand the jurisdiction of the *'urf* courts at the expense of the *shar'* courts and submit these courts to the jurisdiction of the state,^{ccxiv} whereas during the Safavid era, the state had control over both systems of courts, placing the *'ulama* and the *shar'* courts in a position subordinate to the state.^{ccxv}

The increased political independence of the Qajar *'ulama* may have allowed not only for their intellectual radicalism but their political activism, and Khomeini reserves words of praise for this activism. In their actions, and not merely in their writings, scholars wrote that clerics, on the basis of their familiarity with the law, should encourage a king to act based upon legal ordinances and principles of Islamic law or should themselves take direct action to encourage certain political ends. To Khomeini, too, jurispudents had the duty to classify a political act as having religious sanction or not, unlike the foremost opponent of the constitutionalist movement,

Sheikh Fazlollah Nuri (d.1909), who wanted to allow religion to issue judgment on only a limited number of affairs, most of which had been explicitly mentioned in the classical texts.^{ccxvi}

Khomeini cites two instances of the intervention of a jurispudent in political affairs during the Qajar era: first, the *fatwa* (legal edict) issued by Ayatollah Mirza Hasan Shirazi that called for a boycott of tobacco, and second, a *fatwa* issued by Mirza Muhammad Taqi Shirazi (d. 1921) for *jihad* against the British in Iraq after World War I. In 1891, the Qajar king Nasir ad-Din Shah had traveled to Europe to seal a deal with a British Company, the Imperial Tobacco Corporation, that would transfer to it all rights concerning the sale and distribution of tobacco inside of Iran and the export of all tobacco produced in Iran. Shirazi then issued a *fatwa* that resulted in a widespread refusal to smoke, and as a result, that same year, Nasir ad-Din Shah rescinded the deal. The text of Shirazi's *fatwa* read: "Today the use of tobacco for water pipes or pipe tobacco, in whatever form, is tantamount by law to engaging in war with the Imam of the Age, May God Hasten his Return."^{ccxvii} Shirazi, in authoring the *fatwa*, had, quite effectively, asserted his authority over the monarch, as a jurist who could determine what constituted "engaging in war with the Imam of the Age." Shirazi was a student of Sheikh Mortaza Ansari (d. 1864) (along with Naraqī), who agreed that the jurispudents were the *ulu'l amr* (those in authority) mentioned in the Quranic verse^{ccxviii} and were the general deputies of the imams but did not believe that this authorized their participation in government.^{ccxix} Shirazi agreed with Ansari's position in his writings, but in practice, he asserted his own authority over that of a monarch who he believed was selling his country to foreign economic interests.

Khomeini also mentions Mirza Muhammad Taqi Shirazi's *fatwa* that called for a *jihad* against the British in Iraq. Before being occupied by the British, Iraq had been part of the Ottoman Empire, which, during World War I, was allied with Germany against the Allied powers. In 1917, the British conquered Iraq,^{ccxx} and Shirazi was part of a general resistance movement, composed of tribal, nationalist, Sunni, and Shi'a elements, which began at the start of the war in 1914. In 1920, Shirazi declared a *jihad* to remove the British, and in the ensuing revolt, about 20,000 Iraqis lost their lives.^{ccxxi}

The Shirazi fatwas were not the first of their kind. Perhaps one of the most radical instances of the intervention of a member of the '*ulama* in political affairs by issuing a fatwa occurred when the chief *mujtahid* of Tehran, Mulla Ali Kani (d. 1888), wrote to the Qajar King Nasir ud-Din Shah in 1873 demanding the dismissal of his chief vizier (*sadr-i 'azam*), Mirza Husayn Khan, who had helped to facilitate the granting, in 1872, of a concession to the British financier Julius Reuter for the exploitation of all minerals and forests in Iran, including for constructing a railway. In this letter, Mulla Kani declares "the right of the '*ulama* to intervene in matters of state, whether or not their intervention is welcome to the monarch and acted upon him or not..."^{ccxxii} He later issued a fatwa declaring that Khan's dismissal was *wajib* (religiously obligatory).^{ccxxiii} Bowing to pressure, Nasir-ud-Din Shah demoted Khan, re-assigning him as governor of the Gilan province.^{ccxxiv}

Khomeini does not mention Kani's fatwa, but he says that both Shirazi *fatwas* were binding on citizens and other '*ulama* by virtue of the fact that the *fatwas* were "governmental

rulings” (*ahkam-i hokumati*). A jurisprudent issues such a ruling, he says, in *Islamic Government*, “based on the interest of Islam and the Muslims...”^{ccxxv} These governmental rulings are clearly not found in the classical sources of Islamic law—because they are responsive to considerations that arise in new circumstances—but are binding nonetheless because they are based on principles that underlie the law. In the case of these *fatwas*, two jurisprudents issued governmental rulings on the basis of the general principle that the interest of Islam and the Muslims must be protected. In issuing these governmental rulings, Khomeini argues, both Shirazis could exercise political power, even in defiance of a government already in power. Jurisprudents could most accurately discern, certainly better than a Qajar monarch, what a government ought to do in a particular situation—namely, when a country was threatened economically and politically by a foreign power—and, moreover, what ordinary citizens must do when their government did not act in their interest.

As an interpreter of the Shi’a jurisprudential tradition of political theory, Khomeini agreed that jurisprudents must have political authority in the absence of any infallible individual who could assume leadership. However, also as an interpreter of this tradition, Khomeini accepted that all political authority, even the authority of the jurist, is fallible, and therefore it operates—and by implication, must operate—within a limited sphere. Not only will the jurist have moral failings, but he will also have intellectual failings, both for his imperfect knowledge of jurisprudence and his insufficient knowledge of other fields. This means that Khomeini follows traditional texts of the Shi’a jurisprudential tradition by holding that the jurisprudent is the successor of the Imam in occultation, but he also says, in essence, that there are multiple successors, and the jurisprudent is only one of them. Drawing upon the ideas of constitutionalist scholars, Khomeini saw a role in government both for experts in other fields and the common citizenry.

Tradition Four: Constitutionalist Tradition

As has been described so far, Khomeini was part of a long line of scholars who wrote that the jurisprudent should have a role in government, and many jurisprudents, in fact, acted upon this idea. Participants in a Shi’a jurisprudential tradition of political theory, these scholars wrote that the Islamic jurisprudent’s knowledge of the law made him qualified to be not simply a judge in a court or an implementer of particular ordinances of the *shari’a* but to have a position in government. One indispensable ingredient of religiously legitimate government, to these scholars and to Khomeini, is the knowledge of the jurisprudent—his knowledge of particular ordinances of the *shari’a*, and his knowledge of how to derive *shari’a* from the primary texts.

However, just as Khomeini should be considered part of the Shi’a jurisprudential tradition of political theory, he should also be considered part of the constitutionalist tradition, which included scholars who, like the politically active jurisprudents described above, were critical of the unchecked power of the Iranian monarch; many of them held that a constitution and a parliament of democratically elected representatives, overseen by jurisprudents, could best

constrain the monarch, grant common citizens their right to participate in their own government, and serve as a forum in which experts in non-Islamic fields could help to draft effective law. Toward the end of the 19th century, religious scholars were instrumental in the movement for constitutional reform,^{ccxxvi} and Shirazi's *fatwa* for a tobacco boycott helped to encourage the constitutionalist political theorizing, emboldening and inspiring scholars to theorize a constrained political role for the monarch.^{ccxxvii}

The constitutionalist elements of Khomeini's thought appear in a theoretically clearer manner in his 1943 work, *The Unveiling of Secrets*, as well as in his post-revolutionary writings, and only rarely in *Islamic Government*, his most widely studied academic work. As will be argued in the next two chapters, Khomeini urges, in *The Unveiling of Secrets*, that the 1906 constitution be implemented, a constitution which had provided for a parliament of elected representatives. Though he says that parliament must be overseen by jurists, he recognizes that jurists' expertise does not entitle them to impede the passage of any law passed by parliament. There were some laws that were needed to address unprecedented circumstances, laws not found in the letter of the law but that still served its ethical principles. Representatives in parliament could determine the need for and the content of such law. Finally, in *The Unveiling of Secrets*, Khomeini, like scholars of the constitutionalist tradition, emphasized that even a government that implemented Islamic law could not be imposed upon a public that did not desire such a government.

In his post-revolutionary writings, Khomeini highlights the important role played a parliament, as well as the indispensability of popular consent to government—two central themes of the constitutional tradition. He continues to maintain, after the Revolution, that parliament may pass law that supplements the *shari'a* but serves the principles that underlie the *shari'a*. He is more radical than he was in *The Unveiling of Secrets* when he says that parliamentary law drafted in the service of the principles of the *shari'a* may even justify the suspension of the *shari'a*.

Unlike *The Unveiling of Secrets* and his post-revolutionary writings, *Islamic Government*, a series of lectures written in 1970, is only vaguely reminiscent of constitutionalist ideas. Khomeini stops short, in *Islamic Government*, of calling for the election of representatives to a parliament, though he does make mention of a "planning body" that seems to perform functions similar to a parliament, and he says that it is praiseworthy, though he does not say that it is necessary, for a government to have attained the consent of its people to pass and implement law.

In both *The Unveiling of Secrets* and *Islamic Government*, however, it is evident that Khomeini was familiar with scholars of the constitutionalist tradition. In *The Unveiling of Secrets*, Khomeini speaks highly of the parliamentarian Sayyid Hasan Mudarris (d. 1938) and says that "people like Mudarris" should oversee the parliament.^{ccxxviii} Mudarris was a representative from Isfahan and a supporter of constitutionalism; in Qom, Khomeini frequently went to Mudarris' classes and home.^{ccxxix} Also in *Islamic Government*, Khomeini twice cites the important twentieth century constitutionalist scholar Mirza Muhammad Husayn Na'ini (d. 1936), who put forward a theory of Islamic constitutionalism his book, *Tanbih al-Umma wa Tanzih al-*

Milla [Exhortation of the Community and Purification of the Nation] (though it is important to note that Na’ini disowned this book after the government put to death his chief intellectual opponent, Ayatollah Fazlollah Nuri). In both instances, Khomeini compares Na’ini’s conception of the role of the jurispudent in government to his own, calling Na’ini’s Islamic theory of constitutionalist parliamentary democracy—where a popularly-elected parliament was overseen by a council of jurisprudents—a theory of government by the jurispudent. Na’ini, he says, regarded “all the extrinsic functions and tasks of the imams as devolving upon the *faqih* [jurispudent],” an idea that he says Na’ini, like himself, derived from the *hadith* of Umar ibn Hanzala.^{ccxxx}

Though Na’ini believed that the jurispudent would continue the political rule of the imams insofar as he ensured that Islamic law was implemented, he also held, like Khomeini, that the jurispudent must not govern alone. Like Khomeini in *The Unveiling of Secrets*, Na’ini argued that there was room for a parliament in government that implemented Islamic law; parliamentary legislation, he said, is impermissible only if one declares a provision not in the *shari’a* to be part of the *shari’a*.^{ccxxxi} In other words, law is still law even if is written by human beings and is not included in the *shari’a*; but it is a distinct kind of law, a human law—and should be recognized as human and not divine—but it is binding nonetheless. As will be argued in Chapter 4, Khomeini was also amenable to parliamentary lawmaking in a similar way; lawmaking, he said, could only be undertaken insofar as it did not violate clear provisions of the *shari’a*. In both Na’ini and Khomeini’s view, the parliament that undertook the task of lawmaking would be popularly-elected, and citizens should assess their representatives in parliament based on their ethical qualities and vote for them accordingly. Participating in parliamentary elections, in Na’ini’s words, is a “religious and patriotic task.”^{ccxxxii} It is important to note that constitutionalists were enabled by their Usuli orientation to make an argument for parliamentary government. The idea that the *shari’a* could be supplemented and developed in ways that were inspired by its principles—and that this new law was human and contestable—was distinctly Usuli, but constitutionalists added that a parliament could be involved in this process.

Sheikh Fazlollah Nuri is representative of a position on parliamentary constitutionalism that is opposed to a tradition that both Na’ini and Khomeini fall into, although all three figures share a connection to scholars of the Shi’a jurisprudential tradition of political theory who argued that jurisprudents have duties in government after the occultation. Nuri argued that lawmaking must be entirely in the hands of the *mujtahids* and that majority rule and representation are innovations that should be avoided.^{ccxxxiii} Na’ini, on the other hand, grounded his support of majority rule and representation in Islamic arguments, arguing that both of these institutions are legitimate and, in fact, the best available tools for decision-making in the absence of the infallible Imam on matters not addressed by the *shari’a*. Na’ini accuses Nuri of engaging in sophistry by making the claim that constitutionalists seek to establish a parliament that will engage in *tashri’*, or the making of law that is on par with the divine law. All law-making is not divine law-making, Na’ini says.^{ccxxxiv} Still, Na’ini held that any parliament must be supervised by

jurisprudents in order to ensure that law does not violate “principles of Islam,”^{ccxxxv} an argument made by Khomeini in *The Unveiling of Secrets and Islamic Government* (although Khomeini also left open the possibility, in *The Unveiling of Secrets*, that parliament could instead be composed of *mujtahids*).^{ccxxxvi}

As a resident of Iraq (teaching at the seminaries in Najaf), Na’ini was in touch with ideas on constitutionalism circulating in the Arab world in the late 19th and early 20th centuries. According to Abdul Hadi Ha’iri, Na’ini’s ideas seem most similar to the Arab reformer Sayyid Abd Al-Rahman al-Kawakibi (d. 1902), and Na’ini even used much of the same terminology that Kawakibi uses in his book, *Taba’i’ al-Istibdad wa Masari’ al-Isti’bad* [*The Characteristics of Tyranny and the Destruction of Enslavement*]. Kawakibi, in turn, drew extensively on the writings of Vittorio Alfieri (even, according to Ha’iri, repeating almost word-for-word long passages from one of his books), and Alfieri, in turn, was influenced by Montesquieu.^{ccxxxvii}

The constitutionalists, and following them Khomeini, likely had a second source for opposition to political tyranny [*istibdad*], beyond ideas emerging from the Arab and European worlds, and this was the traditional texts of the Shi’a Islamic tradition. In this Islamic view, when does a government become tyrannical? Is it tyrannical when it is unjust, or can it be tyrannical when it simply opposes the wishes of the people, regardless of whether it is just? Does the Islamic tradition provide the theoretical resources for a condemnation of force and imposition in its essence, or does it only condemn force when it is allied with evil (like the rule of Pharaoh, or the rule of Yazid—the Umayyad caliph responsible for the killing of the third Shi’a imam, Imam Hosein, at Karbala)? In *Exhortation of the Community and Purification of the Nation*, Na’ini condemns not only a governor who works against the good of the nation, and in doing so, forces his people to submit to his will, but a governor who—even if he claims to, and truly is, working for the good of the nation—disregards the will of his people. A tyrant, to Na’ini, does not become tyrannical only when he is both driven by the wrong aims and acts against the will of the people, but he may become a tyrant when he meets only one of these two criteria—when he simply acts against the will of the people. Na’ini narrates a story that shows that the Prophet himself heeded the views of his people even when they contradicted his own. During the Battle of Uhud, the Prophet preferred not to leave Medina, but because the majority of his followers wanted to, he complied, though he knew this would not be the best tactical move.^{ccxxxviii} Na’ini, in other words, argued on a religious basis that a government must acquire the consent of its subjects if it is to exercise legitimate authority. Khomeini’s ideas are similar to Na’ini’s and other constitutionalists insofar as he, too, accepts this idea, putting him squarely in the constitutionalist camp.

Conclusion

Though Khomeini was well-acquainted with the mystical-philosophical tradition of Islamic political thought, in his own political works, Khomeini draws very little from this tradition. Contrary to claims widespread in the secondary literature on Khomeini’s thought,

Khomeini does not say that the mystic or philosopher, depicted by scholars of this tradition as having reached an understanding of the divine truth by means of philosophy or mystic transcendence, is most suited to exercise political rule. Still, Khomeini's political writings are not unaffected by this tradition of thought; Khomeini says that the political leader, though a jurist, does not simply deduce and implement the law, but also provides ethical and theological guidance to citizens. The leader has acquired this ethical and theological insight through the study of subjects apart from—and more elevated than—the law, but Khomeini does not envision that the political leader has understood these subjects by thinking about their philosophical or mystical significance. To the extent that the political leader offers—though does not impose—his ethical and theological insight to ordinary citizens, he is concerned, like the philosopher or mystic, with the intellectual and spiritual flourishing of citizens, a flourishing that results not simply from being an obedient follower of the law, but from adopting ethical practices and theological beliefs that lead them to develop a familiarity with the divine truth on a plane that is more elevated than the legal.

Though the mystical-philosophical tradition served primarily as a foil for Khomeini's depiction of the political leader—Khomeini is more concerned with distinguishing his political leader from the mystic or philosopher than with giving his political leader qualities exhibited by the mystic or philosopher—Khomeini primarily draws from and contributes to a Shi'a jurisprudential tradition of political theory, a tradition of scholarship oriented around defining the jurist's prerogatives during the occultation as a successor to the last imam. Like other modern scholars of this tradition, he envisioned an expansive political role for the jurist, arguing that the jurist's duty was not simply to ensure, whether as part of the judicial branch or a subordinate assistant to the executive power, that the limited number of already-existing ordinances of the *shari'a* were implemented. Instead, the jurist was the successor to the Prophet and the imams, and he was to participate in the drafting of legislation and the issuing of governmental ordinances, granting the *shari'a* a greater importance by using it as a resource for new law, responsive to new circumstances. In taking this position, Khomeini joins a generation of nineteenth and twentieth century clerical activists, who, in their actions and not just in their scholarly writings, either made the monarch the instrument of their political will, or, when the monarch would not comply, resisted and defied the monarch's authority. All scholars of this tradition, and including Khomeini, believed that the jurist, whether or not he exercised political authority, was morally and cognitively fallible, unlike the imams that he succeeded. This idea cannot be neglected when we analyze Khomeini's political theory and specifically the role he envisioned for jurists in government.

While many scholars acknowledge Khomeini's debt to the Shi'a jurisprudential tradition, they do not perceive that he drew from a constitutionalist tradition that was born in the late nineteenth century. On the one hand, as a scholar of the Shi'a jurisprudential tradition, Khomeini holds that the jurist's expertise is an indispensable component of political justice, but like scholars of the constitutionalist tradition, he argues just as strongly that the jurist does not govern alone—that government should include a parliament of directly-elected citizens, whose

expertise and opinions would be instrumental in the drafting of legislation that responded to issues not addressed by the *shari'a*. Also like scholars of the constitutionalist tradition, Khomeini argued that ordinary people must offer their consent to government by the jurispudent. In his constitutionalism, Khomeini was influenced chiefly by the constitutionalist scholar Mirza Muhammad Husayn Na'ini.

Finally, the Usuli legal tradition also allowed Khomeini to conceptualize Islamic government, which included jurisprudents, as a human institution. Jurisprudents could exercise *ijtihad*, always imperfectly, to move beyond authoritative texts and make their best argument for how law could become applicable to a particular circumstance, a circumstance unaddressed by the original text. The law that they derived and implemented, using their intellect as well as their knowledge and understanding of the authoritative texts, was nothing more than *zann*, or supposition. To govern by Islamic law meant not that a code of law simply needed to be implemented but instead that governors needed to discuss what the most Islamic response would be to particular legal questions. In the Usuli conception, Islamic law contains specific provisions but more often is silent and prescribes general principles. When law is absent or contingent, the duty to formulate it need not lie exclusively in the hands of the jurispudent; forms of knowledge beyond what is found in the sacred texts can be contributed and considered by non-jurisprudents. This principle made it possible for both Na'ini and Khomeini to argue that a popularly-elected parliament could draft law where the *shari'a* fell silent. It also made it possible for Khomeini to argue that parliament could draft law that suspended ordinances of the *shari'a* if continued implementation of those ordinances in specific contexts meant that the principles of the *shari'a*—held by Usulis to be understandable through reason and more important than the letter of the law—were being violated. Moreover, since Usuli scholars argued that laws derived by jurisprudents through *ijtihad* could always be contested, Na'ini and Khomeini could argue that one could not presume that jurisprudents in government must have the final word on matters related to the law; their conclusions could always be mistaken, and hence they could not exercise unquestionable political authority.

Drawing from diverse traditions, Khomeini melded together a political theory that held legal expertise to be of central importance but also emphasized the insufficiency and conditioned nature of the jurispudent's rule and the importance of public opinion. Like the centuries of scholars who came before him, Khomeini said that the jurispudent was the Imam's representative on earth, but he also said that the jurispudent's knowledge was not enough and his right to govern not exclusive of the right of others to help govern, even if they were ordinary citizens. Khomeini's Usuli conception of the law informed his belief that the law was underwritten by principles from that could sanction new law, and both experts and non-experts could participate in the drafting of this law. Beyond simply being of use to the legislative process, however, ordinary citizens had a right to participate in their own government, Khomeini believed, to give their consent to a government and to elect representatives to a parliament. In arguing that both ordinary citizens and jurisprudents had a role to play in the government that substituted for the government of the infallible Imam in his absence, Khomeini became a scholar

of the constitutionalist tradition, though the influence of this tradition on Khomeini's thought has often been minimized or unrecognized.

Chapter 3: Islamic Government (Hokumat-i Islami)

In the previous chapter, I argued that Khomeini drew on four traditions of thought in his political writings: first, the Usuli legal tradition; second, the Shi'a jurisprudential tradition of political theory; third, the constitutionalist tradition; and finally, but only minimally, the mystical-philosophical tradition. First, Khomeini adopted ideas from the Usuli legal tradition, a tradition of thought that profoundly influenced his view of the law. With a belief in the rational comprehensibility of the law, Khomeini could argue that it could become subject to debate in a modern government and in a parliament, reapplied to speak to circumstances that did not exist when it was revealed. The principles in which the divine law was grounded could become the basis for new law, and law became, on the whole, not a ready-made code to be implemented, but a source of principles from which law could be deduced that took into account changed circumstances. As an Usuli scholar, Khomeini upheld the principle that law derived by the mujtahid was contestable.

Second, as an interpreter of the Shi'a jurisprudential tradition of political theory, Khomeini held that jurists must have political authority in the absence of any infallible individual who could assume leadership. However, also as an interpreter of this tradition, Khomeini accepted that all political authority, if not exercised by an imam or prophet, including the authority of the jurist, is fallible, and therefore it operates within a limited sphere. Not only may the jurist have moral failings, but he will also have intellectual failings, both for his imperfect knowledge of jurisprudence and his insufficient knowledge of other fields. This led him to conclude that the jurist cannot alone serve as the successor to the Imam in occultation.

Third, Khomeini drew upon the ideas of constitutionalist scholars who believed strongly that a monarch must be constrained by a constitution and by a popularly elected parliament and emphasized that the legitimacy of a government depended in part upon the consent of its citizens. Like scholars of the Shi'a jurisprudential tradition of political theory, these scholars believed that the jurist should have a role in government—in particular, by serving on a committee that would oversee law passed by parliament to ensure that the law did not violate the *shari'a*. However, key scholars of this tradition, like Mirza Muhammad Husayn Na'ini (d. 1936), believed parliamentary representatives were needed to draft law that supplemented the *shari'a*, serving the same principles that the *shari'a* served, recognizing that the divine law was not sufficient for modern-day government.

Finally, Khomeini was influenced only minimally by ideas from the Islamic mystical-philosophical tradition of political theory. Though Khomeini believed that the jurist need not have experienced the same spiritual development that he describes in some of his works on mysticism, he does draw from this tradition the idea that the religious expert in government must provide guidance to the citizenry in matters regarding belief and religious practice. Religious scholars who exercise political authority, however, are qualified not by their

knowledge of philosophy or their mystic insight into the divine truth but by their knowledge of the laws and their skills in deducing the law from authoritative sources.

I argue that scholars in the recent literature on Khomeini's political thought often skim over the constitutionalist elements of Khomeini's political thought, whether they claim that in Khomeini's view it is a philosopher or a jurist who should have sovereign political power. Particularly in Khomeini's Najaf lectures, which were later published in book form under the title *Islamic Government*, we find that at times, Khomeini's argument opens up space for constitutionalist principles, whereas in *The Unveiling of Secrets*, a work he wrote in 1943, we find direct support for these principles. Though in both texts, Khomeini holds that government can legislate and act only within the boundaries of Islamic law, where jurists determine when government has violated the divine law, he also recognizes limitations on the jurist's capacity to govern and political prerogatives reserved for ordinary citizens.

In this chapter, I will focus on Khomeini's argument in *Islamic Government*, highlighting those elements of the text that open up the theoretical space for constitutionalist principles or have been wrongly interpreted to contradict these principles. First, drawing on the Shi'a jurisprudential tradition of political theory, in *Islamic Government*, Khomeini recognizes the moral and intellectual fallibility of the jurist and therefore implicitly calls for the jurist to be held accountable by others. While Khomeini never proposes, in this text, a mechanism by which the jurist may be forced to step aside, nor states in explicit terms that certain governors should have the ability to force him to step aside, he says that the position may indeed be "usurped," and that government, on the whole, is a human convention. The view that political power may become tyrannical and therefore there must be institutional mechanisms by which it is constrained was central to the constitutionalist tradition. Second, Khomeini speaks of the divine law not as a code to be rigidly implemented by a jurist or mystic, but as "progressive" and "evolving." Though Islamic law must be the central criterion for legislation, Islamic law itself is malleable enough, at times, itself to serve as the material, rather than a set of unalterable standards, for legislation in government. Though he stops short of saying that non-jurists may participate in molding the law, his rationalistic view of the law comports with his earlier and later view that there is need for a deliberative legislative body even in a government that implements Islamic law. Third, Khomeini says that attaining popular consent is morally preferable to coercion, though he does not go so far as to adopt the constitutionalist view that popular consent is an indispensable condition for legitimate Islamic government. Fourth, though he is not clear on whether there is to be a parliament of popularly elected representatives in government, and thus we can only remain doubtful about his views in 1970 on representative government, he does describe a body that shares many of the same prerogatives as a parliament, calling it a "planning body." Finally, Khomeini claims that his theory of government is similar to that of the constitutionalist scholar Mirza Muhammad Husayn Na'ini. Na'ini had held popular consent and an elected parliament, operating within the bounds of Islamic law, to be the most desirable form of government in the absence of divine guidance. This evidence indicates that in

Islamic Government, Khomeini is less averse to constitutionalist principles than secondary scholarship has claimed.

In *Islamic Government*, Khomeini leaves important questions unanswered. More specifically, he does not answer questions such as the following: Who is to cause this “progressive” Islamic law to “evolve”? Who is to hold the guardian accountable, and by what means is he to be held accountable? Is consent a necessary condition for an Islamic government? Is the planning body elected, and does it engage in legislation? Because he does not answer these questions, *Islamic Government* does not provide us with strong evidence that Khomeini was influenced by the constitutionalist tradition. It is in *The Unveiling of Secrets*, rather than in *Islamic Government*, that we find stronger support for constitutionalist themes, and I will discuss this book in greater detail in the next chapter.

Does the absence of support for constitutionalist principles in *Islamic Government* and the explicit support for these principles in *The Unveiling of Secrets* simply indicate that after nearly three decades, by the time he wrote *Islamic Government*, Khomeini had changed his mind? Khomeini again defends these principles, however, in his speeches, statements and correspondence that he produces after the Islamic Revolution in 1979 and until his death in 1989, writings that I discuss in Chapter 5. These writings, like *The Unveiling of Secrets*, are only infrequently studied in the literature in English but provide evidence against the claim that the trajectory of Khomeini’s thought, as time passed, tended toward an authoritarian view of government, and that *The Unveiling of Secrets* is an early work unrepresentative of Khomeini’s more mature, developed views. In his post-revolutionary writings, he emphasizes that an Islamic government cannot be considered legitimate if the public has not consented to it and prescribes a robust role in government for a parliament—though he continues to argue for a powerful role for the jurispudent. Though some scholars have argued that these post-revolutionary writings are hopelessly contradictory,^{ccxxxix} they have been differently interpreted in contemporary Iran by conservatives who claim that these writings support a stronger role for the jurispudent, and by reformists who interpret these writings in a different way, arguing that Khomeini envisioned an expansive sphere of prerogatives for citizens and their elected representatives.^{ccxli}

The reading of *Islamic Government* that I argue for here undermines the claim made by scholars that there is a sharp inconsistency between his most well-known pre-revolutionary writing, *Islamic Government*, and his perspective after the Revolution. Two important authors on Khomeini, Said Amir Arjomand and Vanessa Martin, are troubled by what they perceive to be a discrepancy between *Islamic Government* and Khomeini’s expressed political attitudes in the speeches and statements he delivered after the Revolution, when they argue that Khomeini becomes a strong advocate of the need for popular consent to and various forms of popular participation in government. Both state without reservation that *Islamic Government* is a text which simply urges rule by a jurispudent, and after the Revolution, Khomeini changed his mind completely, either—in Arjomand’s view—to make it seem as if he wished that ordinary citizens have a significant role in government, during a short period that would only be a slow and hopefully indiscernible transition to authoritarian rule^{ccxli}—or, in Martin’s view—because his

perception of the theoretical tension between divine sovereignty and representation became dulled after the revolution, when he pushed for combining two things that could never be combined.^{ccxlii} Misconceiving the nature of the guardianship that Khomeini prescribes in *Islamic Government*, they see an incompatibility between the pre- and post-revolutionary Khomeini that does not exist.

Historical Context of *Islamic Government*

Almost three decades after writing *The Unveiling of Secrets*, in January and February 1970, Khomeini delivered a series of 19 lectures to his seminary students in Najaf that outlined his vision of Islamic government. Khomeini had been exiled to Najaf in 1965, having first been exiled to Turkey in 1964 after commencing, in 1963, political activity against the Shah. The decade preceding his 1970 lectures had been a particularly difficult one for Iran; parliamentary elections were rigged or tightly controlled, and when parliament was in session (often it was not, since several times the Shah dissolved parliament), it functioned largely as a rubber stamp. In addition, the Shah attempted to pass unpopular programs designed to undercut Islamic aspects of the law, such as his famous “White Revolution,” proposed in 1963, which featured a land redistribution program that some clerics, including Khomeini, condemned because they claimed that it undermined property rights in a way that violated Islamic law. These and other laws that were widely perceived to be designed to solidify the Shah’s political control spurred massive protests on several occasions, protests which the Shah then crushed violently.^{ccxliii} In addition, in 1968, the Ba’ath Party came to power in Iraq for the second time and began constricting the intellectual freedoms of scholars in Najaf.^{ccxliv}

Khomeini’s *Islamic Government* was delivered during a period of great political duress and in resistance to the political pressures of both the Iranian and Iraqi regimes, and it was addressed to theology students he hoped would be spurred into political action against political regimes that were becoming increasingly hostile to traditional Islam. His audience was one that perhaps Khomeini thought would be won over—and driven to political action—not by images of constitutionalism and democratic government, but by images of the renewed relevance of Islamic law and the political role of the jurist.

Structure of *Islamic Government*

Though *Islamic Government* is by far the most frequently referenced of Khomeini’s works in scholarship on his political thought, the purpose of the book is narrower than to “offer either a complete scheme of Islamic political philosophy or a detailed plan for the establishment and functioning of an Islamic state.”^{ccxlv} Because of its narrow focus on the political relevance of Islamic law and the jurist’s political role, the book provides no conclusive evidence that Khomeini envisioned – or did not envision – his government to include constitutionalist elements. Khomeini seems unconcerned with theorizing how to constrain the jurist’s

power and instead concentrates on making the argument that the jurisprudent should be given power in the first place.

Khomeini begins the lectures by arguing why Islam concerns itself with government: its principles oppose tyranny, monarchy, imperialism and colonial government, and it features a legal system that must be implemented, including provisions related to taxation, criminal punishment and the upkeep of a military. If Islamic law is implemented, the state will be safe from foreign intrusion and exploitation and internal disorder, poverty will decrease, ethical corruption will be discouraged, and a social environment favorable to spiritual growth will be fostered.^{ccxlvii} It is only because imperialist powers have spread propaganda that Islam is an apolitical religion, and it is only because Muslims glorify the wealth of Western states, and in pursuit of this wealth, seek to reproduce their political institutions, that Muslims have not yet established an Islamic state.^{ccxlviii}

Khomeini then moves on to provide some discussion—though much detail is left out—on the form of Islamic government. He is very particular about the forms of government he believes are illegitimate, but he is not specific about what institutions he does believe to be legitimate. Monarchy cannot be compatible with Islam, nor Western constitutionalist government that is not bound by Islamic law, nor government with excessive bureaucracy, he says. He is, of course, clear that the jurisprudent is to have political power, although as will be argued in what follows, he recognizes that the jurisprudent may abuse his power. He spends much time discussing *hadith* (narrations from either the Prophet or the imams) that he furnishes as evidence for the political power of the jurisprudent, *hadith* that he says have been misinterpreted or neglected by past scholars.^{ccxlix} Finally, to conclude the series of lectures, Khomeini addresses how the clergy may help to bring about Islamic government, involving themselves both in educating others and reforming themselves.^{cccl}

The Content of *Islamic Government*

The influence of the Shi'a jurisprudential tradition of political theory on Khomeini's thought is evident in *Islamic Government*. On the one hand, Khomeini insists upon a fact that he believes his audience, the *'ulama* or future members of the *'ulama*, has come to neglect: that Islamic law has political relevance, and that it should be implemented by those who best understand it—the jurisprudents. He analyzes *hadith* and Quranic verses to prove both this political relevance and this particular prescription that the jurisprudents succeed the infallible imams in their political authority. In their pursuit of political power, various groups and individuals have favored a depiction of Islam which says that religion does not need to be concerned with governance, and they promoted this view by installing advocates of their view in religious teaching institutions, universities, government educational institutions, and publishing houses.^{cccl} However, contrary to this depiction, Islam is about more than the life of the individual; Islam is about society. "In just the same way that there are laws setting forth the duties of

worship for man,” he says, “so too there are laws, practices, and norms for the affairs of society and government.”^{ccli}

That government is concerned with the protection of religion, that people must be free from imperial domination, that there is specific law that instructs us not only on individual matters such as how to perform the daily prayers, but social matters such as how to tax, how to punish, and how to conduct foreign relations and war—these are all Islamic principles that Khomeini argues must be disregarded or misunderstood if one is to argue that Islam is not concerned with government.^{ccli} These principles are manifestly clear in religious texts; in fact, he says, the social and political dimensions of Islam comprise a bulk of Quranic and prophetic teachings; the ratio of verses in the Quran which are concerned with the affairs of society, in relation to the number of verses which treat issues related to worship, is nearly one hundred to one, and no more than three or four of the fifty sections of the corpus of *hadith* which contains all the ordinances of Islam address matters of worship and the duties of man toward his Creator, and a few more address questions of ethics; the rest are concerned with social, economic, legal, political, and administrative questions.^{ccliii}

Khomeini says that Islamic government exhibits a particular form of constitutionalism (*mashrutiat*); it is a constitutionalism in which the divine law comprises the law that limits government and men. Islamic government is “neither tyrannical nor absolute,” he says,

but constitutional, but it is not constitutional in the current sense of the word; i.e., based on the approval of the laws in accordance with the opinion of the majority. It is constitutional in the sense that the rulers are subject to a certain set of conditions in governing and administering the country, conditions that are set forth in the Noble Qur’an and the Sunnah of the Most Noble Messenger (s). It is the laws and ordinances of Islam comprising this set of conditions that must be observed and practiced. Islamic government may therefore be defined as the rule of divine law over men.^{ccliv}

While emphasizing that Islamic law limits government and is implemented by government, he does not say, here, that the opinions of the majority play no part in limiting or directing government. The legitimacy of the law is not based *simply* on the opinion of the majority. Khomeini, like other Islamic constitutionalists, wrote that something else, namely the sanction of experts in Islamic jurisprudence, was needed for law to become legitimate. The approval of the majority is not, by itself, a *sufficient* precondition for legitimate law. Instead of elaborating the significance of public opinion in an Islamic government, however, Khomeini instead focuses on a fact that he believes his audience, the *‘ulama*, has come to neglect: that Islamic law has political relevance, and that it should be implemented by those who best understand it—the jurists. Khomeini does not, here, claim that no government institution, including a popularly elected parliament, could operate by the principle of majority rule, but only that government as a whole could not operate based exclusively upon this principle.

While the Shi'a jurisprudential tradition of political theory appears in *Islamic Government* when he argues that jurists have the duty to implement the law during the occultation and that the divine law is relevant to and must be implemented in the political realm, as was argued by other 19th and 20th century jurists, there are also elements of *Islamic Government* in which Khomeini recognizes ways in which the political authority of jurists is conditional, moments in his writings that are reminiscent of constitutionalist themes and open up space in his thought for his explicit arguments for constitutionalist themes, both earlier, in *The Unveiling of Secrets*, and later, in his post-revolutionary writings. Khomeini emphasizes in *Islamic Government* that jurists do not have the spiritual status of the imams and prophets, and the political implications of this fact are clear. For Khomeini to later argue that the jurist in government can be assessed by citizens, a position that he develops from the constitutionalist concept of limited government, Khomeini must hold, as he does here, that jurists' legal judgments and ethical qualities may be challenged. Furthermore, in order for him to invoke the constitutionalist theme that law can be drafted in a parliament, he must recognize that the jurist's ultimately limited knowledge and skills, as well as his own moral and intellectual fallibility, make it difficult for him to legislate on his own, simply by implementing known ordinances of the *shari'a*. While the jurist's duty to implement the sacred laws of the *shari'a* "constitute a serious, difficult duty," he says, they "do not earn anyone extraordinary status, or raise him above the level of common humanity."^{cciv} During the absence of the last imam, jurists must try their best to apply the sacred law to the societies in which they live, but they undertake this task as human beings, and nothing more. Because they apply the sacred laws imperfectly, the laws, as soon as they are pulled out of traditional texts and applied to circumstances in contemporary society, are no longer sacred. Moreover, Khomeini says, the political post occupied by the jurist may be effectively "usurped" or "abandoned."^{ccv} We can only approximate, rather than re-create, the political order that existed during the time of the imams, establishing conventions to appoint the jurist to office as well as conventions that empower and limit him once he assumes that office. In successfully attaining a position in government, the jurist does nothing to prove a real and actual spiritual capacity. Judgment by others, then, of the jurist's virtues remains simply that – a judgment – which may prove to be wrong once the jurist assumes office and usurps or even abandons his position.

Though Khomeini recognizes that a fallible jurist must be constrained, he does not say by whom. Instead, he emphasizes that the jurist's appointment is a human process, and humans could appoint the wrong jurist, one who will "usurp" or "abandon" his position. His recognition of the fact that political positions may be usurped or abandoned does not lead him to propose how these events may be prevented, or who is to determine whether the position has been usurped (although the criteria for what constitutes abandonment seem to be clear). Instead, more broadly, he discusses the conventionality of any political structure or political appointment that occurs after the occultation.

Khomeini makes an analogy between political guardianship and the guardianship of a minor to demonstrate the conventionality of political guardianship, saying that the guardianship of the jurispudent “exists only as a type of appointment, like the appointment of a guardian for a minor.”^{cclvii} Just as the guardian of a minor can be anyone whom his appointers judge to possess the requisite qualifications which would enable him to fulfil his duties toward that minor, so can the guardian be anyone who has the requisite qualifications for political guardianship – though this judgment can later prove to be mistaken, in either case, when the guardian does not perform his duties adequately. However, this analogy cannot be used to illuminate all aspects of political guardianship. While a minor would, as Hamid Enayat argues, be unable to define his interest in a way other than which is “defined by, or enjoy[s] the approval of,”^{cclviii} his guardian, a nation would certainly not be so constrained by its guardian. Certainly, a minor would not be expected, as Khomeini had argued earlier in *The Unveiling of Secrets* and would argue after the Revolution, to understand the benefits of and thus give prior consent to the law which governs him, nor be able to judge, as he would argue after the Revolution, whether a candidate for guardianship has the requisite qualities for guardianship, nor, finally, as he argues even here in *Islamic Government*, would a minor be governed by a law which is often hollow in its specifics and frequently subject to change. Khomeini’s comparison of Islamic government to the guardianship of a minor cannot be meant to assert identity, but, instead, partial similarity, between the two relationships. The jurispudent does not exercise the same authority over the citizenry as a guardian does over a minor; if this had been Khomeini’s contention, then his political thought in *Islamic Government* would indeed contradict his earlier and later thought.

In *Islamic Government*, Khomeini moves toward making an argument for a second constitutionalist theme: citizens make a government legitimate by consenting to it. While stopping short of saying that consent is an indispensable prerequisite to legitimate government, he says that it is praiseworthy for a government to have attained the consent of its people. He speaks critically of parliamentary government in “constitutional monarchies and republics,” where “most of those claiming to be representatives of the majority of the people will approve anything they wish as law and impose it on the entire population.”^{cclix} A government which stands for the implementation of Islamic law, on the other hand, will naturally be more representative of the wishes of a public that desires to be governed by Islamic law. “The body of Islamic laws that exists in the Quran and the *Sunnah* [prophetic tradition],” he says, “has been accepted by the Muslims and recognized by them as worthy of obedience”; this consent and acceptance, he says, “facilitates the task of government and makes it truly belong to the people.”^{cclx} Putting aside the question of what Muslim public he is referring to here, or whether he speaks of a particular Muslim public at all, Khomeini reveals that public consent to an Islamic government would be a desirable feature of this government. Khomeini limits his criticisms to representatives in presumably non-Islamic constitutional monarchies and republics who impose their own will on the people, uninterested in understanding and granting their wishes, and he commends a government that implements Islamic law in a Muslim society (either Muslim

societies generally or one Muslim society in particular; it is not clear) because such a government “truly belongs to the people.”

These statements certainly leave room for the idea that when government does not implement Islamic law, public consent to this government would not be enough to make it legitimate—or more radically, that the people can only ever truly consent to government by Islamic law, and therefore any expressed consent to a non-Islamic government is the result of a mistaken comprehension of one’s own existing or proper desires. The opposite, however, may also be true—if a government implemented Islamic law, but did not attain the consent of the people, perhaps it would be illegitimate; perhaps consent is a decision made by thinking citizens that is equally “consent” whether it is consent to the right or to the wrong, and perhaps, by this account, even a government that is non-Islamic but that has secured the consent of the people to be governed by it is, at least to some extent, legitimate. The most that may be concluded from this passage is not that consent is a requirement for government but that it is at least a desirable prerequisite for government. Certainly, this consent becomes less meaningful if Khomeini believes it exists independently of the conscious will of citizens, but there is no evidence in the text that Khomeini places the giving of consent, in effect, outside of the control of individuals.

A third element of *Islamic Government* has often been interpreted to indicate that Khomeini could not accommodate the idea of parliamentary government. Khomeini says that in an Islamic government there would be not a law-making body but a “planning”^{cclxi} body because “the Sacred Legislator of Islam is the sole legislative power.”^{cclxii} The “fundamental difference” between an Islamic government and a constitutional monarchy or a republic lies in whether the monarch, or representatives in parliament, creates law, or whether the legislative power and the prerogative to make law are reserved to God. There is no law besides God’s law, he argues, and therefore, the legislative parliament becomes a planning body, and this institution “draws up programs for the different ministries in light of the ordinances of Islam and thereby determines how public services are to be provided across the country.”^{cclxiii}

That he is careful to point out that Islamic government does not include an assembly that legislates, but instead an assembly that plans, might make us skeptical of whether he believed in representative government, since planning the implementation of the divine law seems an administrative matter, where what is at stake may not be contentious enough, in moral or practical terms, to warrant the election by citizens of representatives. However, Khomeini is clear, in other parts of his work, that he has an Usuli perspective on the law, and on this basis, our interpretation of Khomeini’s planning body changes. As an Usuli, Khomeini cannot believe that it was simply a matter of administration to rule by Islamic law. When Khomeini strongly states that humans cannot legislate, he uses the word in a specific way, assuming that his reader (or listener) recognizes that legislating in a way that disregards the divine law is the more radical idea of legislation that he is condemning.

To prohibit humans from legislation, in other words, is not such a severe sentence—it is merely to emphasize that humans must not be indifferent to Islamic law as they write law; they must derive their laws from the principles, or base them on explicit ordinances, found in the

authoritative traditional texts. Khomeini's application of the word "legislation" is here used very carefully—strictly to refer to God's revelation of the divine law. "Law" created by parliament must be inspired by or written within the limits of divine law and therefore should be considered merely "programs" for the implementation of a broader set of law. To "plan," unlike to "legislate," is to orient oneself toward serving the sacred religious truth. Once we have accepted the existence of the divine law, the only task left is to "plan." There is a realm of governing, which Khomeini, for purposes of conceptual distinction between divine and human legislation, calls planning, in which governors have sovereignty. In his speeches to his seminary students, where he is working to create a fundamentally Islamic revolutionary movement, Khomeini emphasizes the importance of being concerned with implementing Islamic law—or more accurately, law that is "Islamic"—but this does not mean that Khomeini discards his Usuli perspective on the law, disregarding the human aspect of law-making so emphasized by the Usuli school. The planning body cannot simply be assumed to be merely an administrative apparatus of the jurist's government, as some secondary authors have argued.^{cclxiv}

Khomeini does not explicitly say that the planning body that should take the place of the legislative assembly should be elected, but he does not demand that this planning body not be elected, either. There is nothing in Khomeini's *Islamic Government* that would indicate that he is opposed to representation in a legislative body, as long as the law that it passes stays within the bounds of divine law. Still, Khomeini's brief reference to the concept of a planning body falls short of providing conclusive evidence that he envisioned non-jurisprudents to participate in the process of deriving new law applicable to the contemporary world. Even if he doesn't explicitly say that non-experts should be involved in the planning body, his concept of planning is not as foreign to our concept of parliamentary legislation as we may at first perceive.

After all, while Khomeini had stated that the "Quran and *sunna* [prophetic tradition] contain all the laws man needs in order to attain happiness and the perfection of his state," he also says, importantly, that "Islamic law is a progressive, evolving, and comprehensive system of law."^{cclxv} When he makes the apparently radical statement that Islamic law provides us with a manual to guide us as we assign duties to and place limitations on government, he does not refer to the law as simply pre-formulated law, but he refers to the law as it is conceived by the Usuli school, a law that is capable of transformation and is perhaps largely, as of yet, unformulated and undefined. It is the implementation of a system of law, as opposed to particular laws, that Khomeini urges his reader to support.^{cclxvi} The Quran and *sunna* have all the laws that we need, not because of the literal laws they contain, but because they prescribe principles that may be the basis from which new law is derived. Because it must often be clarified by humans by means of their fallible faculty of reason, the divine law cannot be fully sovereign. In fact, Khomeini responded to increasing public opposition to corporal punishments implemented in the immediate years after the revolution by introducing "innovations [in criminal law] unprecedented among *Shi'a* jurisprudents"^{cclxvii} that were designed to increase the scope of state-determined punishments (*ta'zīrāt*, or punishments said not to be specified in the *shari'a*) and establish the permissibility of non-corporal state-determined punishments.

Interestingly, at one point in *Islamic Government*, when Khomeini is describing “the forms of government that have emerged in recent centuries,” he says that there are three branches of power: executive, judicial, and the third branch is the parliament, which, he clarifies in parentheses, is a body of “legislators and planners.”^{cclxviii} Evidently, planning, as opposed to legislating, is not an activity that occurs exclusively in Islamic governments, and a planning body may also be referred to as a parliament. The parliament, or the legislative assembly, may be called a planning body when it passes laws that conform to a more general policy, or various more general policies, whether or not those policies are based in religious or a legal-religious doctrine. If Khomeini is content to call parliaments “planning bodies,” perhaps Khomeini presumed that his planning body, like other planning bodies he observed, would be constituted by representatives elected by the people. Moreover, among the tasks he classifies as belonging to a realm of “planning” is one often performed by legislatures: the “draw[ing] up a fiscal program for the nation,” a program that members of the planning body must take care does not unduly burden peasants who work on publicly owned lands.^{cclxix} Evidently, Khomeini uses the term “planning” in unconventional way in this text, seeking to avoid using the term “legislation,” which he has redefined as an act undertaken exclusively by God. He lacks the words to articulate the nature of the task performed by a modern-day parliament or planning body, so he uses a familiar term (“planning”) in an unconventional way and makes a point not to use the term more commonly used to describe the task performed by the parliament.

Additional evidence that Khomeini may have envisioned popular participation in government can be found in his discussion of the political thought of the 20th century constitutionalist scholar Mirza Muhammad Husayn Na’ini, whom he mentions twice in *Islamic Government*. Na’ini believed, as discussed in Chapter 2, that Islamic principles can be interpreted to support parliamentary government. If Na’ini believed that the jurispudent’s authority left room for constitutionalist parliamentary government, and if Khomeini compared his own theorization of the jurispudent’s authority to Na’ini’s, perhaps Khomeini also believed that government by the jurispudent left room for constitutionalist parliamentary government.

Conclusion

Khomeini’s theory required the overturning of the status quo because he called for jurisprudents to exercise a central role in government, to emerge from the seminary libraries, the civil courts and the local mosques and to ensure that government would enact and be limited by Islamic strictures. Because Khomeini seeks to bring the jurisprudents out of their—at best, secondary, and at worst, marginalized—status in the political hierarchy of Islamic society as it had evolved through the centuries, he emphasizes the key role that jurisprudents are to play in government. In the more immediate pre-revolutionary context, when Khomeini wrote *Islamic Government*, he emphasized the most revolutionary aspect of his thought—that jurisprudents must have a political role—and not the ways in which a jurispudent must be constrained.

He also emphasizes the authority of the jurispudent in this text because of his audience. It is key to recall, when interpreting this text, that Khomeini speaks to an audience of seminary students, likely to be inspired to participate in a movement against the Shah by the hope of establishing an Islamic government, and a government in which they would have a role. However, Khomeini's this emphasis cannot cause scholars to neglect to consider those elements of his writings that limit, too, the prerogatives of jurisprudents in government.

Islamic Government does not contradict and in fact makes the theoretical space for constitutionalist ideas, and this has not been recognized by the secondary literature. The guardian pictured in *Islamic Government*, for all his knowledge and expertise, can be a *usurper*, since the guardian is always only ever *human*. Though in *Islamic Government*, Khomeini does not say who is to be charged with deciding when the guardian should be constrained or describe how he is to be constrained, he is clear, as he is in *The Unveiling of Secrets*, that governors, including the guardian, may be tyrannical, or the guardian may err. He implies, however, that the jurispudent cannot be given absolute, all-comprehensive, and unquestionable power, an idea that makes it possible for him to argue, in a constitutionalist vein, that the jurispudent may be overseen by citizens or may share his power with a parliament and other political institutions.

He also says that when Islamic law has been accepted and recognized as “worthy of obedience” by the people, it is just to establish an Islamic government, and furthermore, it is objectionable when so-called representatives in secular regimes fail in their duty to truly represent the wishes of the people; however, Khomeini stops short of saying that consent is an indispensable precondition of legitimate government, since he limits his discussion to a situation in which citizens desire to be governed by Islamic law and does not consider whether consent is necessary when they do not. Still, in recognizing the desirability of popular consent, he moves some distance toward the constitutionalist principle that the legitimacy of government depends upon the consent of citizens.

In addition, he stops short of explicitly calling for the popular election of representatives to a parliament in *Islamic Government*. In place of parliament, he says that there should be a “planning body.” There are indications in the text, however, that he views the function of this body as similar to a parliament, at one point using the terms “planning body” and “parliament” interchangeably to refer to the same institution, and at another stating that among the duties of a planning body is the duty to draw up a fiscal program for the nation, a task that must involve the drafting of legislation.

His perspective on Shi'a juristic methodology, which entails that government must be engaged in more than simply the implementation of a pre-existing set of laws but also a legislative molding of Islamic law, certainly opens the possibility that government could include a legislative body such as a parliament. Khomeini says that Islamic government is not charged with implementing a rigid legal code, but instead with managing a system of law that allows for progression and evolution in the law, though he does not say that non-jurisprudents can have a say in how the law progresses and evolves. According to this interpretation of *Islamic*

Government, Khomeini's thought in this text is continuous with the role for an elected parliament that he elaborates both in *The Unveiling of Secrets* and after the Revolution.

Finally, Khomeini seems almost to take for granted that his theory does not preclude constitutional government, and the need for a parliament, when he associates his own theory with the thought of the preeminent constitutionalist scholar, Mirza Muhammad Husayn Na'ini. Na'ini recognizes the rightful role of the jurispudent in government, Khomeini states, a role in which—though Khomeini does not describe Na'ini's perception of it in detail—the jurispudent governs along with a parliament of elected legislators in a constitutional government. Far from rejecting constitutionalist principles in *Islamic Government*, Khomeini does everything short of endorsing them.

Chapter 4: The Unveiling of Secrets (Kashf-i Asrar)

The purpose of this chapter is to demonstrate the influence of the Islamic constitutionalist tradition and Shi'a jurisprudential tradition of political theory on Khomeini's political theory in his earliest political work, *Kashf-i Asrar*, or *The Unveiling of Secrets*. While on the one hand, Khomeini is just as insistent in this work, as he would be almost thirty years later in Najaf, that Islam provides direction not only in matters of worship but also in social and political matters, the Islamic government he depicts in this text is not one in which jurists exclusively hold political power, and the function of government is simply to implement the divine law. Khomeini adopts two central constitutionalist principles: first, that government must include a popularly-elected parliament, and second, that a government must have been consented to by citizens. Insofar as Khomeini holds that jurists must be granted political authority, he writes in the Shi'a jurisprudential tradition of political theory, but insofar as he is explicit, in this work (unlike in *Islamic Government*), about the need for a parliament and for citizens to hold representatives in parliament accountable and for roles to be played by non-jurists in government, he writes in the constitutionalist tradition.

Like the constitutionalists who came before him, Khomeini recognizes that Islamic law as it can be found in a body of jurisprudential work, *fiqh*,^{cclxx} does not provide for all political needs. He argues that law must be drafted in a parliament to address contemporary circumstances. Parliamentarians should be elected in free and fair elections by citizens who assess their moral character and, while they are in office, pass judgment on the reasonability of the law that they pass. However, parliament must be overseen by a council of jurists, as stipulated by the constitution of 1906-07, to ensure that government operates within the boundaries of the divine law. The government for which Khomeini makes a case in this text is essentially the 1906-07 constitution; thus, besides a parliament, it includes a monarch with limited power. As a constitutionalist, Khomeini believes that government is legitimate when it serves the law and not when certain individuals or persons of certain intellectual or social backgrounds—like jurists—are given political power. In addition to calling for the reinstatement of the 1906-07 constitution, Khomeini emphasizes, in a constitutionalist vein, that a government must have attained the consent of its citizenry, and that political tyranny occurs not only when a law is implemented that violates the divine law, but when citizens are forced to live by a set of law against their will. Even an Islamic government, he implies, is illegitimate if it has not attained popular consent.

While arguing that constitutional government is ideal, Khomeini grants that there are times when one must abandon, at least temporarily, any aspiration for constitutional government. He writes at a time that he does not regard as appropriate for revolution; hence, his radical encouragement for reform stops short of advocacy for a complete withdrawal of support for Mohammad Reza Pahlavi's regime. One must choose not to withdraw support for one's government when doing so would make it vulnerable to imperialist powers, and there are even times when one must serve a monarchical regime, when doing so one furthers a morally

praiseworthy end. Monarchies that lack a constitution or governments that do not operate according to Islamic law, however, are clearly non-ideal governments in Khomeini's view, to be tolerated when there exist contingent circumstances in which undermining the regime would be harmful.

Khomeini's argument for constitutional government in this text is couched in an effort to refute two other claims: first, that a ritualistic Shi'a religious culture keeps Iranians from developing their rational capacity; and second, that the Shi'a doctrine of the messianic return of the last imam, as well as the doctrine of government by the jurist, keeps Iranians from developing a sense of loyalty and allegiance to the current government, in effect weakening it in the face of foreign imperial threats. Khomeini argues that insofar as Islamic principles support constitutional government, these principles encourage individual reasoning and political loyalty. Citizens in a constitutional polity must use their reason to assess their representatives and the law that they pass and to recognize and comprehend the reprehensibility of political tyranny, and parliamentarians must use their reason to derive law from the principles of the *shari'a* to address unprecedented circumstances. Citizens in a constitutional polity also develop a sense of allegiance to a government that they have a hand in through regular elections.

Historical Context

Khomeini writes in the context of an intellectual debate that had been occurring in Iran perhaps most markedly since the mid-19th century, when widespread dissatisfaction with the Qajar dynasty (which ruled Iran from 1786-1925) precipitated debate on political reform. A central subject of debate concerned the role of religion in the political sphere, and political activists included secular proponents of constitutionalism, religious scholars (*'ulama*) and other intellectuals who prescribed a constitutional system of government that they viewed as compatible with, or even prescribed by, Islam, and a second group of religious scholars who were opposed to constitutionalism on a religious basis and, at the beginning of the 20th century, offered reasons for resisting the constitutionalist movement. In *The Unveiling of Secrets*, Khomeini's political theory falls within the former class of religious scholars; he views constitutionalism as a system of government that is prescribed by Islamic principles and certainly preferable to untrammelled monarchical government. To gain a better understanding of this intellectual context, it will be helpful to review crucial political developments starting from the time in which Khomeini wrote *The Unveiling of Secrets* and moving backwards to the Constitutional Revolution of 1906.

Political Conditions in Iran during Khomeini's Writing of The Unveiling of Secrets, under Mohammad Reza Pahlavi

The overthrow of Reza Shah's repressive regime in 1941 by Allied forces made possible the open expression of political criticism,^{cclxxi} and during this time, parliament began to act more independently, no longer a rubberstamp for the directives of the Shah. It would, for example, use

its power of the purse to control administrations and put into practice its right to question and control the selection of ministers.^{cclxxii} The new king, Reza Shah's son, Mohammad Reza Pahlavi, was too young and inexperienced to rule autocratically; in addition, he was weakened by the occupation of his country by foreign powers—the Soviet Union and Britain—who had occupied the northern and southern regions of Iran, respectively, in August 1941, just before Reza Shah was forced from his position in September 1941. The occupation was prompted by the Allied powers' fear of an Iranian–German military alliance—the Shah had friendly relations with the Nazi regime—and their desire for a supply route through Iran to the USSR.^{cclxxiii} With parts of his country under occupation, his army was preoccupied by the task of establishing internal security, so that “he could only reign, not rule.” Pahlavi, during these early years, even yielded to clerical political pressure, annulling his father's bans on Shi'a passion plays (reenactments of the string of events that led to the martyrdom of the third imam, Imam Hosein) and pilgrimage to Mecca. Many women, during this time, began appearing in public with their heads covered, though this aspect of Islamic dress had been banned in 1936 by Reza Shah.^{cclxxiv}

During the time he was working on *The Unveiling of Secrets*, in May 1944, Khomeini issued his first political proclamation, “calling for action to deliver the Muslims of Iran and the entire Islamic world from the tyranny of foreign powers and their domestic accomplices.”^{cclxxv} Still, despite writing *The Unveiling of Secrets* and issuing this political proclamation, Khomeini refrained from regular political involvement until 1962, since such involvement would conflict with the political quietism of the senior members of the religious establishment.^{cclxxvi} That Khomeini did not wish to work in complete opposition to these religious leaders becomes significant when reading *The Unveiling of Secrets*, in which Khomeini, as will be argued, tempers his criticism of the government by clarifying that he is not calling for a revolution. He advocates reform, and not revolution, because he is concerned with preserving the degree of unity among Iranians and political strength for the government required to oppose Britain and Russia, and he even accuses Hakamizada of spreading disunity with his criticisms of Iranian society and politics.^{cclxxvii} Still, he violates the taboo among religious scholars against political activity by leveling harsh criticisms against the existing regime, arguing that it should be structured such that religious law serves as a check on political action and shapes legislation. It was perhaps because he had taken a strong political position despite the political quiescence of leading scholars that Khomeini chose to publish the work anonymously.^{cclxxviii}

Iran under Reza Khan: 1925-1941

Though the era of Reza Shah had ended by the time Khomeini began writing *The Unveiling of Secrets*, the experience of being a subject of Reza Shah's secular government had by no means been forgotten by Khomeini, and in *The Unveiling of Secrets*, he remains concerned with convincing his reader of the harmfulness of Reza Shah's secular reforms. Through these reforms, the Shah aimed to limit the social and political authority of the clergy and reduce the influence of Islam on society and politics. While some reforms, such as the increase of tariffs on

foreign imports in 1927 and the canceling of economic concessions to foreign powers were undoubtedly welcomed by Khomeini, the two men had very different visions of the political end that should be pursued—the one believing that religious belief and institutions were an impediment to, and the other believing they were part and parcel of, good government.

After leading a coup in May 1921, with the support of the British, overthrowing the Qajar king Ahmad Shah Qajar, Reza Khan became war minister, and eventually, he accumulated enough political support to be voted shah by parliament in 1925.^{cclxxxix} His efforts to promote European dress—which included banning the headscarf and requiring men to wear a European hat—were a major affront to many Iranians and resulted in a sit-in at the shrine in Mashhad in 1935. The Shah’s troops responded by firing on the crowd of protesters, and hundreds of people lost their lives or were injured.^{cclxxx} Khomeini condemns this tragic event in *The Unveiling of Secrets*. Reza Shah was not only intent on discouraging Islamic morality and rituals through bans on passion plays and Islamic dress, but he also pushed for change in education and government that would accomplish the same ends, in addition to diminishing the power and influence of the clergy.

Many of his reforms were inspired by those of his contemporary, Mustafa Kemal Atatürk, the then-president of Turkey; often the Shah would pursue a policy a year or two after Atatürk had implemented a similar one in Turkey.^{cclxxxi} In working to diminish the power and prestige of the clergy, centralizing judicial power, creating a uniform, codified law, suppressing religious morality and ritual, and opening access to secular education, Reza Shah aimed to establish a strong, centralized state that would, more than the clergy and more than religion, secure the allegiance and loyalty of citizens. With a few exceptions, clerics did not resist Reza Shah’s program of secularization and centralization, and when there were protests, the Shah responded with great force.^{cclxxxii}

Educational Reforms

Crucial to the creation of a modern state and undermining the influence of the religious classes was the revamping of Iran’s educational system. Reza Shah’s reformation was directed at undermining the seminaries and even American missionary schools in Iran; in 1928, the Ministry of Education began regulating these missionary schools, which resulted in financially well-off Iranians instead sending their students abroad for their education.^{cclxxxiii} On the whole, between 1921 and the Second World War, there was an expansion of educational institutions, including primary and secondary schools,^{cclxxxiv} and the University of Tehran was established in 1935. Significantly, the University of Tehran included a “Faculty of Theology”—an opportunity for religious learning outside of the traditional seminary system.^{cclxxxv} Beyond the University of Tehran, Reza Shah established numerous universities that offered a secular education in competition with the Islamic seminaries, previously the predominant and most easily accessible educational institution in Iranian society.^{cclxxxvi} He reduced the presence of clerics in government by recruiting top state bureaucrats not from the seminaries, but from graduates of secular

universities or universities abroad.^{cclxxxvii} Reza Shah sought not only to enhance the secular education of Iranians but also worked to gain control over the seminary's educational curriculum. In 1928, the government established a law for state examination of religious students and licensing of religious teachers, and in 1931 it established a curriculum for all seminaries.^{cclxxxviii} In the decade following the passage of these laws, the number and size of religious seminaries would decrease.^{cclxxxix}

Judicial Reforms

In addition to undertaking educational forms that undermined religious educational institutions, Reza Shah sought from 1926-1940 to reorganize and centralize the judiciary. While local religious courts had been dominant into the 1920's,^{ccxc} Reza Khan encouraged the development, for the first time, of a state legal code, and in 1927 he replaced a large number of clerics in the Ministry of Justice with European-trained lawyers.^{ccxci} State officials and parliamentary representatives, who were picked mostly by Reza Shah from 1930 onward,^{ccxcii} codified the law, and then state courts issued sentences. In May of 1928, a provisional civil code was passed which, controversially, included provisions for subordinating religious courts to the state.^{ccxciii} Though this civil code, as well as legal codes passed subsequently, was based largely on Shi'a legal theory, its "administration was...brought under control of the Ministry of Justice,"^{ccxciv} instead of local *shari'a* courts. The government's broad strategy, according to Akhavi, was to give the "state administration the authority to define the jurisdiction of the religious institutions." In 1931, a law was passed that stipulated that state courts and the office of the Attorney General must approve the referral of a case to a religious tribunal,^{ccxcv} and that the jurisdiction of *shar'ia* courts was restricted to issues of marriage, divorce, and the appointment of trustees and guardians.^{ccxcvi} In 1936, legislation was passed that "effectively excluded the *ulama* from holding the position of judge"^{ccxcvii}—judges, it was required, must have received their degree from the Tehran Faculty of Law or a foreign university.^{ccxcviii} According to Akhavi, by the late 1930s, the "dismantling of the '*ulama*' from their position of authority in Iran's legal system had been achieved."^{ccxcix}

Despite the fact that Reza Shah's reforms undermined the authority of the '*ulama* and were aimed at reducing the influence of Islamic law and principles on politics, society, and culture, it is noteworthy that leading members '*ulama*—with the exception of the parliamentarian Seyyed Hasan Mudarris—did not mobilize against Reza Shah's policies. In 1929, Mudarris was exiled to Khorasan, rendered no longer threatening to the regime.^{ccc} While number of factors may explain the overall quietism of the '*ulama* during this period, one probable reason may be that the '*ulama* were unable to effectively organize against the state because of its increasing repressiveness, including by means of its secret police. In the face of this repressiveness and the ongoing attempts by the government at cultural engineering, the '*ulama* may have thought it wise to concentrate their energies on developing the educational institution in Qom,^{ccci} an endeavor that would, in the long-term, prove more beneficial and effective in stemming the tide of secularization than directly confronting the powerful state.

The Constitutional Revolution of 1906

Though Khomeini wrote *The Unveiling of Secrets* almost 40 years after the Constitutional Revolution, the debates concerning constitutionalism had far from subsided, since constitutionalists had not yet succeeded in establishing a functioning parliamentary government and the impetus for liberal political reform still existed. In *The Unveiling of Secrets*, Khomeini urges that the constitution produced by the 1906 Revolution finally be implemented,^{cccii} a constitution that had declared, in its second article, that “the National Consultative Assembly represents the whole people of Persia, who [thus] participate in the economic and political affairs of the country.”^{ccciii} Still, Khomeini believed strongly in Article 2 of the 1907 Supplementary Fundamental Law,^{ccciv} which stipulated that:

it is for the learned doctors of theology (the ‘*ulama*’)—may God prolong the blessing of their existence!—to determine whether such laws as may be proposed are or are not conformable to the principles of Islam; and it is therefore officially enacted that there shall at all times exist a Committee composed of not less than five mujtahids or other devout theologians, cognizant also of the requirements of the age.^{cccv}

Khomeini adds that short of instituting this committee of religious scholars, the parliament itself may be composed of experts in Islamic law capable of exercising *ijtihad*.^{cccvii} According to the constitution, the members of the committee of scholars that ensured the conformity of the law with Islamic principles would be elected by the parliament from a list of twenty submitted by the ‘*ulama*.’^{cccvii} This article, however, “for reasons that have never been adequately explained,” was never implemented.^{cccviii} Furthermore, all legal enactments, not just laws passed by parliament, would have to conform to Islamic law, and a dual system of courts was established—religious courts concerned with matters that fell under the jurisdiction of *shari’a* law, and a system of civil courts that ruled according to customary (‘*urf*’) law that was enacted to address matters outside the scope of the *shari’a*.^{cccix}

Despite including a parliament and stipulating that the jurists had a role in government, the constitution still reserved significant power for the king. Article 43, for example, said that the half of the members of the Senate, one of two legislative bodies in government, would be appointed by the king.^{cccix} Still, the prerogative to make international treaties, grant economic concessions, and the right to control both the natural resources of the country and government finances were reserved exclusively to the parliament, whose members were, at least after the passage of the Electoral Law of 1911, directly elected and did not need to meet property or educational qualifications. Moreover, the monarch was deprived of his ability to veto legislation and required never to postpone or suspend execution of laws.^{cccxi}

The constitutional government—as designed by the 1906 constitution and the 1907 supplement—was short-lived. In June 1908, the Qajar king, Mohammad Ali Shah, staged a

successful coup d'état with help from the Russian Cossack Brigade, bombarding the parliament. As a result, the parliament was closed and many constitutionalists arrested and executed. A resistance movement against the central government developed in Tabriz but was shut down after an invasion by Russian troops. The movement then sprouted in Gilan, and the southern Bakhtiari tribe, some of whose members had liberal leanings and others of whom aspired to political power, liberated Isfahan from Royalist forces and began a march toward Tehran. With the Bakhtiaris approaching from the south and the Gilan revolutionaries approaching from the north, the two groups converged on Tehran in July 1909, forcing the Shah to pass his power to his son, Ahmad, and the second parliament was elected.^{cccxi}

The central government lacked the financial means to govern effectively, since it had difficulty maintaining control over and collecting taxes from the provinces. It hired Morgan Shuster, an American, to lead the effort to improve the state of Iranian finances. Shuster had planned to organize a tax-collecting gendarmerie, appointing the British officer Major C.B. Stokes as its head, but the Russians objected, saying it violated the Anglo-Russian agreement, which had been signed in August 1907 and had divided Iran into 3 spheres of influence, with Russia maintaining exclusive control over the north. In November 1911, Russians sent the Iranian government an ultimatum, in which they demanded the dismissal of Shuster and the agreement of the Iranian government not to make arrangements with foreigners without British and Russian consent. When parliament refused to comply, Russian troops marched on Tehran, and Ahmad Shah's regent, Naser a-Molk, dissolved the parliament.^{cccxi}

After these events, it was clear that the government was no longer able to successfully resist foreign political and military pressure. Throughout the duration of World War I, Iran lacked not only an independent government but also an effective one; conditions of near-anarchy prevailed, and famine and sickness was widespread.^{cccxi} The fate of constitutional government in the context of instability and foreign political involvement was grim. Key governmental agencies and economic institutions were run by Westerners, and often, prime ministers were appointed only with the consent of and controlled directly by Britain and Russia. The government frequently delayed and manipulated elections. The occurrence of the Bolshevik Revolution in Russia meant the end of Russian imperialism in Iran but Britain continued to exercise influence over Iranian politics, rigging parliamentary elections in 1918, which resulted in the calling off of the elections.^{cccxi} While the coup of 1921—through which Reza Khan became war minister—led to the establishment of a central government that was able to claim more independence for itself and bring about more stability,^{cccxi} parliamentary government and the authority of the constitution were not successfully reestablished, and needless to say, under the Pahlavis, the parliament was more of a symbol than a means through which the popular masses could meaningfully participate in government.^{cccxi}

Immediate Context of *The Unveiling of Secrets*

The Unveiling of Secrets is structured by 13 questions put forward by a critic of Shi'a Islam and an advocate of the secular state, Ali Akbar Hakamizada, in a pamphlet he published in 1943 called *Thousand-Year Secrets*. Khomeini is said to have written *The Unveiling of Secrets* in only 48 days because of a “sense of urgency”^{cccxxviii} created by the need to respond to Hakamizada's pamphlet. Like Reza Shah, Hakamizada believed that Shi'a religious rituals and belief impeded progress in Iran. Khomeini seeks not only to refute Hakamizada's claims but the political ideology that had nurtured him—the secular ideology of Reza Shah.

Tabari says that *The Unveiling of Secrets* was published in relative obscurity, and that it “remained relatively unknown until its re-publication in 1979.”^{cccxxix} Contrary to Tabari, Algar says that the book must have “met a need” because it was published twice in its first year.^{cccxxx} Though Tabari does not recognize the book's popularity, he nonetheless contends that it was significant because, in his words, it was the “first systematic formulation of a position of the clerical opposition” to the political regime of Reza Shah, though this was delayed until after Reza Shah's fall. According to Tabari,

whereas the clergy had for decades been reacting instinctively and in piecemeal fashion to the transformation of Iranian society...Khomeini realized that the accumulation of changes was resulting in a new social and political structure. He was the first amongst the clergy of his rank systematically to try to understand the implications of the conflicts between an emerging bourgeois state and the old Islamic institutional order.^{cccxxxi}

In this pamphlet, he says, firstly, that Shi'a religious rituals, such as mourning ceremonies and pilgrimage to the shrines, lead people to rely upon ritual to bring them emotional—and even, they believe, physical—healing and well-being, preventing them from instead relying on their intellect and effort to resolve challenges they face in their individual lives and challenges faced by society. They are more likely to make a pilgrimage to a shrine, asking the venerated figure who is buried there for *shifa'*, or physical healing, rather than seek a medical cure. The “West” has moved ahead of the “East,” he says, because it has abandoned such religiously based superstitious practices; “its attention is turned more toward work and struggle.”^{cccxxxii}

A second set of Hakamizada's criticisms address the tenets of Shi'a belief. Hakamizada says that two features of Shi'a Islam have kept people from feeling an allegiance toward government. First, he argues that Shi'a messianism, which says that the last imam, now in occultation, will return near the end of time to establish a just government, prevents people from developing an allegiance to or affection for the currently existing state. Second, people do not feel allegiance to government because they believe—and are encouraged by clerics in this belief—that it is the jurisprudents who should have political power in the Imam's absence, and the jurisprudents must implement the *shari'a*, despite the fact that the jurisprudent has neither the

knowledge nor the know-how to govern, and the *shari'a* is no longer relevant to the modern world. This causes citizens to view state law—since it is not religious law—and government—if it is not government by the jurispudent—with diminished respect and loyalty. He emphasizes how much the “independence and stability of the country is weakened”^{ccccxiii} when people begin to believe that because the state is not Islamic, they should not pay taxes, or they should not volunteer in the army (or exert effort when they are in the army), or that there is no sin involved in bribing a government employee when one is asked to pay the government its due. Hakamizada laments,

That salesperson who makes a hundred excuses to escape from [paying taxes] ... that soldier or security officer who believes that his work doesn't have value in the eyes of God (so he should avoid doing his duty as much as he can) should know that according to the sound law of reason, which is the unmediated law of God, he is a sinner and will be responsible before God.^{ccccxiv}

Content of *The Unveiling of Secrets*

Responding to Hakamizada's questions one by one, Khomeini seeks, in *The Unveiling of Secrets*, to refute his claim that Shi'a religious practices and belief had evolved in such a way as to discourage reason and allegiance to state law. On the subject of Islam and reason, Khomeini says that Islam encourages rational thought insofar as Islamic political theory is constitutionalist. Citizens must exercise their reason in their political lives, he says—in assessing legislation and legislators, in drafting law that serves principles that underlie the law—and also, he says, in breaking free of a centuries-old habit of thinking that prevents them from comprehending the reprehensible nature of government without popular consent. Moreover, he says that Hakamizada misunderstands Shi'a religious ritual; people should not ask for divine aid for events they can bring about themselves, he says. In refuting Hakamizada's claim that Islam discourages the development of one's reason, Khomeini reiterates principles of the constitutionalist tradition—namely, the need for citizens to recognize tyranny where it exists and to assess and hold accountable their representatives in government. Citizens are enabled to fulfill both of these functions by use of their reason, he says.

On the subject of allegiance to state law, Khomeini disputes Hakamizada's claim that Islam expects that citizens feel loyal only to a government headed by the Imam or a jurispudent. Khomeini argues that citizens develop an allegiance to state law when they elect representatives to parliament who they believe work in their interest. Although the jurispudents must oversee the executive and legislative branches of government, ordinary citizens are still expected to participate in free and fair parliamentary elections and assess both the law that their representatives pass and the character and ethical behavior of their representatives. Here, again, we find support in this text for the constitutionalist principle of parliamentary representation—a parliament that is overseen by jurispudents. When citizens give a positive assessment of their representatives and the law that they pass, they will become obedient to state law. Before such a

government is established, however, clerics must not urge citizens simply to withdraw their support from government, he says, recognizing the threat of instability and (more extensive) foreign incursion when government is weakened.

While, on the one hand, Khomeini argued in *The Unveiling of Secrets* that the Shah, in his efforts to make Iran less Islamic, had set Iran back, he was concerned with more than just reintroducing Islam into the institutions of government and into Iranian culture and society. He was also insistent that Iran regain another asset that Reza Shah had suppressed: constitutional government and an elected parliament. Khomeini shares Reza Shah's aim of rebuilding the central government, especially given the reality of foreign occupation, but he does not think that secularization will have this effect; instead, he sees the reintroduction of not only Islamic, but constitutionalist institutions as part of the solution.

The Unveiling of Secrets is treated only marginally—usually, in no more than a few sentences—in texts on Khomeini's life and thought. When the content of the book is discussed, authors neglect to discuss, or explicitly deny that it has, constitutionalist elements. One group of authors neglect to discuss constitutionalist elements in *The Unveiling of Secrets* and emphasize instead one crucial difference between this book and Khomeini's 1970 lectures—in *The Unveiling of Secrets*, he is accepting of monarchical government, whereas in 1970, he flatly rejects it. These scholars, including Adib-Moghaddam, Shahrough Akhavi and Ervand Abrahamian, focus their argument on the fact that in 1943, Khomeini was more accommodating of existing institutions than he was in 1970, when he calls for revolution. However, these authors do not discuss the fact that Khomeini is more accepting of monarchical government in 1943 because he wishes to revive major provisions of the 1906 constitution, which had created a *constitutional* monarchy, one in which the monarch was limited significantly by a constitution and democratically elected parliament. Moreover, insofar as Khomeini approved of the figure of the monarch in 1943 (unlike in 1970), this may have been because Reza Shah had recently been deposed, and Khomeini was hopeful that existing institutions—without the figure of Reza Shah towering over them—could be reformed and made to serve, or at least not undermine, new political aims.

A second group of scholars do address the subject of constitutionalism and parliamentary government in Khomeini's thought, but they take the position that Khomeini opposed it. Some of these scholars say that in *The Unveiling of Secrets*, Khomeini holds that it is impossible for constitutional, representative government ever to be a desirable form of government because parliamentarians will never faithfully and fairly represent their constituents. Vanessa Martin cites Khomeini's criticism of parliamentary elections, in which he complains that “members of the assembly are elected by force” and “money is disbursed to collect the votes of ruffians,” and claims that Khomeini therefore rejected any system of representative government.^{ccccxxv} She fails to recognize that Khomeini proposes the improvement of the existing system—he proposes fair elections and representatives elected on behalf of the public at large—rather than the elimination of popular elections entirely. Ghamari-Tabrizi, too, says that Khomeini believes legislators to be “deceitful and cunning.”^{ccccxxvi} However, these authors mistake Khomeini's criticisms of the then-

existing system of representative government—to the extent that it existed at all—for a rejection of representative government in its essence.

Other authors who claim that Khomeini opposed constitutionalist and parliamentary government in *The Unveiling of Secrets* argue that Khomeini saw a political role for the clergy that ultimately precluded constitutionalism or parliamentary government. Ghamari-Tabrizi goes so far as to claim that in *The Unveiling of Secrets*, “Khomeini followed the anti-constitutionalist position of Sheikh Fazlollah Nuri, who called the notion of legislative power blasphemous,”^{cccxxvii} while Tabari says that Khomeini argues that the laws of the country should simply be the laws of Islam and the public should be obedient to *mujtahids* and *faqih*s.^{cccxxviii} Rahimi says that the parliament was simply a place where the *shari’a* was enforced,^{cccxxix} and finally, Adib-Moghaddam argues that in *The Unveiling of Secrets*, we find what is a “constant in [Khomeini’s] political thought and praxis”: an interest in recreating Al-Farabi’s Virtuous City, placing a philosopher-cleric at the head of government.^{cccxxx} However, when Khomeini says that parliaments lack legitimacy and the laws they approve are harmful,^{cccxxxi} his broader argument is that the legislative branch should be *overseen* by jurisprudents, and legislation should be circumscribed by the divine law instead of, as he says, borrowed from European law; a parliament that operates without this oversight is the kind of parliament that Khomeini says Islam cannot accommodate.

Consent and Representation in an Islamic Government

Three chapters of Khomeini’s work contain discussion of government in the contemporary age; they are: his chapter “On the Clergy,” “On Government,” and “On the Law.” He begins the chapters “On the Clergy” by stating that in the next three chapters he will address numbers five through nine of the questions that Hakamizada has raised in his pamphlet. Hakamizada had concluded his pamphlet by listing, in numerical fashion, the questions he wished those who are “possessing of knowledge”^{cccxxxii} to answer. It is important to keep in mind that Khomeini writes with the stated intention to answer these questions; these concerns, and not the concerns of the modern reader, are to shape his writing.^{cccxxxiii}

Khomeini begins his discussion of politics in his chapter on the clergy by arguing that when we speak of “right” to government, it is only God who has this right. The law of reason, given to us by God and which no one is capable of contesting, says that among humans, law and government is a necessity, and it is only appropriate for one who owns everything that the people own to exercise government over them, so that exercising control over the people and their belongings means exercising control over his own belongings. Thus, the only entity whose exercise of prerogative and guardianship over all humans is, by the law of reason, appropriate, is God.^{cccxxxiv} No one, except God himself, has a “right” to rule, and humans have no right to create law for themselves. It is as if Khomeini wishes to shift our conception of political legitimacy from its comfortable position in human institutions. No human entity has a right, or any sort of moral claim, to govern or make law.

Later, in his chapter “On the Law,” Khomeini addresses Hakamizada’s question, “do humans have the right to make law for themselves, or not? If they do, is obeying that law *wajib* [obligatory according to Islamic law], or not? If it is obligatory, if someone violates [this law], what is his/her proper punishment?”^{cccxxxv} Khomeini’s answer to the first question is “no,” and this obviates his need to answer the other two—no, he says, humans have no right to create law for themselves. It opposes our reason to claim that the law of one person, or of many people, without any particular reason, must be obeyed; it conforms with our reason, on the other hand, to call these lawmakers criminals.^{cccxxxvi}

Khomeini is clear, in these two separate passages, about what he does—and does not—regard as the basis of political legitimacy. In a radical assertion of a right to autonomy, Khomeini says that no individual may exercise control over another individual’s life and property, unless that individual owns this life and property. At the same time, he makes clear that this is not an argument for anarchy—that according to the law of reason, government and law must exist among men. Because only God has ownership over the property of all individuals in a given community, he is the only entity who can claim a right to absolute governorship over this community.

But what does Khomeini mean when he says that God must govern? “If God has given the task of government to someone,” Khomeini says, “and through communication to the prophets, declared this government to be one that must be obeyed, then it is necessary for humans to obey this government. Humans should accept no law but the law of God or the law of the individual that God has specified must be obeyed.”^{cccxxxvii} God’s right to govern, it seems, may be exercised by God’s appointees to government. Furthermore, government, at least at this early point in Khomeini’s discussion, seems to be little more than the implementation of God’s law.

Throughout the course of subsequent chapters, Khomeini explains in greater detail what he means by Islamic government. He goes on to argue that God has not appointed a specific individual who must be obeyed but instead sanctions a system of constitutional government that is overseen by jurists. Moreover, humans may draft law for themselves as long as this law does not violate the principles of the *shari’a*. In this way, they do not create law that simply fulfills their desires—they have no such right—but instead they remain within the boundaries of religious law. To Khomeini, while God must be granted sovereign political power, any human being, working toward ends that are inattentive to divine ends, as specified in the divine law, must not.

Iranians, according to Khomeini, have come to uncritically accept and remain subservient to human tyranny. This tyranny is defined not simply by its neglect of divine law, however, but its neglect of the desires of those it governs, including their consent to its government. Khomeini aims to bring the reader to question his or her own perception of political legitimacy—at least the perception of one who is uncritical of the political order that existed at the time Khomeini was writing. Hakamizada’s claim had been that contemporary Iranian religious culture, if not Islam in its essence, has brought Iranians to neglect their own capacity for rationality. While Khomeini

agrees that the symptoms exist, he does not accept Hakamizada's account of the cause. Iranians have become irrational and unquestioning, he says, but not due to any fault of religion. Furthermore, Khomeini wants to draw the reader's attention to a particularly relevant consequence of such qualities—an inability to develop rational political ideas. He agrees with Hakamizada—customs and habits blind us to reason, to the extent that if someone says something completely reasonable, it sounds bizarre to us. But importantly, these customs and habits stifle our political thinking. We have grown too accustomed to the rituals of the political world and have thus become subjugated by certain political masters.^{cccxxxviii} Weaving into his argument his insistence, contra Hakamizada's claim, that Islam values reason, he says that we can recognize the injustice of government without consent simply by using our reason. Unlike Hakamizada, however, he puts reason in the service of a constitutionalist principle: people do not yet perceive, fully, the tyranny of a monarch who has acquired his power through illegitimate means and keeps his position only by means of raw power.

To help his reader see beyond the habits that have obscured the law of reason, Khomeini starts small, by describing tyranny in a way that is more tangible to his reader. We can easily perceive the injustice of theft, he says, when a single person steals from another, but when a government steals from its citizenry—when our government steals from us, he implies—we are less likely to be attuned to the injustice of the act. He says,

if an ordinary person forcefully takes a toman^{cccxxxix} from you or forces you to do something against your will, everyone would consider [this person] to have done wrong and [to be a] transgressor; they would consider his action to be unjustifiable by reason, and they would call him a criminal and consider him deserving of punishment.^{cccxl}

He then describes progressively more serious acts of violation—injuring a few people to take control of a village, killing scores of people to take control of a city—until he asks the reader to imagine a person who:

gathers together several army regiments, attacks the capital of a kingdom, captures and imprisons the residents, kills a great number of them, and [then] takes over the capital, overthrowing the king of that country and taking his place [as ruler]. In the few days after the event, the people feel bitter, but later, the invasion and killings become insignificant, and they have celebrations for [the new king] and praise him, calling him “Your Majesty” and considering his law to be just as sacred as the law ordained by God, and in patriotic songs they sing, “what the Shah orders is what God has ordered.”^{cccxli}

Through this narration, Khomeini seeks to convince his readers that by force of habit and tradition, they have become accepting of governments that were founded and continue to operate without their consent. What is the difference, he asks, between each of the events that he

describes, each occurring on a larger scale than the one before it? If our minds were free from the habit of unthinking acceptance of political regimes which were established (and, by implication, continue to exist) by force, we would realize that all of the events he describes are blameworthy, not merely the events that occur on a smaller scale that involve transgression that is more palpable. The transgression of a dictator who seizes power is just as repulsive in quality as the transgression of a thief.

We have been accustomed to think, however, that as the scope of force becomes more expansive, the action begins to differ in kind, when in reality it only differs in scope. If we were able to exercise our reason and discard tradition, we would recognize oppression for what it is. Thus, Khomeini argues, Hakamizada is right to call us to exercise our reason, but he does not understand that the direst consequences of our neglect of our reason occurs in the political sphere. Perhaps most importantly, we must acquire that clarity of reason that will allow us to understand that the laws that we obey have no basis other than force and is the result of no holier act than that of the transgression of a single man, a single criminal, who has managed to gather around him an army of soldiers. We must unravel our notion of political legitimacy and recognize that the imposed political rule of a single man is condemnable for the same reasons that the actions of a thief or a bully are condemnable—both involve illegitimate force. This kind of government involves the unlawful exercise of control by an individual over items that do not belong to him, and the unlawful exercise of force over other individuals, compelling them to act in a way that is against their will. If only they were to free themselves from habit and tradition and allow their reason free reign, they would come to recognize that government should not be forced upon them, even—it must be concluded—Islamic government.^{cccxl}

Khomeini's challenging of his reader's preconception of political legitimacy does not simply aim at prompting them to realize the injustice of the tyrannical rule of a dictator and the necessity to simply replace the dictator's government with government by divine law. He does not argue that the human plays no part in government. His claim is made less radical, and more understandable, when he says that there must be a representative government, but one that is reformed such that it is faithful to the wishes of constituents—at least to the extent that constituents do not wish to pass legislation that violates the divine law. While on the one hand, Khomeini says that only God has the right to govern, he also criticizes a corrupt form of representative government, one that is disconnected from the people, arguing that parliament must be reformed so that it is attentive to the wishes of constituents within the limits of the divine law.

Khomeini saw an important place for a parliament even in a government that implemented Islamic law. In *The Unveiling of Secrets* (unlike in *Islamic Government*), Khomeini uses strong words to criticize what he believes is a defunct parliamentary system, one that has never fulfilled the aims of the 1906 Constitutional Revolution. A parliament, he says, can be just as tyrannical as a single leader, and in Iran, “parliamentary representation has never occurred on the basis of justice and freedom.”^{cccxl} Moreover, Khomeini holds that Iranians do not adequately comprehend the tyranny of the corrupt system of government that was then in

existence, and they lack the intellectual understanding to reform the system. “The majority of people,” he says, “are not aware of the concept of representation, the arrival and conducting of elections, the nature of representation and the limitations of the prerogatives of the representative.”^{cccxliv} Furthermore, he says that the faulty administration of elections may be at least partly to blame. In provinces with a population of more than 20,000, no more than ten to twelve thousand voter registration cards are distributed. In such a situation, he says, “representation is oppressive and the laws of [representatives] are transgressions.”^{cccxlv} After all, when constituents do not know their rights, or the dates of elections, or what sort of behavior they can and cannot expect from their representatives; and when, on a more basic level, they are not given a ballot which they can use to vote, how can we expect representative government to fulfill its function?

He says that if just an ordinary, unelected individual wrote a book of law and attempted to impose this law on the people, he would be called a criminal and his law would be considered “opposed to reason and justice.”^{cccxvi} We do not, however, issue the same judgement on

the individual who, using force or money, gathered together a number of forged votes and became a representative, and the hundred other people who, through means with which we are all familiar, brought themselves [to occupy] a representative seat, and whatever law they pass is opposed to the inclinations of their constituents or is meant to plunder their property, violate them, or humiliate them. [Despite this], the law [issued by the representative] is one that is [considered] rational and fair, and opposing it is a crime.^{cccxlvii}

In other words, Khomeini argues that it is our inability to see past what we have come to accept through habit and culture that has led us to resign ourselves to the laws of our so-called representatives in parliament. If we allowed ourselves to reason freely, we would recognize the corruption of the political system, recognize that to acquiesce in the laws of our representatives is as if we are acquiescing in the laws of a random individual who has conjured up a book of law and decided to impose it upon us. “Ask [your] reason, free from ignorant habits, what the difference is [between the every-day individual seeking to impose his own law and today’s parliamentary representatives],”^{cccxlvi} Khomeini says, and you will find that there is no difference.

Khomeini here expresses agreement with Hakamizada—if people do not reason in a way that is unrestrained by religious culture and habits of thinking, the consequences for the political development of the country will be tragic. Unlike Hakamizada, however, Khomeini laments the consequences of lack of rational thought for a parliamentary government. Hakamizada is concerned that Iranians prefer religious ritual over rational thought when they encounter uncertainties and challenges, resulting in stagnation in multiple dimensions of human life—personal, scientific, legal—but Khomeini focuses on an effect of a ritualistic worldview that Hakamizada doesn’t mention: the stagnation that will occur in the political realm, insofar as

citizens, accustomed to faithfully engaging in cultural practices without subjecting them to rational critique, will be less likely to criticize a political culture that is more accommodating of political corruption.

Khomeini's discussion of illegitimate forms of "representative" government allows us to more fully understand his views on this form of government, and in particular, the extent to which principles of representative government can be a basis for political legitimacy. Parallel to his condemnation of the forced rule of a single criminal, Khomeini does not issue a blanket condemnation of all representative government, but instead his description of illegitimate representative government is more particular—a particular kind of representative government elicits his condemnation here; one in which seats are bought, in which the inclinations of constituents are not taken into account and instead representatives use their power to pursue their own benefit, and in which people lack the awareness and the means to participate effectively in representative government. He does not dispute the claim that elections can be a basis for legitimacy. Instead, he says that we would be fooling ourselves if we believed that representatives were actually chosen and held accountable by a majority of their constituents. And he speaks highly of one parliamentarian who he believed did fulfill his duty as representative: Hasan Mudarris, a member of parliament who was outspoken in his criticism of Reza Shah.^{cccxlx}

Here would have been an opportunity to condemn or criticize parliamentary government in its essence—to claim that the election of representatives to government will lead us further away from ideal government, in which God's law is effectively implemented—but Khomeini instead criticizes the imperfect *implementation* of representative government, arguing that votes cannot be bought, a sufficient number of ballots must be distributed during elections in the provinces, and that on the whole, representatives do not act as our reason would tell us they should—that is, in a way that results from a tie of accountability between constituent and representative. These practical criticisms seem to indicate that Khomeini supports principles of representative government.

While Khomeini's criticism of Iran's parliamentary government indicates that he sees representation as valuable, he stops short of arguing that the dutiful fulfillment of the wishes of constituents by representatives in government is solely the basis of political legitimacy. He does not argue that if representatives were to be elected and were to pass law that accords with the wishes of their constituents, there would be nothing to criticize about government. If we were able to step outside of the habits of thinking that have caused us to accept a corrupt political order, we would realize that "a representative's actions must, by the law of reason, be in accordance with the well-being and the interest of the represented, and if not, then the representative is deposed from his position according to the laws of treachery and crime..."^{ccccl} Representatives cannot simply listen to the preferences of their constituents—Khomeini has an additional standard; namely, that the work of the representative must be in accordance with the well-being and the interest of the constituent. While on the one hand, Khomeini argues emphatically that representatives must be elected by citizens in free and fair elections, he also

says that representatives must have two concerns when they pass law—first, the inclinations of their constituents, and second, their well-being. Needless to say, these concerns may sometimes conflict, since a representative may have a different perception of citizens' well-being than citizens themselves.

Khomeini has no inherently positive opinion of representatives, however, and their ability to judge what is in the interest of their constituents. Certainly, Khomeini has no favorable expectation of political leaders or lawmakers. Humans are humans, he says—just like their constituents, these leaders are driven by desire, influenced by Satan, and pursue their own interests, even sacrificing the interests of others for their own. We cannot expect an ordinary individual to prefer others over himself—although the crucial word is “expect”—we may be allowed to consider the possibility, or even to think likely, that an ordinary individual would prefer others over himself. He says that because in every human exists the “desire for rule over all of the world, and not one of them eats bread off of his own table, and in the nature of each person is the ability to transgress the rights of and oppress others,”^{cccli} God could not have neglected to provide them with instruction on just government in His revealed law. Because parliamentarians will be driven by their desires and cannot be expected to put the interest of the country above their own selfish interests, government must be constrained by Islamic law. The moral standard that must shape legislation, and serve as a check not only on representatives but also on the inclinations of their constituents, is the divine law. It is the divine law that can indicate what furthers the well-being of constituents. Human lawmakers, left on their own, would only pass law that would harm constituents and oppose the well-being of the country.

Hakamizada had argued that Islamic law does not speak to matters of government, so much so that if a jurisprudent were to govern, he would be as unsuited to his task as would a doctor working as an auto mechanic. Islamic law, he says, has no relevance to the modern world. Khomeini wants to be clear that he does not accept this claim; Islamic law, he says, is certainly relevant to government, even in the modern age. Is it possible, he asks, for our reason to allow for the possibility that “a God who has created the world with such astonishing order and care, on the basis of wisdom and well-being, would...leave [humans] free without instruction, without establishing a just government among them...one should not expect this of a God Who acts according to reason ...His law is based on justice and the preservation of a [political and social] order and [system of] rights, and of course, personal benefit and personal opinion and other productions of this world will play no part in the heavenly law.”^{ccclii}

God, in his justice, has therefore left us with a “method of forming government,”^{cccliii} and interestingly, Khomeini's recommendations for government do not transgress the system that had been set up by the Constitutional Revolution of 1906. He argues that the implementation of the constitution produced by the Constitutional Revolution, including the Supplement of 1907, can help to do away with the corruption that has led so many people—not just religious clerics—to refrain from pledging political loyalty and support. This constitution had called for the supervision of parliament by a committee of religious clerics. “Simply implement one article of the constitutional law (‘whatever law opposes *shari'a* does not have the force of law’),”

Khomeini says, “so that all of the individuals of this country will be unified and the situation of the country will change as fast as lightning. With the implementation of this [article], those sorrowful institutions will be transformed into new institutions that operate based on reason, and with the efforts of [both] the learned and the masses, the country will develop such a change in character as the world has never seen.”^{cccliv} Thus, in Khomeini’s view, a popularly-elected parliament has the prerogative to draft law that does not conflict with the *shari’a*. By calling for supervision of parliament by the committee of religious clerics, he also recognizes the need for the parliament itself.

How is parliament to be constituted? Khomeini mentions two types of parliaments; first, there is the “founding parliament,”^{ccclv} which is elected by the people to reformulate the constitution and choose a new king. This parliament should be composed of “religious *mujtahids* who understand God’s law, who are just, who have been liberated from their desires, who are not polluted by the world and by rule over it, and who do not have any aim but the benefit of the people and the execution of God’s law...”^{ccclvi} This body can then choose a “just monarch who does not act against God’s law and who is not oppressive and does not encroach upon the properties, lives, and dignity of the people.”^{ccclvii} Second, there is the parliament that functions as an every-day legislative body. Just as we now establish a parliament to impose European or our own law, law that we draft without consideration for the divine law, on our nation, he says, we should instead replace it with another kind of legislative body. What would be wrong with the world, he says, if parliament were to be “composed of religious jurists or [operate under] their supervision, just as the law prescribes now?”^{ccclviii}

Khomeini here takes the existing government as the raw material with which to describe his reforms of government, without significantly transforming this raw material. There is still to be a monarch, and there is still to be a parliament, but these are to be qualitatively different when they are Islamic. Instead of a founding parliament that chooses just any individual to be monarch—based on, it is implied, no specific set of standards—there should be constitutional provision for a founding parliament that is made up of *mujtahids* who meet certain ethical standards and who will be responsible for choosing a just monarch. Furthermore, instead of a legislative parliament that passes reprehensible law, often based on no set of standards or based on a wrong (European-influenced) set of standards, there should be a parliament either composed of jurists themselves or supervised by jurists.

Khomeini here describes an improved government that includes a representative body and functions within the boundaries of Islamic law. A legislative branch, therefore, can be part of an Islamic government, and this can either be composed of elected jurists or supervised by jurists. Khomeini is not opposed to the principle of representation but only, he says, to parliaments made up of representatives who do not seek to maintain fidelity to God’s law. As long as our representatives are enamored of Europe, and not of God, he says, our country will continue to exist in its deplorable state.

Here, a question arises: if parliamentary law must be shaped and limited by Islamic law, then what is left of representative government? Khomeini did envision a role for a parliament,

but what would that role be? What of Khomeini's idea that "law leaves nothing out," that Islamic law has given us direction on how to establish an Islamic government and has given us a system of law—tax law, criminal law, civil rights law, and law according to which a political system functions?^{ccclix} How does Khomeini's argument for the crucial importance of Islamic law square with any possible reconciliation between Islamic and representative government?

Khomeini moves some way toward answering this question when he discusses Hakamizada's claim that parliamentary government and Islamic government have incompatible sources of legitimacy. If legislators must get permission from the jurists to pass law, as had been the arrangement in the Supplementary Fundamental Law of 1907, then this can mean only one of two things, he argues. On the one hand, it can be the sort of permission that has no practical relevance—legislators are able, in the end, to make the decisions they think best. On the other hand, if jurists must acquiesce to the passage of every law, then this creates a crisis of legitimacy, because when jurists have this authority, the law and parliament and government "have no meaning."^{ccclx} If the claim is that legitimacy depends upon the permission of religious specialists because of their understanding of the divine law, then why even have a parliament or a government? If jurists must give parliament permission to pass each and every law, then unless this granting of permission is simply a formality, this implies that the jurists understand what is at stake in each decision and approve or disprove of the law not just based on their legal knowledge but their understanding of the circumstances that the law was written to address. If the jurists, however, are in a position to grant permission, why are they not in a position to pass law? Are parliamentarians superfluous and unneeded in the legislative process?

In his response to Hakamizada's question, Khomeini elaborates his view of the relationship between parliament and the supervising jurists in government. Is Hakamizada correct to claim that that in a government supervised by jurists, a parliament can "have no meaning"? No, Khomeini says, it is incorrect to claim that parliament can have no meaning under the supervision of the jurist. To make this claim, he says, would be like claiming that in a representative system of government "parliament is dependent upon the existence of constituents, and with the existence of constituents and elections, a representative and parliament do not have meaning."^{ccclxi} Because Khomeini does not elaborate on his view of the function of a representative with respect to the representative's constituents, it is difficult to determine what he means when he says that representation by a parliament of its constituents is meaningful, but he implies here that the representative fulfills a function that his constituents cannot fulfill, and this makes his function meaningful. The divine law cannot do everything in Islamic government, just as constituents cannot do everything in secular government. While the ultimate service of the representative in a secular government is to his constituents, the service of a parliamentarian in Khomeini's ideal government is to the divine law—as articulated by jurists—but this law, in an Islamic government, and these constituents, in a secular government, do not place restraints on the parliamentarian such that there is no room for him to make judgments apart from them. All that is required of the parliamentarian is not simply that he must bow to the rule of Islamic

law and to the opinion of jurists in power but also that he independently perform a function that supplements or interacts with the function fulfilled by jurists in government in a way that is productive and meaningful.

In his chapter “On the Law,” we gain further insight into what Khomeini envisioned the role and value of a parliament would be in a government that implements Islamic law. In this chapter, he responds to Hakamizada’s argument that the *shari’a* was formulated to address the needs of seventh century Arabia, not a country in the 20th century that aspires to be modern. “It is impossible,” says Hakamizada, “that *shari’a* could provide for all human needs, in every place and in every time.”^{ccclxii} Can Islamic law change, Hakamizada asks, as time progresses and as the context in which it must be implemented evolves? If Quranic verses related to the law were abrogated even during the Prophet’s lifetime, Hakamizada asks, in “one environment in one small area...[and it was changed] to meet the needs of changing times, is it possible for law not to change the world over until the end of time?”^{ccclxiii} Khomeini responds by saying that it is wrong to claim that God was incapable of foreseeing the needs of future societies and therefore His law is neglectful of modern exigencies. God’s law, he argues, must surely speak to modern times as well. If we truly understood God, he says, we would know that God is not neglectful of a single minute particle in this world; why, then, would He be neglectful of our need for law—political law included?

According to Khomeini, there are two sorts of law that Hakamizada claims individuals may come to need with the passage of time; firstly, law that opposes the *shari’a*—for example, taxes on *haram* (legally impermissible) items. This type of law, he says, is by no means acceptable, since it is harmful to the country and its people.^{ccclxiv} A second kind of law that the country will come to need with the passage of time is law is not at odds with the *shari’a* but plays a role in sustaining the “order of the system and progress of the nation.”^{ccclxv} Islamic government, he says, can determine, “by means of religious specialists,” whether this law is compatible with Islamic law. Government can implement laws, he says, “only if they are meant to secure the well-being of the country, even if they are not included in the law of Islam.”^{ccclxvi} This includes law related to property, banking or defense that may be required in the contemporary age. Of course, he says,

in the beginning years of Islam, because the Islamic state was limited [in its development], there was no need for banks and the registration of property and census and such, and the equipping of the army was different in that time from the way it is now, and there were no postal services or telegraph...but Islamic law has no fundamental opposition to instituting [and developing] these things...Islam has never opposed this kind of progress and the law of Islam is not opposed to any social or political advancement.^{ccclxvii}

This discussion indicates that Khomeini saw a role for “religious specialists” in determining whether law that promotes the “order of the system and the progress of the nation”

accords with the *shari'a*, but he does not say that they must necessarily be involved in the drafting and passage of the law itself. Religious specialists must agree to the passage of law that is not mentioned in traditional religious law but for which the country has need.^{ccclxviii} While “Islamic government” is concerned with drafting law (Khomeini does not specifically use the word “parliament” in this passage), jurists are responsible for determining whether this law contradicts Islamic law; if it does not, then this law is legitimate, in Khomeini’s view. Thus, while Khomeini, on the one hand, had previously claimed the exclusive legitimacy of God’s law, in this section, he develops a more nuanced explanation of the term and argues that there is, in a fact, a kind of lawmaking in which humans are able to engage, though this lawmaking is limited by the strictures of God’s law. This is despite the fact that in his chapter “On Government,” he had stated explicitly that lawmaking is exclusively a divine activity.

This conception of the *shari'a*—as limited in its scope and, at times, in need of supplementation by human legislation—allows Khomeini to respond to Hakamizada’s criticism that the *shari'a* was revealed in one very particular time and place and is deficient when it comes to responding to the needs of contemporary society. It also serves as further evidence that Islam values reason, Khomeini argues, insofar as legislators must use their reason to deduce new law. Khomeini accepts that the task is more complicated than simply implementing a set of laws that was drafted centuries ago, but he insists that Islamic law should not simply be put aside. Law could become responsive to contemporary legal questions because it is formulated on the basis of principles that can be discerned through our reason; it is not trapped within the confines of the written word, but instead continually recreated when it can act in the service of these fundamental principles. Because new law can be created through rational deduction, Hakamizada is mistaken, Khomeini argues, when he claims that Islam does not value reason.

Just as in *Islamic Government* Khomeini says that law is progressive and evolving, here he says something similar in more concrete terms. Islamic law is neither comprehensive nor indifferent to new problems in new contexts; instead, it is underwritten by principles from which new law may be deduced through a process of deductive reasoning. In other words, law is still law even if it is written by human beings and is not included in the *shari'a*, but it is a distinct kind of law, a human law—and should be recognized as human and not divine—but it is binding nonetheless.

The extent to which Khomeini believes that humans have a prerogative in lawmaking is further illustrated in another sub-section of this chapter “On the Law,” in which Khomeini discusses how to encourage in citizens obedience to the law. Hakamizada had criticized the existing state of political affairs by saying that law is only effective when humans have embraced the law fully, and he implies that religious belief has kept citizens in Iran from fully accepting state law, hindering the emergence of an effective central government. To argue that belief in the eventual messianic return of the twelfth imam keeps citizens from developing a sense of allegiance toward government Hakamizada cites a *hadith* that says that “any government before the rise of the twelfth imam is illegitimate (*batil*).”^{ccclxix}

Khomeini responds by saying that this *hadith*, and others that prohibit engaging in warfare on the side of anyone but the twelfth imam “have nothing to do with founding a godly and just government which any man of reason will feel is necessary.”^{ccclxx} In other words, such a government, a government that is “godly and just,” can be established before the return of the twelfth imam. Instead, he says, there are two alternative ways of interpreting this *hadith*; firstly, the *hadith* could be saying not that any government that precedes the return of the last imam is illegitimate, but that a government cannot claim to represent or act under the direction of the twelfth imam if those signs that must accompany or precede his return have not yet appeared. A government that claims to have “raise[d] the flag”^{ccclxxi} of the Imam before the signs that must precede his re-emergence have appeared is illegitimate (*batil*). In other words, governments that arise before the return of the twelfth imam do have a claim to legitimacy but cannot appeal to the same basis of legitimacy as the government of the twelfth imam. The government of the twelfth imam, according to Shi’a belief, is perfect and unassailable, a “kingdom of God” that comes at the end of time. However, according to Shi’a doctrine, there will be a series of events—in the natural world and in human society—that will indicate that he is about to return, and the absence of these signs will keep other governments from claiming to act on behalf of the twelfth imam, deflecting any criticism and demanding absolute obedience. Any government that claims on behalf of itself that it is the government of the twelfth imam, when there is an absence of any of the corroboratory signs, must be recognized for what it is—a government that falls below the divine ideal for government. Scholars of the constitutionalist tradition emphasized this point, arguing further, based on this premise, that any fallible government must be constrained by a constitution and by citizens represented in a parliament.

Khomeini says that this *hadith* can also be interpreted in a second way; perhaps, he says, it means to foretell that no government that arises before the return of the twelfth imam will “act according to its duty.”^{ccclxxii} The *hadith*, in other words, could be a prediction of future events rather than a description of principle; it does not say that we should not endeavor to establish a government that acts according to its duty before the return, but that, as events will play out, no government before the return of the twelfth imam will act fully according to its duty. He draws a distinction, in other words, between a *hadith* that is a forecasting of future events and one that is meant to provide moral instruction. When this *hadith* states that all governments that come before the return of the twelfth imam will be illegitimate, it may not be instructing us to refrain from participating in all governments until the end of the occultation but instead may be a description of fact, meant to make us aware of future events.

Still, is not the effect of the *hadith* the same, in both cases, whether it forecasts future events or provides moral instruction? If there is to be no government that we may consider legitimate until the return of the last imam, does this not serve simply to make our moral duty more clear to us—that we must not, until his return, participate in government? However, the *hadith* cannot instruct us to practice political quietism because the meaning of the *hadith* is not clear. We cannot know for sure that the *hadith* is forecasting the future.

Hakamizada had argued that religious scholars have caused people to act indifferently toward government and to refrain from judging whether government has acted according to its duty because they are convinced that any government that exists before the return of the twelfth imam will be corrupt. “If we said that when the government does not act according to its duty, then we will consider it oppressive, and when taxes are not spent appropriately, then we will consider [paying them] haram,” according to Hakamizada, “then this reckless spending and this unawareness of duty would not have been present from the beginning.”^{ccclxxiii} (Hakamizada also argues at various points in his text, as mentioned earlier, not that the religious classes urge disinterest in any temporal government but that jurists want to take control of government and consider oppressive any government that they do not control. Khomeini mentions this discrepancy, asking which of the two Hakamizada means to say is the bigger threat.)

Hakamizada’s argument has interesting implications; those who await the perfect government of the twelfth imam, he says, do not develop their political judgment, their ability to critique government. Or, to the extent that they do judge, they do not actively hold the government accountable, withdrawing and offering their support as necessary. Consequently, even if during the period of occultation, the most just of kings were to ascend to the throne, he would still be called an oppressor; similarly, whatever amount of taxes are levied—whether too much or too little—it will always be religiously forbidden to pay taxes.^{ccclxxiv} Any law that is passed citizens will treat with indifference instead of respect. They have not shaped the law based on their convictions because they do not care to involve themselves politically before the return of the last imam.

Khomeini responds to Hakamizada’s criticism largely by agreeing with him, arguing that even during the time of the occultation, citizens must pay close attention to and engage in an ethical critique of both the law and the legislators that govern them. When citizens are not politically apathetic, he says, law becomes more than, as Hakamizada had contended, “a paper tree which looks like a tree on the outside, but is blown over with one gust of wind.”^{ccclxxv} More particularly, law will be respected by the people, recognized as law in its fullest sense, when two categories of conditions apply. Firstly, the people must have determined the legislator to be a “righteous individual who, in his legislating, does not consider anything but the well-being of the country and its people...and if they see that the legislator is driven by his desires and interested in power and will not keep himself from committing any crime in order to occupy a representative seat [in parliament] and [filling] a ministerial position, then inevitably the people will not have faith in this law, and we should not expect that they would develop this faith.”^{ccclxxvi} Furthermore, these “legislators must not exempt themselves from the law...”^{ccclxxvii} Thus, not only does Khomeini believe that legislating can occur within a certain sphere of legitimacy, but that the people must come to have full faith in law which has a non-divine origin, and they can arrive at this faith only when they have judged the legislator to have lawfully attained his position in government and to be inspired in his legislation by consideration for the well-being of the country and its people.^{ccclxxviii}

Secondly, not only do people internalize the state law as “law” by positively assessing the legislator, but also by positively assessing the law itself. Khomeini says that that the law itself must be “rational”^{ccclxxix} and must have been enacted with a view to the good of the country; when the people judge the law to have these qualities, they will develop “belief and faith” in it. Mandatory military service, judicial law, customs duties, and most of our country’s laws are not worthy of faith and acceptance, he argues. Individuals can, by accessing their reason and their ability to distinguish what is in the interest of the country, come to have faith in the law. This is not to imply that humans may obey or disobey the law as they please but that law must, on the whole, achieve some level of respectability or of rationality if people are to take it seriously. Importantly, this means that even when law passed by parliament has been approved by a council of jurists—as had been the arrangement mandated by the constitution of 1906–1907 that Khomeini believed governors should implement—ordinary citizens still have the right to assess and take issue with this law. Only when people have come regard the law as rational and discern sound ethical qualities in legislators will the law become “rooted in their hearts,” Khomeini says.^{ccclxxx}

Against concerns Hakamizada had raised in his pamphlet, Khomeini argues that the existence of religious law does not make citizens indifferent to state law, that it is not the case that citizens who adhere to a religious tradition cannot grow to respect any law but the law they hear pronounced by religious scholars. He reassures Hakamizada that he shares his aim—people must feel allegiance to the state—but it is not religion but the lack of responsiveness of government to the opinions and needs of the people that keep them from becoming loyal citizens.

In making this argument, Khomeini says that he agrees in part with Hakamizada—citizens should make use of their reason—but unlike Hakamizada, he says that they should use it to assess the work of their legislators. Khomeini reassures Hakamizada that people are not unthinking creatures, who cannot respect any law that sounds the least bit unfamiliar to them. Citizens can and should use their reason to consider the law that has been passed, and to consider the character of the legislator who has passed it, so they can determine whether they will obey the law, or whether it was enacted for purposes contrary to their good, and stands so far outside the pale of rationality that they cannot obey it. He also shares Hakamizada’s concern that citizens should feel allegiance to the law of the state, but he disputes Hakamizada’s claim that religion is to blame for their lack of affection toward the state; instead, he argues that citizens can only feel allegiance to the state when they have come to believe that the legislator and the law have their interests in mind.

After his discussion of the qualities of the law and the legislators who will inspire citizens to obey and support their country, Khomeini uses the word “legislator”^{ccclxxxi} to refer exclusively to God. “We say that the *legislator* must be God,” he says, “and *members of government* must have those characteristics that Islam has specified because under these conditions the law will root itself in the hearts of men and the people will develop faith and belief in the law.”^{ccclxxxii} Here, Khomeini uses the word “legislator” in a different way from his use of the word earlier in the passage, and thus he employs the concept of law in two different ways in this part of the

chapter. On the one hand, he argues that “legislation” may occur for the purpose of responding to contemporary circumstances but must always be constrained by the boundaries of the *shari’a*, and he specifies the characteristics of the legislator and describes qualities of law that will make the law acceptable to the people. This indicates not only that the existence of a divine law does not preclude the need for human legislation, but also that it is necessary, in Khomeini’s view, for law and legislators to attract the obedience and approval of the people, and for humans to issue judgment about the law and its creators. On the other hand, he says that the only true lawmaker is God; those he had previously called “legislators” he then calls, later in the chapter, “members of government.” This sort of switching of terms is only possible if the word “legislator” can vary in meaning; in this case, it refers to the makers of two different kinds of law. God the legislator creates perfect law, while human legislators, members of government, create law that only aspires to this perfection but that nonetheless can be called law and can be obeyed and respected when certain conditions apply.

The Role of the Monarch in an Islamic Government

Given that Khomeini’s recommendation for an improved political system does not exclude the monarch, how may the monarch—who, in Khomeini’s view, must have been selected by a founding council of jurists and must not act against the divine law^{ccclxxxiii}—limit the parliament and the possibility of representative government? Though Khomeini’s idea of reformed government includes a monarch, does Khomeini believe that the monarch may overrule parliament?

The power of the monarch, in Khomeini’s view, as in the view of constitutionalist scholars, is conditional. First, he must not “consider it permissible for himself to violate the law, and he must consider himself obedient to the law if others are to consider him worthy of their obedience.”^{ccclxxxiv} Secondly, the king must “believe the country to be of himself and himself to be of the country”,^{ccclxxxv} he must feel a sense of attachment to the country, such that the country’s interests and his interests are inseparable. Such a perception of his relationship to the country would prevent him from, for example, granting economic concessions to foreign powers for his own personal financial benefit. Third, the king must feel himself responsible for protecting the lives, property, dignity and honor of the people.^{ccclxxxvi}

Thus, in Khomeini’s view, the king must both be of service to the people while at the same time limited by law passed by a parliament. Khomeini describes a monarch who benevolently struggles to do what is best for his country; if he considers the country to “be of himself,” there is a sense in which he must feel responsibility toward the country. At the same time, however, the king is “of the country”; there is a sense in which the country is an entity greater than the king, to which the king must be receptive and offer his services.

Khomeini’s views overlap with the constitutionalist tradition—and with the articles of the 1906-07 constitution—insofar as he says several times in the text that the monarch need not be a jurist, and that the claim of the religious scholars has never been that the monarch need be

a jurisprudent, although he does say that at a minimum jurisprudents should choose the monarch. Hakamizada had argued that if the jurisprudents were to take the place of the monarch, then “we would have multiple shahs,”^{ccclxxxvii} implying that the jurisprudents cannot exercise executive political authority because this authority would then be diffused and ineffective. No one jurisprudent could convincingly claim that he has the right to exercise this power alone, and therefore multiple jurisprudents would have to rule at once.^{ccclxxxviii} Either Hakamizada does not examine the possibility that an institution could be set up that would regulate and organize their exercise of this authority, allowing it to be effective, or perhaps his argument assumes the possibility of this institutionalization but still implies that there is no religiously-sanctioned way of negotiating between the varying views of jurisprudents and establishing one “shah.” Khomeini answers, however, that no jurisprudent has ever claimed that “we are shahs, or the monarchy is our right.”^{ccclxxxix} This means that Khomeini allows that a non-jurisprudent can fulfill this supreme executive function.

The Role of Jurisprudents in an Islamic Government

Khomeini’s discussion of jurisprudents’ role in his recommended political system, a role which, he emphasizes, does not preclude the participation of non-jurisprudents in governing institutions, including in a parliament, also reveals that for him, as for constitutionalist scholars and scholars of the Shi’a jurisprudential tradition of political theory, political legitimacy centers on a particular system of law, and not the assumption of power by particular individuals or members of particular social and intellectual groups, such as jurisprudents. While constitutionalists said that political legitimacy depended upon the implementation of the constitution and Islamic law, scholars of the Shi’a jurisprudential tradition of political theory emphasized the need to implement Islamic law and were often indifferent to the character of the political system that implemented this law. However, Hakamizada argues that certain members of the clerical class are critical of government and claim that it is “oppressive” only because they do not hold power. He asks, “What do they mean when they say that government is oppressive? Do they mean that because the government does not act according to its duty, it is oppressive? Or do they mean that the government must be in the hands of the *mujtahid*?”^{ccccxc} Hakamizada asks a fundamental question: when does a government exercise illegitimate force and become oppressive? Is there a set of duties that set the boundaries within which a government can exercise force legitimately, or is the exercise of force legitimated by the character or qualities of the individual who exercises it? More specifically, do the *mujtahids* approve of government according to whether it conforms in its behavior to what is regarded as its duty, or do *mujtahids* only approve of government when members of their own hold power?

Khomeini’s response to Hakamizada is that the standard that must be applied to determine whether a government is oppressive is one based on a concept of duty, though he specifies his understanding of “duty” in order to make this claim. “When a government does not act according to its duty,” he says, “it is oppressive, and when it acts according to its duty, it is

not oppressive; in fact, it is great and dear before God. However, the duty of government must become clear so that we can determine whether it is oppressive or not oppressive.”^{cccxcxi} The duty of our government, he then says, is simply to set up an Islamic government that will implement God’s law. The fulfillment of this duty, he says, will mean the creation of Farabi’s Virtuous City.^{cccxcii} Like the constitutionalists who came before him, Khomeini holds that it is fidelity to a system of law, and not the holding of power by particular individuals, that makes government legitimate. This system of law would not be invented by human beings; it would not be conventional, but instead divine, but as Khomeini holds elsewhere in the text, it is not the divine law alone that constrains government. Though here he mentions the divine law exclusively, elsewhere he elaborates on the ways in which the divine law accommodates human law—including law drafted in a parliament, and law contained within the constitution that he maintains should be implemented.

The aim, Khomeini states, is not to put the jurispudent in power; it is not power that is the object to be attained. Power is what someone like Hitler is interested in; Hitler, Khomeini says, who “all of you irrationally praise from afar,” even though he desired to “take Poland, though hundreds of thousands of families [would] die as a result...[Hitler’s] desire has oozed out of the most poisonous and justice-destroying of human thoughts, and any scholar who loves justice should stand against it...”^{cccxciii} Instead, the aim is to ensure that government is constrained by Islamic law. It is not a particular group of people who, when they assume office, will make possible Farabi’s Virtuous City; it is the implementation of a system of law that creates this ideal city.

Hakamizada also holds, consonant with his portrayal of religious clerics as power-hungry, that jurisprudents intend to control government entirely. This would be inappropriate, Hakamizada argues, because jurisprudents do not have the skills and knowledge that would allow them to control government. If something is to be made a condition for something else, Hakamizada argues—if, more specifically, one is to argue that a condition for governorship is having knowledge of Islamic jurisprudence—there must be appropriateness to the condition. It would be laughable, he argues, if one were to argue that a condition for being an engineer is knowledge of jurisprudence, just as it is ridiculous to suggest that political duties require knowledge of jurisprudence.^{cccxciv}

In his response to Hakamizada’s claim, Khomeini argues, like other constitutionalist scholars, that government must be a cooperative endeavor between experts in jurisprudence and experts in other fields that are also relevant to government. Khomeini says twice in his work that “their” claim—the claim of religious scholars who argue for Islamic government—is not that the jurispudent should be “the king, and also the minister, and also the military man, and also the street sweeper...”^{cccxcv} “Instead” he says later, “[they mean that] the jurispudent must supervise the legislative branch and the executive branch of an Islamic government.”^{cccxcvi} Jurispudents, in other words, must exercise oversight over government; Khomeini denies that Islamic government entails that jurisprudents should occupy every position in government. All that Islamic government requires, Khomeini says, is that, at a minimum, jurisprudents exercise

supervision over the legislative and executive branches, though they may also participate in government. As mentioned previously, Khomeini also suggested that jurists could either supervise or directly participate in the legislative branch; thus, Khomeini considered it a possibility that jurists could participate directly in government but does not indicate whether their direct participation would be preferable to their supervision. Instead of specifying what roles the jurists must play in government, he instead focuses on refuting the claim that an Islamic government is one in which jurists have absolute control. While Hakamizada argues that there is no relationship between jurisprudence and government, Khomeini does not entirely refute but instead tempers this claim, arguing that while the jurist's knowledge is not sufficient for government, it is necessary for government, at the very least to ensure that laws passed by parliament or actions taken by the executive branch do not contradict the law of God.

Alternative Principles of Legitimacy in The Unveiling of Secrets

We have seen so far that the political system that Khomeini believes should replace the one in existence at the time of his writing derives its legitimacy from its implementation of Islamic law and from the representative decision-making that occurs within the boundaries of Islamic law. However, Khomeini recognizes other sources of legitimacy for governments that rank lower in preference than the government he recommends. Because governments that do not implement Islamic law and do not include representative institutions are manifestly less desirable to Khomeini, we find in his discussion of these alternative forms of government further proof that Khomeini remains explicitly within the Shi'a jurisprudential tradition of political theory, since he holds that an ideal form of government is one in which jurists have the authority to ensure that Islamic law is implemented. His position on this subject is also consonant with the constitutionalist tradition since he disapproves of the monarchical government then in existence, a government in which parliament had lost its power, and, like other constitutionalists, he underscores the importance of implementing the divine law, but he says that it is necessary to temporarily support this monarchical government just enough to prevent it from falling victim to foreign control. In Khomeini's view, a concern for national independence may legitimately keep one, at least for a time, from advocating for the implementation of Islamic law or the establishment of constitutional government, and it is sometimes appropriate to participate in a monarchical government if one believes that by doing so, one promotes national well-being.

We find these alternative sources of legitimacy in Khomeini's refutation of Hakamizada's claim that religious clerics weaken government by discouraging allegiance to any government not led by jurists or the twelfth imam. One cannot simply withdraw one's support from a non-ideal government so that the country becomes vulnerable to external threats, Khomeini says; instead, one must struggle for reform from within. This involves maintaining a modicum of support for existing government. Khomeini says that the *mujtahids* "have never opposed the [current] system of government or interfered with the independence of Islamic

countries, even if they have, in the past, considered this law to oppose the laws of God and determined this government to be oppressive...;”^{ccccxcvii} This is because, he says, “they consider this rotten government to be better than no government at all.”^{ccccxcviii}

Khomeini stands by his claim that “every kind of sovereignty except for the sovereignty of the divine [law] is opposed to the well-being of the people, and [every system of law] except for the divine law is illegitimate (*batil*) and useless (*bihude*),” but “as long as a better government cannot be established, [the *mujtahids*] will respect and do not condemn this uselessness.”^{ccccxcix} The monarch and his law clearly, then, are not “useless”; Khomeini must be using this word for rhetorical purposes. In a later section, Khomeini argues that *mujtahids* are crucial to strengthening the country, and therefore it was not tactically wise of Reza Shah to deprive clerics of their institutional roles in government and to undermine their social influence. The clerics are willing, Khomeini implies, to use their influence to bring the masses to support the state during times of difficulty and particularly during times when the state’s economic and political independence is threatened,^{cd} even if it means offering their support to a monarch that Khomeini condemns, in strong words, in other parts of the text. Thus, Khomeini’s primary concern, even before his concern for the implementation of Islamic law, is to maintain the country’s independence.

Thus, the aim, for Khomeini, is not simply the establishment of religious government; there are intermediate aims as well. In this sense, a government that is non-Islamic but that defends a country from foreign influence and incursion cannot simply be opposed and overthrown, even if it does not implement God’s law. Right to govern is not derived simply from one’s intention to implement Islamic law. Non-Islamic government can be legitimate, though not as preferable as the government that Khomeini had earlier described, and certainly not ideal. Though earlier Khomeini had stated that only God has the right to govern, here we see that when God’s rule cannot be established (through the implementation of Islamic law and the granting of political authority to jurisprudents), then the exercise of authority over lives and property can be justified in another way. One cannot simply withdraw one’s support from a government that does not implement God’s law because this would leave the country vulnerable to harm—and perhaps foremost on Khomeini’s mind, harm inflicted by Britain and Russia, already occupying Iran in the north and south and ready to further take advantage of a country with a weak political system.

In addition to arguing in a general fashion that there is reason for a non-Islamic government to continue to exercise authority, he also states, more particularly, that a (non-constitutional, non-Islamic) *monarchical* government is not, in every circumstance, to be condemned. It is permissible, he says, and sometimes even religiously obligatory (*wajib*) to offer support to a monarchical government. He says this in order to refute Hakamizada’s interpretation of a *hadith* that Hakamizada says indicates that monarchical government is categorically illegitimate. This *hadith* states that “participation in the affairs of the sultan, aiding him, and attending to his needs is equivalent to ‘*kufri*’ (rejection of the existence of God).”^{cdi} Khomeini argues that Hakamizada has misunderstood the *hadith* he cites; this *hadith*, he says, and many

others like them, prohibits participation in government institutions *for the purpose of aiding oppression*. It is good, and sometimes, even religiously obligatory, to offer support to any government “in order to prevent corruption and improve the state of the country and its people...”^{cdii} Khomeini then refers to a *hadith* by Sheikh Murtaza Ansari, who says that serving the oppressive sultan is permissible in order “to defend the well-being of God’s creatures...for some have said that participating in the affairs of an oppressive sultan is permissible if a person can return to someone what is owed to him,”^{cdiii} and it is obligatory to participate in the affairs of sultans when one must “enjoin what is right and forbid what is wrong.”^{cdiv} A citizen’s support for the government of a monarch is not to be condemned from the start, but instead to be assessed according to the ends the citizens intended to achieve by offering this support. While the monarch’s government is not ideal, there are situations in which desirable ends may be achieved by offering support to this government.

That Khomeini conceives of a hierarchy of political institutions, where government that functions according to God’s law sits at the top, is also made clear when he says that though “men of reason can confirm what is ‘good’ government and government which accords with the well-being of the people and the nation, of course the *best* institutions were founded upon the law of God and God’s justice...”^{cdv} Khomeini regards as permissible obedience to governments that men of reason discern are good, but the best institutions cannot always, he implies, be recognized as such by men of reason. Khomeini remains faithful to tenets of the Shi’a jurisprudential tradition of political theory and the constitutionalist tradition insofar as he says that the ideal government—the government that we must always work toward establishing—is one that implements Islamic law and one in which jurists have a central role in ensuring this law is implemented.

Conclusion

This chapter has sought to demonstrate that in his early work, *The Unveiling of Secrets*, Khomeini writes, as he does in later works, in the Shi’a jurisprudential tradition of political theory. There is also convincing evidence that he writes in the constitutionalist tradition—much more so than in his 1970 Najaf lectures, and evidence of his having been influenced by the constitutionalist tradition appears again, as will be argued in Chapter 5, in his post-revolutionary writings. In *The Unveiling of Secrets*, though Khomeini does not offer his support to a representative government that holds as its exclusive goal the enactment of the desires of its constituents without being attentive to the requirements of the divine law, he does express unqualified condemnation of a government that ignores or misrepresents the opinions of its constituents. Thus, neither the faithful representation of constituents’ desires nor the imposition of a political order that ignores constituents’ desires is an acceptable basis of political legitimacy in Khomeini’s view.

Khomeini does not relinquish the idea that there exist objective criteria by which the decisions of lawmakers may be judged—including the criteria defined by Islamic law—however,

such criteria cannot be the basis upon which law is imposed on the people. When he says that the only entity that has a “right” to govern and to create law is God himself, Khomeini uses theological concepts to justify a significant degree of individual freedom from the authority of government; there is never, in fact, a situation in which we can say that a fallible human being has the “right” to govern, since he will inevitably make mistakes when he governs, never, to the fullest extent, doing right by those he governs. While a fallible individual’s government is never perfect, Islamic law is, and government therefore has a right to its authority when it implements Islamic law, at least to the extent that Islamic law is incontestable in its strictures. This is, of course, assuming that citizens wish to be governed by this law. When government does not implement Islamic law, its authority may always be questioned.

On the one hand, Khomeini delivers the strong statement that no entity other than God has the right to exercise control over another’s property—a political responsibility that he singles out as one to be exercised only by one who has a right to do so, which is no one else but God or those whom God has appointed to this position. Though Iranians do not recognize it, he says, they are victims of a tyrannical government, a government in which one individual holds absolute control and has not attained power by the consent of citizens; like a thief, he has imposed his will on his subjects. However, to overcome this tyranny, Khomeini does not urge Iranians simply to grant power to God’s appointees—presumably, Islamic jurists—so that they may implement the divine law. Tyranny is classified as such, in Khomeini’s view, not simply because it imposes the wrong law on citizens, but because it imposes a law on them against their will, when they have had no say in selecting who formulates and implements this law.

Like the constitutionalist scholars who came before him, Khomeini says that even in an Islamic government, there must be a parliament in which elected representatives draft law. He says that there is an area in which humans can legislate, and that is where Islamic law is silent or cannot be applied in contemporary circumstances. Law, therefore, to be legitimate, must either be directly extracted from the divine law by legal experts or must be formulated to address unprecedented circumstances by either experts or non-experts, though it must remain within the framework of the principles of the law and must have been approved of by the legal expert. Khomeini recommends that either Article 2 of the Supplementary Fundamental Law of 1907—which called for the supervision of parliament by a council of *mujtahids*—be implemented, or that parliament itself be composed of *mujtahids*. Khomeini is sharply critical of the system of parliamentary government that had existed in Iran since the failed Revolution of 1906, arguing that a more effective system should be created—one in which a sufficient number of voter registration cards are distributed and people are aware of when elections are being held—in short, he wants to finally see the establishment of a functional democratic system.

Citizens must actively assess both the character of their representatives and the law that they pass. In this way, citizens may hold representatives accountable, but Khomeini emphasizes that representatives must be attentive to both the inclinations of their constituents and to Islamic law. Representatives cannot act simply based on the inclinations of their constituents, though

they are not to ignore them, either—there must be some consideration of the well-being of their constituents, where this well-being is secured by Islamic law. When the inclinations of constituents conflict with Islamic law, there is an institution in government—the council of jurists that oversees parliament—that will prevent representatives from serving these inclinations. Since Khomeini is strongly critical of any government to which citizens have not given their consent, however, he cannot sanction a government that implements Islamic law, and whose parliament may govern only within the boundaries of Islamic law, if citizens have not consented to being governed by Islamic law and by these particular political institutions.

How much prerogative does parliament have when it is overseen by jurists? In Hakamizada's words, why is a parliament even necessary if jurists claim to be the final authority on the law? Khomeini says that parliamentarians are needed to draft law that supplements the *shari'a* but that furthers the progress of the nation; in other words, the *shari'a* is not, by itself, sufficient for governance, especially given the broad range of circumstances unaddressed by a law that was originally meant to be implemented in 7th century Arabia.

When citizens believe that the laws passed by parliament have been, to at least a certain extent, drafted in a rational way, and when they approve of the characters of legislators, they will feel allegiance to government. Despite the absence of the last imam, a “godly and just” government may be established, Khomeini holds, and thus Hakamizada is wrong to claim that belief in the occultation of the last imam, and the absence of perfectly just government until he returns, causes people to become politically indifferent. It is when constitutionalist principles are realized that people will grow to respect and develop a sense of loyalty to the central government. It is not religion, but political tyranny and the absence of a functional representative system, that keep people from feeling allegiance to government. Moreover, a constitutional government will help to nurture the capacity of Iranians to exercise their rational faculties, since they must use their reason to assess the law, law which will often be deduced rationally in a parliament from the principles of Islamic law. Khomeini agrees with Hakamizada's critique of the tendency of contemporary Shi'as to be too ritualistic, to turn too quickly to ritual in the face of dissatisfaction with circumstances in their lives, and he says that one effect of Iranians' inability to reason is found in the political sphere, since Iranians are incapable of comprehending the reprehensible nature of political tyranny.

Finally, as a constitutionalist who seeks to reinstate the 1906-07 constitution, Khomeini says that the monarch should have only conditional power, and this supreme executive power need not be a jurist. Not all actors in government need be jurists, but all members of the executive branch, including the monarch, must be constrained by the rule of law as formulated by parliament, which in turn is overseen by a committee of jurists. Following the constitutionalist tradition, to Khomeini, political legitimacy stems from fidelity to a system of law and not the exercise of power by certain individuals or classes of people. Khomeini calls for the participation of the *'ulama* in government not, as Hakamizada had suggested, because of their identities as individuals, but because of their ability to understand and keep government within the boundaries of Islamic law. It is not only Islamic law that orients Islamic government,

however, but the human law that does not violate the strictures and serves the principles of Islamic law. The concern is not to give individuals power, but to implement the law—provided, of course, that the people agree to be governed by it.

Still, when this ideal political system has not yet been established, Khomeini also recognizes other principles upon which obedience to government may be justified and required. In recognizing less-than-ideal governments, Khomeini reiterates the features of an ideal government—that it implements Islamic law and that it is not headed by a tyrannical monarch. Khomeini says that citizens should not withdraw their support for government when this would weaken it and make it easier for foreign powers to undermine its independence—a concern which beleaguered Iran at the time of Khomeini’s writing. Khomeini holds, contrary to Hakamizada, that the doctrine of the return of the infallible twelfth imam should not preclude participation in any non-Islamic government and calls our attention, moreover, to the imperfection of this government and the need for citizens to pass judgment on it, and then seek to reform it, just as they should seek to reform any government—even one that is ostensibly Islamic—that exists before the return of the last imam.

Chapter 5: Constitutionalist Themes in Khomeini's Public Speeches, Statements, and Correspondence: 1979-1989

Much of the scholarship on Ruhollah Khomeini's political thought focuses on his 1970 work, *Islamic Government*, the series of lectures he delivered to seminary students in Najaf in 1970, and neglects to examine the 21 volumes of speeches, statements, and correspondence produced by Khomeini before and after the Islamic Revolution in Iran in 1979, published under the title *Sahife-yi Imam*. In this chapter, I study these writings, and I argue that from them one can discern that Khomeini envisioned both representatives of ordinary citizens and experts in Islamic jurisprudence playing a role in the drafting of legislation in government. On the one hand, Khomeini, as a scholar of the Shi'a jurisprudential tradition of political theory, continues to maintain after the Revolution, as in his writings from before the Revolution, that jurists, as guardians over Islamic government, were to ensure that government legislated according to and within the boundaries of the divine law. However, Khomeini's particular concept of guardianship cannot be reduced to this principle. Though Khomeini believes that it is a moral imperative that jurists be given this role, he also recognizes, as a scholar of the constitutionalist tradition, that citizens must first consent to allow jurists to have political authority and that granting power to the jurist does not preclude the exercise of political authority by non-jurists, including popularly elected representatives in a parliament. These representatives are given the prerogative to draft "secondary ordinances" of the *shari'a*, ordinances which suspend the *shari'a* in the service of what representatives deem to be the public welfare.

In one succinctly-articulated description of what he believes to be the role of jurists in government, he says in a letter to parliament that "the fully qualified jurists are the successors to the infallible [imams and prophets] in all legal,^{cdvi} political, and social affairs, and guardianship over [all] affairs during the Greater Occultation is contracted to them."^{cdvii} Khomeini recognizes the right of jurists on the government's Guardian Council to declare any bill passed by parliament, including secondary ordinances, incompatible with the *shari'a*, preventing it from becoming a law. However, he did not ultimately give final authority to the Guardian Council on determining whether a bill could be passed. In 1988, he created a new institution in government, the Council for Determining the Interest of the Governing System, composed of two elected and ten non-elected individuals, which would settle disputes between the Guardian Council and the parliament on whether a secondary ordinance was justified according to Islamic principles.

Khomeini's depiction of the rights and roles of ordinary citizens in government sits uneasily with the role he gives to the Guardian Council and the Council for Determining the Interest of the Governing System. On the one hand, Khomeini says that citizens cannot be forced to be governed by Islamic law, but on the other, citizens' views and desires, as they are expressed by representatives in parliament, can ultimately be left unheeded if members of these two bodies determine that these views and desires are not compatible with the principles of the

shari'a (in the case of the Guardian Council) or the public good (in the case of the Council for Determining the Interest of the Governing System). However, Khomeini acknowledges, on occasion, that it is parliament, rather the Guardian Council or Council for Determining the Interest of the Governing System, is best equipped to assess, independently of jurists, the need for and the content of secondary ordinances of the *shari'a*. Still, Khomeini never upheld the right of parliament to pass secondary ordinances despite the opposition of the Guardian Council and without the support of the Council for Determining the Interest of the Governing System. While citizens and their representatives do not have the final say in debates in government over legislation, they retain the prerogative to engage in a more fundamental, radical act—to withdraw their consent to be governed by the guardian or Islamic government more broadly, or less radically, to criticize the guardian openly or participate in public debate, within civil society, over religious law.

As I have argued, the secondary literature has not recognized that Khomeini's political theory cannot be reduced to a theory of guardianship by the jurist; more commonly, scholars have claimed that Khomeini called for the political leadership of a figure variously characterized as a jurist or a mystic-philosopher, who is to be granted unquestionable and comprehensive political authority. Two authors in particular, however, make the focus of their studies Khomeini's post-revolutionary speeches and statements and argue that in these writings Khomeini expresses support both for majoritarian principles and for the principle that the opinion of the jurist is sovereign. Daniel Brumberg says that Khomeini shifts between calling the jurist a "divinely inspired activist-prophet" who, on account of his unmatched qualities, must have absolute authority,^{cdviii} and also, on the other hand, arguing based on utilitarian principles that the interests of the public should be defended not by a charismatic leader but by stable democratic institutions.^{cdix} Sussan Siavoshi, like Brumberg, also says that Khomeini is inconsistent; at times, his theory was "democratic," and at other times "authoritarian."^{cdx} When it is authoritarian, she says, the people are the "obedient and helpful followers of the leader."^{cdxi} Brumberg and Siavoshi, however, depict the contradiction in Khomeini's thought too sharply and in a different way than I do here; Khomeini never claims that the guardian is divinely inspired or that the people must be his obedient followers, nor is there evidence that his support for popular participation can be reduced to a concern for utilitarian principles or that his theory can be characterized as democratic.

Khomeini's Post-Revolutionary Writings

Shortly after his return to Iran from exile on January 31, 1979, after the Pahlavi regime had been toppled on February 11,^{cdxii} Khomeini rejected a proposal made by Mehdi Bazargan, the newly appointed prime minister, to give voters the option, in a popular referendum, between a monarchy and a country that would be named the "Democratic Islamic Republic of Iran," objecting to the inclusion of the word "democratic" in the second option.^{cdxiii} As a result, in the referendum, voters were asked to choose between a "monarchy" and an "Islamic Republic."^{cdxiv}

In his interview with Hamid Algar on December 28, 1979 (7 Dey 1358), Khomeini explains that he was opposed to Bazargan's suggestion not because he opposed all of the values the word "democracy" may imply, or because he believed the concept was a product of secular and Western modes of thought, as Brumberg claims,^{cdxv} but because the meaning of the word is nebulous—it has meant different things in different times and places and to different people.^{cdxvi} Also, he says, it would be "an affront to Islam. If you put this word beside it [in the title Democratic Islamic Republic of Iran], it would mean that Islam is not democratic...it's as if you are saying 'The Just Islamic Republic.' This is a disparagement to Islam because justice is in the very text of Islam."^{cdxvii} Evidently, Khomeini believes that Islam embraces democratic principles, although he also acknowledges that the word can mean different things, and he does not say which version or interpretation of democracy Islam embraces.

Why was Khomeini sensitive about the term "democratic," and not the term "republic"? After all, the term "republic" had a controversial history in the Iranian context. The *'ulama* had been strongly opposed to the republican form of government in the later years of the Qajar monarchy, when there was a movement in parliament and among the intelligentsia outside of government to replace the constitutional monarchy with a republic.^{cdxviii} At first, Reza Khan, prime minister at the time, supported this movement but later distanced himself from it when he realized he would lose the support of the *'ulama*, whose loyalty and good will he felt was crucial to maintaining and increasing his own power.^{cdxix}

To the *'ulama*, republicanism was associated with the founding of the Turkish republic in 1923, with Mustafa Kemal Ataturk, leader of the Republican People's Party, at its head. The new republic was founded upon a secular and nationalist ideology; accordingly, the *'ulama* and local notables were excluded from power, national government took over many of the duties traditionally fulfilled by the *'ulama* (such as management of *waqf*, religious and charitable endowments), codified elements of the *shari'a* law were replaced with European law (such as a 1924 law abolishing polygamy), and the state attempted by various means to implement a cultural revolution that aimed to weaken the attachment of ordinary people to Islam. This regime of secularization was inspired, in part, by Soviet Bolshevism.^{cdxx} In Russia, the Bolshevik government had similarly waged a political and cultural campaign against the clergy and popular religious belief.^{cdxxi}

Because of events in Turkey, in Iran, republicanism was associated with policies that undermined the clergy and dampened religious sentiment. In an editorial published in the journal *Iranshahr* in 1924 that summed up the views of republican parliamentarians, republicanism was said to be a means of destroying "clerical despotism" and "lead[ing] the masses to a social revolution" that freed them from backwards religious practices.^{cdxxii} When a bill was introduced in parliament in 1924 for the establishment of a republic, many ordinary Iranians joined the clergy in opposition, declaring in public protests that republicanism was opposed to Islam and the Quran. The parliamentarian and staunch advocate of constitutionalism, Seyyed Hasan Mudarris (of whom Khomeini spoke highly in *The Unveiling of Secrets*) had a leading role in parliament in the movement against republicanism. In the end, Reza Khan quelled the unrest in

parliament and on the streets by meeting with prominent religious leaders in Qom and then issuing a statement in which he took a position decidedly against republicanism, saying he had discussed the issue with these religious authorities and thereby come to this conclusion. Three prominent religious scholars in Qom, including the constitutionalist Muhammad Husayn Na'ini, as well as Abdul-Karim Ha'iri and Abdul-Hasan Isfahani, sent a telegram to parliament saying that Reza Khan had agreed to abandon his support for a republic.^{cdxxiii}

Despite having such a history, the term “republic” seems to have been acceptable to the *'ulama*, including Khomeini, after the Revolution. Besides being used in the well-known revolutionary chant, “freedom, independence, Islamic republic!” the draft constitution, released in June 1978 and revised by the Assembly of Experts to produce Iran’s first constitution, named the new government an “Islamic Republic.”^{cdxxiv} By the time of the March referendum on the form of the new government, Khomeini had no qualms with providing voters with a choice between monarchy and Islamic Republic and said he would be voting for the Islamic Republic (though he emphasized that despite his own preferences, the nation could vote in whichever way they desired).^{cdxxv}

It is likely, however, that Khomeini’s comfort with the idea of republicanism long preceded the Revolution. As argued in Chapter 3, in his Najaf lectures, he implied that there would be three branches of government—legislative, judicial, and executive—and Islamic government would thus have a republican form, though he did not explicitly use the term “republic” to describe Islamic government.^{cdxxvi} True, Khomeini had also said, in *Islamic Government*, that an Islamic government would be different from a republic. In “constitutional monarchies and republics,” he had said, “most of those claiming to be representatives of the majority of the people will approve anything they wish as law and impose it on the entire population,” whereas an Islamic government implements and abides by Islamic law and in this way functions in a way approved of by a public that has given their consent to Islamic government.^{cdxxvii} “The fundamental difference,” he had said, “between Islamic government, on the one hand, and constitutional monarchies and republics, on the other, is this: whereas representatives of the people or the monarch in such regimes engage in legislation, in Islam, the legislative power and competence to establish laws belongs to God almighty.”^{cdxxviii} These statements have been discussed in Chapter 3. As I argued in that chapter, Khomeini uses the term “legislation” in a specific way to refer to law that is drafted without attention to the *shari'a* or Islamic principles. His purpose is to critique this kind of legislation and recommend a government in which a legislative branch implements and drafts law within the boundaries of the *shari'a*. Such a government will not only serve God but will also serve a public that wishes to be governed by Islamic law. He is not opposed to republican institutions, or the institutions of a constitutional monarchy, per se, but instead republican governments or constitutional monarchies that are negligent of Islamic law. In fact, the form of government he recommends in *Islamic Government* was republican, but it was a republican government that would implement and act within the boundaries of Islamic law, and therefore, would give a governmental role to jurists. By the time Khomeini wrote *Islamic Government*, the idea of republicanism no

longer had the association with secular government, at least in Khomeini's view, that it had in the 1920s.

Since Khomeini endorsed institutions of republican government in *Islamic Government*, it comes as no surprise that after the revolution, he was open to calling the new government an Islamic Republic. An additional reason for this openness may have been that he had read the draft constitution, in which the institutions of an "Islamic Republic" were described in detail, and insofar as he approved of this constitution, he approved of the idea of Islamic Republic as it had been defined there. In the draft constitution, published June 6, 1979, there was no mention of the concept of "guardianship by the jurispudent." There was a provision for a Guardian Council, but on this council Islamic jurists were a minority, and the Council did not have the right to veto law whenever it wished, but only when legal authorities (*maraje'*), the president of the Republic, the president of the Supreme Court, or the chief public prosecutor requested that the Council review a particular law, and the Council determined by 2/3 vote to veto the law. Khomeini approved of this draft constitution with only minor criticisms^{cdxxxix} and even suggested that it be put directly before the public in a national referendum.^{cdxxx} It is perhaps because he had reviewed and approved of this draft constitution that he was amenable to the idea of an Islamic Republic. Interestingly, his approval of the draft constitution also indicated that he had a flexible view on the role of jurisprudents in government. He was not adamant, at least at that point in time, that jurisprudents be given a sovereign role in government. This serves as further indication that secondary authors may have exaggerated Khomeini's depiction in *Islamic Government* of the jurispudent's authority in government; such an interpretation is at odds not only with Khomeini's earlier work, but with his perspective on government after the Revolution.

Khomeini's Writings on Consent

Though Khomeini believed it would be appropriate to call the new government an Islamic republic, he had said that there was no need to call it a "Democratic Islamic Republic," in part because Islam was already inherently democratic. Khomeini's writings from after the Revolution help to clarify what he means when he says that Islam is democratic. First, in a fundamental recognition of the right of peoples to choose their own governments, Khomeini writes, soon after the referendum, that it is only because citizens had expressed that they wished to be governed by an Islamic republic that it is permissible for the new constitution to establish such a government.^{cdxxxix} Writing in the constitutionalist tradition, he says that government—including Islamic government—cannot be imposed upon a public that has not consented to it. According to the official government figure, approximately 98% of voters in the referendum cast their vote in favor of establishing an Islamic Republic, after a massive turnout.^{cdxxxii} In several of his writings that are dated during the period of the drafting of the constitution by the popularly elected Assembly of Experts, which took place from August 18 to November 15, 1979 (27 Mordad 1358 to 24 Aban 1358),^{cdxxxiii} Khomeini reminds his audience of the referendum that had taken place in March and says that it is because people overwhelmingly voted "yes" to an

Islamic government, and only a minority indicated that they did not wish for their government to be Islamic, that the Assembly of Experts must create a constitution for an Islamic government. “Anyone who is aware of the situation of Iran – all [these people] know what this nation wants,” he told representatives of the Assembly of Experts on August 18 1979 (27 Murdad 1358). “What this nation wants is an Islamic republic.”^{cdxxxiv}

Conversely, Khomeini says, if a majority of citizens decide they do not wish to be governed by an Islamic government, then only in these circumstances may the Assembly establish something other than an Islamic government, since a minority can never overrule a majority. In his October 23 address (1 Aban 1358), Khomeini addresses those Iranians who oppose Islamic government, stating:

You can spread propaganda that one day the people will retreat from Islam, that all of the nation will retreat, and at that time, [advocates of Islamic government] will lose power. But as long as the people call out ‘we want Islam and an Islamic government’ – as long as this factor is present, we cannot change it. And it is unthinkable for a minority to impose itself on a majority; this is in contradiction with the democracy that you believe in and in contradiction with freedom. It is inhumane for a small number – a minority – to impose itself upon a larger number. This was [the situation] during the time of [the Pahlavi king] Reza Khan [...].^{cdxxxv}

When he reminds the Assembly of their duty to draw up an Islamic constitution, and to heed the boundaries of the divine law, his reason is not that religion commands it, but instead that the people have commanded it.^{cdxxxvi} Fifty-five out of the seventy-three Assembly members were religious clerics,^{cdxxxvii} and Khomeini says that these clerics have the ability to determine if a suggested constitutional provision violated Islamic law.^{cdxxxviii} However, these experts must act, in Khomeini’s view, not by the command of sacred texts, but instead, by the command of a public that has elected them and has asked them, in turn, not to violate these sacred texts. If a representative wants to include an article that violates Islamic law, Khomeini is concerned that in drafting such an article, he surpasses his prerogative as a representative. Instead of urging that the divine law be implemented simply because it is divine, he emphasizes that Islamic law must be implemented because the nation, by a majority that nears consensus, wills it.^{cdxxxix}

Khomeini is steadfast in his support of the Assembly of Experts, on the grounds that it works on behalf and by the request of the nation, and so he says that no other entity, if that entity is not called into being by the nation at large, as the Assembly itself was, can obstruct or change the course of its deliberations. At one point during the constitutional debates, controversy arose within the Assembly of Experts over Articles 107-112, which delineated the powers of the guardian - a figure that had not been included in the draft constitution that the Assembly was revising. A handful of the members of the Assembly opposed these articles,^{cdxli} and efforts were made to prevent the Assembly from adopting them. Prime Minister Bazargan’s personal aide,

Abbas Amir-Entezam, and a group of his colleagues acquired the support of Bazargan and other cabinet ministers to make an appeal to Khomeini to stop the constitutional deliberations altogether.^{cdxli} They argued that including articles that created a guardian went beyond the prerogatives of the Assembly of Experts, which had been elected only to revise the text of, but not entirely rework and add extensive additional text to, the draft constitution.^{cdxlii} Khomeini, however, rejected the proposal, arguing that the Assembly had a popular mandate to fulfill, and this effort could not be thwarted by a handful of individuals, either in the Assembly or in government. A group of people with political power, he argues, cannot simply halt the work of a popularly elected body, composed of representatives who are delivering on a promise made to their constituents.^{cdxliii}

For Khomeini, representatives in the Assembly must make decisions on the basis of the opinion of the majority of Assembly members, where these members, in turn, strive to articulate the views and preferences of their constituents. On June 20, 1979 (30 Khordad 1358) before the elections for the Assembly of Experts but after the draft constitution that the Assembly had been revising was published and available for the public to review, Khomeini says, in a speech to seminary students in Mashhad: “Every segment of society—you, religious scholars, and all religious scholars in every city, and every Islamic progressive and every Islamic thinker, review this constitution with an Islamic outlook, and express your opinions...review the articles one-by-one.”^{cdxliv} While, on the one, hand, he says emphatically that “everyone” should express their opinion on the draft constitution, he also says that it is particularly important for scholars of Islam to express their opinions. “Gentlemen,” he says,

Those who have knowledge of Islam should give their opinion on Islamic law. The constitution of the Islamic Republic of Iran means the constitution of Islam. The right [of expressing opinions on] this subject matter is with you, with the most qualified scholars, with the great *maraji*, with all Islamic progressives. Don’t sit back and let foreign progressives, [and] progressives who don’t have a belief in Islam, express their opinions and write the ideas [that they usually] write [while you remain silent]...you fill up the newspapers with your opinions...everyone has a right to express their opinion, but the most knowledgeable scholars have more of a right...^{cdxlv}

Thus, Khomeini encourages members of the public to express their opinion on the constitution in a speech in which, at the same time, he encourages experts in Islam to be more outspoken, thereby keeping those with an unfavorable opinion of Islam and government from predominating in public discourse. He accepts that divergent opinions will be expressed—so that when he says don’t “let...foreign progressives, and progressives who don’t have a belief in Islam, express their opinions...” he only means that those who disagree with these individuals should not remain silent while they express their opinions. However, he says that because the subject of discussion is the content of an Islamic constitution, drafted for a nation that desires to

be governed by an Islamic government, this means that experts in Islam who believe in Islam have “more of a right” to express their opinion. Still, representatives on the Assembly should take all opinions into account in their deliberations on the constitution; once elected, they must, he says, “read over and then revise the [draft] constitution based on opinions expressed by everyone.”^{cdxlv}

While there is no doubt that Khomeini believes that Muslim experts in Islam have a better capacity to contribute to the drafting of what he would consider an Islamic constitution, he recognizes the right of everyone to express their opinions on the constitution. An Islamic constitution is legitimate, in other words, only insofar as the opinions of all segments of society have helped to shape it. Furthermore, though it is clear that he believes that the aim of the Assembly must be to design an Islamic government, Khomeini does little to define what an Islamic republic is - what institutions it entails. Instead, he says in broad terms that representatives in the Assembly will design the institutions of an Islamic government, where these representatives make the views of their constituents a central criterion by which to decide how the Islamic government is to be designed.

Later, once the Assembly began drafting the constitution, Khomeini encourages ordinary citizens to make known their opinions on the constitution. On September 13 (22 Shahrivar 1358), he urges a group of university students in Isfahan to turn their attention to the drafting of the constitution, since now, he says, is the time to focus their efforts on ensuring that this momentous task is carried out in a way that meets their approval. At a later time, Khomeini said to the students, they could debate other issues, such as, for example, issues related to Iran’s educational system; now, this issue takes priority. Khomeini encourages his audience, in this speech, to submit their opinions on the constitution to a body that would be charged with compiling these opinions.^{cdxlvii}

Finally, when the Assembly of Experts had finished drafting the constitution, it was to be put before the public in a referendum. In a public address on November 9 (18 Aban 1358), Khomeini encourages everyone to vote, and tells voters that they should feel perfectly free to either accept or reject the constitution. “If you reject it,” he says, “a better version will be written.”^{cdxlviii}

After the constitution had been approved through the referendum, Khomeini continues to maintain that a government does not exercise legitimate authority if the public has not consented to it; even after the founding act, citizens must be willing to be governed by it if it is to govern legitimately. In an interview with a Japanese reporter on November 26, 1979 (5 Azar 1358), when asked whether the tenets of Shi’ism can speak to the realities of contemporary Iran, he answers in the affirmative, and he moves immediately to talk about a particular tenet of Shi’ism that he believes is relevant to politics in contemporary Iran: its centuries-long hostility to what he calls tyranny and despotism. “In every era,” he says, “the Shi’a sect and the followers of Shi’ism resisted the oppressors of the time, [resisted] tyrannical Islamic governments, like the Umayyad and Abbasid governments, and after them, other governments.”^{cdxlx} Perhaps, though, Khomeini means that these governments were tyrannical and oppressive not because they had ruled without

the consent of their subjects, but because they governed outside the boundaries of Islamic law? At least part of the reason why these governments were tyrannical, Khomeini says, is because of the way in which they gained power. “They took control of government forcefully,” he says.^{cdl}

Just as before the constitution had been ratified, in the constitutional deliberations, Khomeini defended drafts of constitutional articles that created the office of the guardian not by arguing that these articles had a religious basis but by reiterating that the articles had majority support among representatives, after the ratification, too, Khomeini defends institutions of government that give it an Islamic character not by claiming that these institutions have a basis in Islamic principles but by reminding his audience that they were designed in the deliberations of a popularly elected body and were approved and established in a nation-wide referendum on the constitution. In a speech on May 27, 1981 (6 Khordad, 1360), Khomeini defends the Guardian Council,^{cdli} a body, composed of six jurists, chosen by the guardian, and six experts in constitutional law, nominated by the head of the judicial branch and appointed by parliament, that must ensure that laws passed by parliament conform with both the constitution and Islamic law. More specifically, the six jurists decide whether parliamentary law conforms to Islamic law, and the entire council decides whether parliamentary law conforms with the constitution.^{cdlii} Khomeini evidently must have been encountering criticism of this body, strong criticisms that called for the body to be eliminated altogether. His defense of the Council does not rest upon Islamic principles, however, but instead upon the more general argument that the people have agreed that it must oversee parliament. “The standard is [the vote of] the majority,” he says, “[and] it is a standard that we all must accept.”^{cdliii} Moreover, he says, all institutions of government, even besides the Guardian Council, exist and function legitimately because of the democratic process through which they were established.^{cdliv}

After the Revolution, before, during, and after the drafting of the constitution of the new Islamic Republic, Khomeini repeatedly articulates what must be considered a fundamental principle of his political theory—that an Islamic government that governs without the consent of its citizenry is not an Islamic government at all. While it is desirable that government implement Islamic law and ensure that all other law serves or is compatible with Islamic legal principles, it is necessary that those who will be governed by this law are willing to be governed by it, and thus, on some level, have accepted the law as true or beneficial. This applies both on a broad, theoretical level—citizens must consent to be governed by Islamic law as they conceive of it abstractly—and at the level of political institutions—by electing representatives to draft the constitution, and by approving the constitution in a referendum, they become the creators of the institutions that govern them. Moreover, this consent must persist even after the founding moment. That is to say, an additional feature of Islamic law, though unwritten in the letter of the law, is that it is a law that must be acquiesced to, and not imposed, if it is to be considered just. Citizens must first wish to be governed by a particular law, and a particular set of institutions, if that law, and those institutions, are to fulfill the moral purpose for which they were created.

Khomeini's Writings on the Assembly of Experts and Overseeing the Guardian and Parliament

Citizens play a role in government not just by granting their consent to be governed by a given set of institutions, designed by individuals who acted as their representatives, but also by electing members of the parliament^{cdlv} and the Assembly of Experts^{cdlvi}; this latter body is charged with choosing, overseeing, and, if need be, dismissing the guardian.^{cdlvii} Constitutionalists before Khomeini had also called for the public election of a parliament, and though they made no mention of an institution, like the Assembly of Experts, that would oversee jurists in government, they were firm in their belief in the principle of popular consent to government, a principle that Khomeini invoked to justify the establishment of the Assembly of Experts. Khomeini emphasizes that it is through these two bodies - the parliament and the Assembly of Experts - that national will can be expressed and made to have an impact on legislation and policy-making. Through the Assembly of Experts, they can exercise some control over the jurist who governs them.

While citizens play an indirect role in government by electing representatives to parliament and the Assembly of Experts, Khomeini also encourages them to play a direct role by publicly expressing their opinions on the character and behavior of guardian himself.^{cdlviii} In a public address on November 7, 1979 (16 Aban 1358), Khomeini states that the guardian's character may be judged directly by citizens. His ethics, his belief in religion, his devotion to the nation, his knowledge and his actions - these all must be acceptable to the nation, he says. Though he does not argue in support of an institutional means by which citizens may remove the guardian from office if they object to his character, Khomeini is clear that he is theoretically committed to the principle that the public must approve of the guardian's character if the guardian's rule is to be considered legitimate.^{cdlix} According to the constitution that had recently been approved, citizens could indirectly exercise institutional control over the guardian by voting members of the Assembly of Experts into office, since this body oversees the guardian and can remove him from office if they have determined he is no longer ethically or intellectually qualified.^{cdlx}

Even though citizens and the Assembly of Experts must oversee the guardian, Khomeini seems to say that he may go for a significant period of time without sinning. In an interview with several reporters on December 17, 1979 (26 Azar 1358), he says that when the guardian "commits even a minor sin, he is deposed from guardianship,"^{cdlxi} implying that it is possible that his tenure as guardian will pass without him ever sinning. Later, on December 28, 1979 (7 Dey 1358), in an interview with Hamid Algar, he says that a guardian who exhibits the moral characteristics specified in the constitution "will not sin."^{cdlxii} Khomeini must have meant this rhetorically; the guardian will *likely* not sin, he implies, since he goes on to say in this address that if he does sin, he forfeits his position as guardian. In sinning, the guardian has shown that he no longer possesses the moral qualities necessary to retain his position. If he lies, for example, or if he looks lustfully at a woman who is not his wife, he loses the moral quality of "justice," a

quality that a guardian must exhibit consistently. “One word of a lie will throw him off justice, one wrong look at a *namahram*^{cdlxiii} makes him no longer just,” he says.^{cdlxiv} That Khomeini considers it a possibility that the guardian has the potential never to sin while in office contradicts his earlier position in *Islamic Government*, when he had stated that the guardian does not have extraordinary spiritual status.

Still, it is certainly possible that the guardian may sin, and it is the Assembly of Experts that has the authority to declare that he has. Khomeini encourages not only Muslim Iranians, but Iranians of various religious backgrounds to participate in elections for the Assembly of Experts and the parliament as well, and more broadly, to be politically active and to take an interest in the nation’s welfare. In an address to a group of representatives of various Iranian religious groups on November 18, 1982 (27 Aban 1361), Khomeini says that “Iran belongs to everyone...we are a unified nation...and whenever we are not unified and [politically] participatory and don’t vote for parliamentary representatives and don’t vote for the Assembly of Experts...[we] have violated [our] duties. Everyone should be participatory and informed.”^{cdlxv} In addition, he encourages the group of non-Muslims he addresses not only to participate in elections for the Assembly of Experts, but even to consider becoming candidates themselves. People of all backgrounds have a duty not only to vote for candidates, but to run for office themselves. He says

Preserving a monotheistic state is a duty for all social groups in this nation...everyone should be involved and aware. And I say to the religious clergy that standing aside will produce the same result that the standing aside of clergymen of various religions did in previous times: the nation and its respected leaders became separated from one another, and the government could do anything it wanted [with no repercussions]... [Forming and convening] the Assembly of Experts is a duty for everyone. Those who want to be representatives should sign up [to be candidates].^{cdlxvi}

When citizens and clergy of all religious backgrounds are not indifferent to politics, he says, “in the future, we won’t become subordinate to those governments who considered themselves disconnected from the people and constructed for themselves the institutions of a [tyrannical] sultanate.”^{cdlxvii}

Khomeini’s support for Islamic government and guardianship by a jurispudent is qualified not only by the requirement that citizens must consent to this government, but also the recognition that all citizens, including non-Muslims, are capable of, and have the right to, assess whether the guardian has the moral and intellectual capacity to be guardian. Citizens, in effect, decide whether they can be served by the guardian. Citizens indirectly choose the guardian who, in turn, ensures that Islamic law is implemented, and who also appoints the jurisprudents on the Guardian Council who may intervene in parliamentary legislation, and therefore the law that is implemented retains something of the character and beliefs of the citizenry. After all, the

jurisprudent who implements the law is one whose morality and intellectual qualities are deemed satisfactory by citizens.

Citizens can and should involve themselves in government, Khomeini urges, not only by observing the guardian's actions and listening to his opinions, thereby gauging whether he is morally qualified to hold office, and not only by electing representatives to the Assembly of Experts, but by participating in parliamentary elections. On many occasions after the revolution, he uses strong words to describe the importance of a parliament in an Islamic government, as did his constitutionalist predecessors. In a speech to the Assembly of Experts and the Islamic Republican Party (*Hizb-i Jumhuri-yi Islami*) on September 14, 1979 (23 Shahrivar 1358), before the referendum and during the drafting of the constitution, Khomeini says that in the immediate aftermath of the revolution, parliament will take the lead in addressing the numerous challenges that the new government has inherited. When a parliament is formed, he says, the responsibility for resolving these problems can be "shifted onto the shoulders of the nation and the representatives of the nation."^{cdlxviii} Just before the second stage of the two-stage vote for parliamentary candidates, in a New Year's radio and television message on March 19, 1980 (29 Esfand 1358), Khomeini again speaks of the significance of the parliament. "The parliament is the combined power of a nation into one group," he says. "...And of all the positions that are in a country, the parliament is the highest."^{cdlxix} A parliament that aims to serve Iran, he says, "is the only center [of power] that the other powers [of government] must follow."^{cdlxxx} He repeats this sentiment again, slightly more than a year later, on May 27, 1981 (6 Khordad 1360), in a speech to parliamentary representatives, saying, "I repeat, the parliament is the highest station in this country."^{cdlxxxi} Finally, on February 11, 1985 (22 Bahman 1363), in an address to the nation, Khomeini again praises parliament, saying that it is composed of respected individuals who, because of their loyalty and seriousness, can *determine* national policy."^{cdlxxii} It is not clear, however, why Khomeini states that the parliament has more authority than other institutions of government, that it is the "center" of power, the "highest station" in government, especially since the Guardian Council is able to intervene in the passage of parliamentary law.

Still, Khomeini wishes for the opinions and desires of ordinary citizens to be articulated in parliament by representatives who write legislation. He encourages citizens to participate in parliamentary elections, recalling disapprovingly, in a radio and television message to the nation on February 12, 1980 (23 Bahman 1358), the way that parliamentary government functioned before the Islamic revolution. For as long as he can remember, he says, even before the Pahlavis came to power, during the reign of the last Qajar king, Ahmad Shah, parliamentary elections were never free. During the era of Ahmad Shah, local officials and property owners forced their subordinates to vote in the way they demanded,^{cdlxxiii} and once these local elites were weakened by Reza Shah, the first Pahlavi, Reza Shah himself controlled elections, as did his son. "I can say that this year's elections will be the only elections [in Iran's history]," he says, "whose outcome will be determined solely on the basis of the votes of the people, without anyone's pressure, and without individuals interfering in the public vote."^{cdlxxiv}

Secondary Ordinances of the Shari'a and Parliament

Khomeini sees parliament as the institution through which the views of citizens can and should be expressed, and moreover, as a powerful, important institution in government. But how may it be considered “the highest station” in government, and how can it be valued for its role as the people’s voice, if it is overseen and can be overridden by the Guardian Council? Does parliament have any authority independent of the Guardian Council? It goes without saying that one of parliament’s main duties is to draft and pass legislation that does not violate the *shari'a*—whether this legislation is compatible with or endorsed explicitly by the divine law as it is conceived and interpreted by the jurists on the Guardian Council—but Khomeini also says that parliamentarians are uniquely qualified to engage in another activity: to provide assessments of social, cultural, and other characteristics of contemporary society that may necessitate new legislation or changes in the law. In several of his writings, Khomeini says that parliamentarians are the primary authority on “*urf*,”^{cdlxxv} a principle recognized by Islamic jurisprudence and defined by one scholar as “a manner or custom, practical or verbal, that is recognized among the majority of a people, nation, or specific group, and has become tradition.”^{cdlxxvi} In other words, while jurists are experts in Islamic jurisprudence, parliamentarians are experts in, or have access to expertise in (through, for example, committee advisors) *urf*, or the social, cultural, technological, scientific, and linguistic practices in human communities, practices to which the law must be attentive and responsive. Here, we see the influence of the Usuli legal tradition on Khomeini’s thought; as described in Chapter 2, this tradition held that the law was underwritten by principles that could become the basis for new law that addressed unprecedented circumstances and was responsive to conditions in *urf*. Unlike Akhbari scholars, Usulis held that the divine law offered instruction on the questions it had not addressed explicitly.

For example, while the divine law as it was originally revealed makes it a sin to use drugs, a question may arise over whether the law can allow for a given drug to be used for medicinal purposes, when medical discoveries have been made that indicate that the drug would be effective medicinally. Here, it becomes the task of expert in *urf*—and more particularly, an expert in medicine, which is a topic in *urf*—to research the question, and to determine whether existing medical knowledge prescribes any other equally effective way to cure the ailment. If the expert determines that there is no other such way, then law may be passed that allows for the drug to be used for this purpose, since this law does not violate the principles that were being served by the original law; for example, the reprehensibility of using drugs just for recreational purposes. Matters of *urf* are not simply scientific, however, and only discernable by experts; there are also matters that may be understood by non-experts, such as, for example, the cultural criteria for what counts as provocative music (where the *shari'a* would prohibit all music that was meant to and has the effect of being provocative to members of a given culture or society, but this music may have different qualities in different times and places).^{cdlxxvii}

This process of investigating a topic in *urf* in order to clarify or develop the law, which Khomeini emphasizes is the exclusive duty of parliament, is called “*tashkhis-i mauzu*,” or

“clarifying the subject” of the law. Representatives in parliament are able to engage in *tashkhis-i mauzu*’ because they are “knowledgeable, thoughtful, and educated,” and they may invite “experts” to contribute to committee discussions in which assessments are made of social, economic, moral, intellectual, and other trends that exist in society, so that law may be passed that takes into account these trends.^{cdlxxviii} The Guardian Council, on the other hand, “does not have the legal right of *tashkhis-i mauzu*’,” Khomeini says; this is a task for which parliament is uniquely suited.^{cdlxxix}

Thus, parliament functions in the way constitutionalist scholars said it would—by supplementing the ordinances of the *shari’a*. Khomeini goes even further, however, and says that based on knowledge they have obtained through *tashkhis-i mauzu*’, parliament may pass legislation that not only supplements but suspends primary ordinances of the *shari’a*—those ordinances that have been deduced from the authoritative texts—in the interest of what its members determine to be the public welfare. In a letter to the president of the parliament, Ali Akbar Hashemi Rafsanjani, dated October 11, 1981 (19 Mehr 1360), Khomeini describes the conditions under which parliament may decide to pass these “secondary ordinances” of the *shari’a*. This was the response to a letter Rafsanjani had written to him, in which he asks Khomeini to clarify when parliament has the authority to pass a secondary ordinance, after a series of conversations the two had concerning shortages in urban housing.^{cdlxxx} The debate over urban housing had begun soon after the Revolution, when the Revolutionary Council (a council set up by Khomeini to organize the drafting of a new constitution and facilitate the formation of government designed by the constitution^{cdlxxxii}) and then parliament passed a series of laws aiming to transfer to state ownership, or oblige landowners to sell to the government at a fixed price, urban wasteland—land that was defined by the law as largely uncultivated or not built upon—so that the government could increase the supply of housing in cities, particularly for the needy. The laws faced opposition, however, from conservative interpreters of the *shari’a*, and a law passed on August 9, 1981 was rejected by the Guardian Council, which said that the law violated a fundamental Islamic principle of *taslit*—the idea that “a person is master over his property and his life.”^{cdlxxxii} From the beginning, many of the supporters of urban land reform laws in the Revolutionary Council appealed to the “rule of emergency,”^{cdlxxxiii} a legal principle that falls under the category of secondary ordinances and says that in an emergency, a commandment of the *shari’a* can be suspended. In other words, they argued that the urban housing shortage constituted an emergency—or, put in more general terms, a particular social condition, which was a matter of *urf* and could be discerned by *tashkhis-i mauzu*’, existed to which the law should be responsive through secondary ordinances. These ordinances violated the letter of the law, which was based on the principle of *taslit*, but they served the more fundamental principle of preserving the general physical well-being of citizens.^{cdlxxxiv}

Not unconnected to the debates over urban land reform were debates over agrarian reform; because profits in the agricultural sector were lagging, there was increased rural to urban migration, leading to overcrowding in the cities.^{cdlxxxv} As in debates over urban land, these debates centered on the legitimacy of passing secondary ordinances that infringed upon

traditional notions of Islamic property rights. On April 15, 1980, the Revolutionary Council passed the law of “Land Redistribution and Revitalization of Agricultural Land,” which established four categories of land that would be redistributed, each according to specified criteria,^{cdlxxxvi} but senior members of the *‘ulama*, including Ayatollah Kazim Shari’atmadari,^{cdlxxxvii} opposed the law’s stipulation that land categorized under the “J Clause” (*Band-i jim*)—in particular, land left uncultivated^{cdlxxxviii} or land that was in excess of three times the amount that the owner needed to support his household according to “local norms” (*‘urf-i mahal*)—would be redistributed by the state among needy cultivators.^{cdlxxxix} Later that year, in November, Khomeini suspended the redistribution of land according to the J Clause, a decision that could be explained by a variety of factors, including the vagueness and uneven implementation of the law, his desire to preserve unity between members of the religious establishment, or his sense that it would be unwise to risk unsettling the economy when Iran was already threatened economically by war with Iraq and attempts by the US to impose an economic blockade on Iran.^{cdxc} In mid-May 1981, 101 members of parliament wrote to Khomeini, asking him to use his powers as guardian to reinstate the J Clause, but instead, Khomeini would reiterate, in his October letter to Rafsanjani, that it is parliament that has the responsibility to push for the passage of secondary ordinances.^{cdxc} Khomeini’s letter to Rafsanjani suggests that Khomeini may have suspended the J Clause also because he desired for the law to originate in parliament (it had been written by the Revolutionary Council).^{cdxcii} A new land reform bill that was introduced in parliament in September 1981,^{cdxciii} in the same month that Rafsanjani wrote his letter to Khomeini, was rejected by the Guardian Council, but the law continued to be debated until a version of the law more friendly to landlords and more likeable to the conservative clergy was passed by the parliament in December 1982, though it was rejected by the Guardian Council in January 1983.^{cdxciv}

It was in this context of debate over urban and rural land reform law that Rafsanjani wrote his letter to Khomeini. His letter was dated September 27, 1981, which was close to the time that the Guardian Council had rejected both the 1981 urban land and agricultural land reform bills. Khomeini responds by confirming the right of parliament to pass law suspending the *shari’a* when circumstances called for it, in effect siding with proponents of the law. “[Whenever] abandoning or performing [a certain action, having been instructed to do so by a primary ordinance] will result in the disruption of the system, and [whenever] abandoning or performing [a certain action] is concomitant with corruption...or sin, [then] representatives are permitted to pass and implement a law [a secondary ordinance, regarding it],” Khomeini says in his letter.^{cdxcv} The representatives themselves determine, using their expert knowledge or access to expert knowledge, that continuing to implement the primary ordinance that protects the property rights of landowners will exacerbate or leave unchanged a set of undesirable social conditions. When the law that aims to remedy or prevent this disruption, corruption, or sin contravenes the letter of the divine law, it will be considered a “secondary ordinance” of the *shari’a*, an ordinance that “automatically lapses,” Khomeini says, after the issue has been resolved.^{cdxcvi} If parliamentarians determine that a law is necessary to allow the political system

to function as it should or to prevent corruption or sin - very broad, vaguely-defined purposes – then even if this law conflicts with an article of the *shari'a*, they must pass it. Even after Khomeini published this letter, the Guardian Council vetoed a revised version of the urban land law once again, though under pressure from advocates of land reform, it approved a “slightly altered” version of the law on March 18, 1982. By 1987, the law had been successful in transferring large tracts of urban land to the government.^{cdxcvii}

By writing the letter, Khomeini had not only cleared the way for urban land reform, but he had established a more far-reaching and broadly applicable principle: that the parliament had the prerogative to pass secondary ordinances based on its assessment of the need for law to be responsive to and perhaps ameliorate a certain set of undesirable social circumstances. It is clear from his concern for public welfare that to Khomeini, the law is not an end in itself. The law becomes valuable when it can be molded, changed, and supplemented in a way that helps to promote a good that is articulated and pursued in particular contexts. This is an Islamic legal principle that dates back centuries, the principle of “*maslahat*,” the public good. Traditionally, Shi’a jurists had rejected this principle, considering it to be “*bed’at*,” or innovation,^{cdxcviii} but Khomeini nonetheless appeals to the principle after the Revolution, perhaps most significantly when he establishes the Council for Determining the Interest (*Maslehat*) of the Governing System, described below.

In *Islamic Government*, Khomeini had written that Islamic law is “progressive” and “evolving,”^{cdxcix} and we see that he continues to believe this after the Revolution. It is after the Revolution, however, when he is faced with the task of actually applying *shari'a* law, that we come to understand what he means when he says the law is progressive and evolving. The divine law cannot be imposed unchangingly in all times and places; instead, its primary ordinances must often be set aside in order for principled ends to be pursued. Moreover, we see that he conceives of law as, in part, produced by a deliberation among popularly elected representatives who aim to mold the law in the service of the public welfare, where representatives themselves have knowledge of empirical conditions in society and can determine whether the existence of these conditions makes the law, as it stands, have an effect that runs contrary to the principles that the law was meant, in the first place, to serve.

On the one hand, by allowing and, in fact, encouraging parliament to pass secondary ordinances of the divine law, Khomeini augments the realm in which democratic legislative activity can occur. After they have passed these secondary ordinances, parliamentarians will be held accountable by citizens in popular elections, so that in drafting these ordinances, they are forced to think not only of how to prevent corruption or disorder, but also to think of the desires of their constituents, or to think about what kind of corruption and disorder their constituents would like to avoid. In fact, Khomeini says in a speech on February 11, 1983 (22 Bahman 1361) that the guardian himself must not overturn secondary ordinances that the parliament has determined are necessary. “Secondary ordinances have no connection to the duties entailed by guardianship of the jurist, and after [secondary ordinances are] passed by the parliament and approved by the Guardian Council, no office has the right to overturn or ignore [this law].”^d

In this speech, however, he raises the threshold of parliamentary votes needed to pass a secondary ordinance to a 2/3 vote. When 2/3 of members of parliament determine the need for a secondary ordinance, he says, this is “proof equivalent to the *shari’a*” that there is such a need.^{di} He established this requirement to placate numerous influential members of the clergy, who had protested that a higher threshold than a simple majority vote should be obtained in parliament to override primary ordinances of the *shari’a*.^{dii}

However, as Khomeini mentions in the speech discussed above, he maintains that the Guardian Council may veto even secondary ordinances deemed necessary by the parliament. On October, 17 1981 (25 Mehr 1360), Khomeini wrote a letter to the head of the Guardian Council, Seyyed Mohammad Reza Golpaygani, who had sent him a telegram in which Golpaygani, as Khomeini describes, expressed his “worry concerning the prerogatives that have been given to parliament” to pass secondary ordinances. In this letter, Khomeini reassures Golpaygani, saying that both he, in his capacity as guardian, and the Guardian Council, have the right to intervene, if they believe that there has been a “mistake” in legislation passed by parliament as secondary ordinances.^{diii} Evidently parliament may propose and shape, but cannot, finally, pass independently, secondary ordinances of the *shari’a*. Perhaps Khomeini changed his view on the right of the guardian to obstruct this legislation, since in his February 11 speech, where he established that it would take a 2/3 majority to pass secondary ordinances, he says that the guardian does not have the right to intervene when parliament passes a secondary ordinance. However, he is consistent in his argument that the Guardian Council does have this right, if they believe that the law strays outside the boundaries of the *shari’a* and the principles sanctioned by it. Effectively, this means that they can dispute parliament’s conceptualization of the public welfare.

In the last half of his letter to Golpaygani, Khomeini urges him to understand why it is important to pass law that will redistribute land ownership to ease the plight of the nation’s poor, which helps to illumine Khomeini’s view of the considerations that might ground the need for secondary ordinances. Vast disparities in wealth, he says, require remediation by secondary ordinances if primary ordinances are incapable of remedying these disparities. “If the situation remains at is,” he says, “...where [members of] one elite class are busy enjoying themselves in Europe, [and] there has been no investigation into [the source of] their wealth, which most of the time has been illegal[ly] acquired by the standards of the *shari’a*, and another, populous class of the poor work for them, [in a relationship that] violates the standards of the *shari’a*, and live in poverty, we will have to bid farewell to Islamic government and the constitution.”^{div}

Much later, on January 6, 1988 (16 Dey 1366), Khomeini again reiterates that government is not constrained by the textual sources of the *shari’a* and may pass law that serves the public welfare, but he does not give parliament final authority to determine the need for this law. In a well-known letter to the then president, Ayatollah Khamene’i, Khomeini disputes an idea that Khamene’i had raised in his Friday prayer sermon on January 1, 1988: that government must always remain within the framework of the divine law. In his sermon, Khamene’i had sought to clarify an edict issued by Khomeini on December 7, 1987 that supported a labor law

promoted by parliament (but opposed by the Guardian Council) that allowed the government to withhold public services from private companies that did not issue certain regulations concerning the treatment of their workers. This labor law was a highly contentious issue, with several drafts having been written since the head of the Ministry of Labor had first presented the draft bill at a press conference in 1982. Khomeini had come out in support of parliament's version of the bill in 1985, but the Guardian Council continued to dispute it, fundamentally because they could not interpret the *shari'a* to sanction the intervention of a third party, the government, in what the *shari'a* considered to be a private contract between employer and laborer. In his Friday sermon, Khamene'i addressed Khomeini's 1987 edict in support of the labor law, stating that Khomeini surely maintains, despite his support for the labor law, that any conditions that modify a contract, including conditions that allow government to punish companies if they did not fulfill certain obligations to their workers, must "fall within the framework of ordinances accepted by Islam."^{dv}

In his letter, Khomeini tells Khamene'i that he in fact does not believe this. The guardianship of government—not of the jurispudent in particular, but of the government in its entirety—is "absolute guardianship," he says, a guardianship "that was given by God to the Prophet and is the most important of God's laws and has priority over all the laws of the *shari'a*."^{dvi} As he had argued in his letter to Rafsanjani, when he had explained that parliament could pass secondary ordinances to promote public welfare, he argues again here that the ordinances of the *shari'a* cannot keep government from passing law that serves the public welfare, but unlike in this letter, he does not grant the authority to pass secondary ordinances specifically to parliament; government in general, he says, exercises a guardianship that allows it to pass law that suspends the *shari'a*. (Still, it must be assumed that parliament, as the country's only legislative body, will, at the very least, have to be the originators of this law.) Government is a "primary ordinance [that] takes priority over all subsidiary ordinances, even prayer and fasting and *hajj* [pilgrimage to Mecca]," he says; government may suspend the *hajj* requirement, he says, it may mandate compulsory military service, it may issue taxes that are not specified by the *shari'a*, and it may do hundreds of other things that may run against the letter, if not the spirit, of the *shari'a*.^{dvii} Government may stand in the way of "any law, whether concerning acts of worship or affairs outside of worship, the continued implementation of which opposes the interests of Islam, for as long as it is the case [that this is so]."^{dviii}

Khomeini passed away over a year after writing this letter, and before his death, he never elaborated more on what he meant by "absolute" guardianship. The opaqueness of his words has led to much debate, with some scholars claiming that "absolute" guardianship meant absolute government; Khomeini was sanctioning government by a jurispudent who was unbridled by the rule of law, including the constitution, and given the prerogative, based on his presumed spiritual status and religious knowledge, to suspend the *shari'a* in the interest of protecting the public welfare, where his perception of public welfare cannot be disputed.^{dix} Other scholars have disputed this interpretation, arguing that Khomeini intended "absolute" to mean not that the guardian has sovereign and unquestionable power, but instead to mean in a "relative" sense that the jurispudents are guardians not simply over a limited number of imperatives, as their role had

been historically—imperatives such as issuing legal edicts, serving as judges, and collecting charity—but instead they were guardians over all the affairs of Muslims, seeing to it that the public interest, as it was defined by Islamic principles, was served, even if it meant suspending the revealed ordinances of the *shari'a*. Even while the guardian may suspend primary ordinances, these scholars argue he is limited, in doing so, by “the framework of the requirements of jurisprudence, the public interest, and the *shari'a*.”^{dx} Moreover, he does not exercise an “absolute,” in the sense of all-encompassing and unconstrained, authority, since he is constrained by the body that could dismiss him—the Assembly of Experts.^{dxii}

Contrary to the claims of all of these authors, however, Khomeini does not speak here specifically of the absolute guardianship of the jurist, but the absolute guardianship of *government* more broadly. This makes the ideas he expressed in this letter less “historic”^{dxiii} and groundbreaking; after all, as I have described, Khomeini had long been urging that parliament be given the prerogative to draft legislation that may take precedence over the *shari'a*.^{dxiii} In addition, this letter is less-than-historic in a second way; in 1970, he had said that a *fatwa* (legal edict) that was issued by Ayatollah Mirza Hasan Shirazi (d. 1896) in 1891 was to be considered what he called a “governmental ordinance.”^{dxiv} The fatwa called for a boycott of tobacco when the Qajar king had granted a British company a monopoly over the product in Iran.^{dxv} A jurist issues such a ruling, he says, in *Islamic Government*, “based on the interest of Islam and the Muslims....” These governmental rulings are clearly not found in the classical sources of Islamic law—because they are responsive to considerations that arise in new circumstances—but are binding nonetheless because they are based on principles that underlie the law; in particular, the interest of Islam and Muslims when they were threatened economically and politically.^{dxvi} We see, here, that even in 1970, Khomeini believed that the political authority – and then he considered the political authority not to be the Shah’s government but a high-ranking religious scholar – could issue law for the sake of the public interest that made religiously impermissible the use of a product, tobacco, that was usually permissible, suspending, thereby, a primary ordinance of the *shari'a*.

The Council for Determining the Interest of the Governing System

In final summation, Khomeini’s writings are ambiguous on the question of whether parliament alone has the authority to determine the need for laws, on the basis of their knowledge of *urf*, and their ability to engage in *tashkhis-i mauzu*, that suspend primary ordinances of the *shari'a*. It is safe to say that in the material that I have discussed so far, Khomeini maintains that the Guardian Council has the right to intervene in all legislation passed by parliament, including legislation passed on the basis of knowledge of *urf*. However, by the end of his life, he no longer maintains that the Guardian Council has ultimate authority on parliamentary legislation; instead, he passed the authority on to a new institution. About a month after the exchange between Khamene’i and Khomeini concerning absolute guardianship and the governmental ordinances that may suspend the *shari'a*, in February 1988, several members of

government—in particular, the presidents of the three branches of government, in addition to Prime Minister Mir Husayn Musavi, and Khomeini’s son, Ahmad Khomeini—wrote a letter to Khomeini asking for clarification on how, in practical terms, government may pass governmental ordinances in order to further the public interest. They describe the process by which a bill normally becomes a law; after the bill is passed by the parliament as a whole, it proceeds to specialist committee meetings in parliament, which are conducted in the presence of experts and involve reviewing the opinions of specialists, after which the bill proceeds to an open meeting, where both experts and members of parliament and the executive branch have a chance to express their opinions on the bill. It is then that the bill is passed onto the Guardian Council, but if the Guardian Council determines it violates the *shari’a*, and the parliament cannot accept the changes proposed by the Guardian Council, “it is here” say the five authors of this letter, that a decision must be made concerning whether, based on *tashkhis-i mauzu’*, there is a need for the secondary ordinance. The authors of the letter, evidently, had come across “information” that Khomeini was planning to create a new institution that would settle disputes between the Guardian Council and the parliament by issuing governmental ordinances, and in this letter, they ask him to establish the institution soon, since many “important issues” remain unresolved, including the debate over labor law.

In his response to this letter, Khomeini says that he believes that “after proceeding through the stages supervised by experts, who are the authority in deciding these affairs”—and here he must mean the committee meetings and the open meetings referenced in the letter he is responding to—“there is no need for this step. [Still,] for the sake of being as cautious as possible” a new council, called the Council for Determining the Interest of the Governing System, will settle the dispute between the Guardian Council and the parliament and issue the governmental ordinance.^{dxvii} Though he is inaccurate in saying that in committee and open meetings the bill was revised under the supervision of experts—the letter merely says that experts were involved in and offered their opinions in these meetings—his theoretical point is that experts, and not the Guardian Council or even other members of parliament, “are the authority” in deciding the need for and the content of such a bill. This seems to be a restatement of his previous argument that individuals with knowledge of social conditions, and the law that is needed to address these conditions, are the ultimate judges of whether there is need to pass law that suspends the *shari’a* but serves the public interest. Khomeini does not elaborate on this thought further in this brief letter, but instead moves on to describe the new council. The Council, he says, would be comprised of the six jurists from the Guardian Council, six representatives from the three branches of government (the speaker of the parliament, the chief justice, the prosecutor general, the president, the prime minister, and the minister under whose jurisdiction any given legislation fell), and an individual who was to serve as Khomeini’s personal representative.^{dxviii}

As the Council for Determining the Interest of the Governing System was drafting its own statutes and seeking Khomeini’s advice, Khomeini indicated to the Council, in one of his suggested revisions of the statutes, that the Council could independently draft law in the service

of public interest even if the matter had not been deliberated by the Guardian Council and the parliament.^{dxix} Later, however, in a letter dated December 29, 1988 (8 Dey 1367), he explains to members of the Council that it was the war with Iraq and the immediate need for legislation that addressed urgent issues related to the war, that had necessitated that the Council be allowed to draft legislation for the public interest. From now on, he says, the Council may only pass legislation to resolve disputes between the Guardian Council and parliament.^{dxix}

Still, it is to the Council, and not the democratically elected parliament that Khomeini gives sovereign legislative authority. While experts in religious law on the Guardian Council did not have the final word in determining the need for a secondary ordinance of the *shari'a*, neither did parliament. Ultimately, a council of individuals, the majority of whose members were unelected, had the ability to decide whether legislation passed by a democratically elected parliament could be implemented. (On the Council, only the president and the speaker of parliament were directly elected. Two others, the two ministers, could be dismissed by the parliament, and the prime minister was appointed by the president and approved by the parliament; he, in turn, appointed other ministers, who also had to be approved by president and the parliament.)^{dxix} Still, Khomeini's answer to the inquiry he received about the Council indicated that he was not strongly convinced about the need for the Council, and in many of his post-revolutionary writings, he emphasizes the authority of parliament to utilize their own and outside expert knowledge to draft effective law.

When Khomeini says that the Guardian Council, or eventually, when he says that the Council for Determining the Interest of the Governing System may intervene in the passage of secondary ordinances, he does not offer a reason why members of these institutions are better able than parliament, with its access to a wealth of expertise, to determine whether social conditions require that primary ordinances be suspended. In his conciliatory letter to Golpaygani, for example, he vaguely states that the Guardian Council has the capacity to determine if parliament has exhibited a mistaken understanding of either a primary or a secondary ordinance when they pass a secondary ordinance, but he does not explain why they have this authority. In other words, his argument for why parliament has the authority to pass secondary ordinances remains more developed than his argument for why the Guardian Council, or even the Council for Determining the Interest of the Governing System, may prevent parliament from passing these ordinances.

It is important to note, here, that Khomeini recognizes that the *shari'a* and the way in which it may resolve contemporary social issues may be debated not only by members of various institutions of government—in parliament, or on the Guardian Council or the Council for Determining the Interest of the Governing System, and between these institutions—but also in civil society. In a letter to Hojjat-ul Islam Mohammad Ali Ansari,^{dxix} dated November 1, 1988 (10 Aban 1367), Khomeini says that “because, in the past...disagreements [on the law] were confined to environments of teaching and learning and were only recorded in academic books – which were, furthermore, written in Arabic - the masses, naturally, were unaware of [these debates], and even if they were aware, pursuing these issues was not attractive to them.”^{dxix}

Now, the masses are more interested in debates on the law because the law is of practical, and not merely academic or intellectual, interest. Moreover, ordinary citizens now have the opportunity to participate in these debates. “Today, fortunately, because of the Revolution,” Khomeini says, “the opinions of the jurists and experts have come out on the radio and on television and in the newspapers, since there is a practical need for these discussions and questions.” Easily able to follow and often haphazardly exposed to debates on the law, ordinary citizens may become part of a public discussion on the law.^{dxxiv}

Citizens should be free to express contradictory opinions on the law, since the law is itself difficult to define when it comes to questions faced by modern society. Khomeini lists, in his letter to Mr. Ansari, what he calls “only a fraction” of the legal questions that have arisen in the modern context. They include questions related to property and limitations on the right to property, taxes, domestic and international business, banking, public monies, land ownership, rent, criminal law, medicine, art, the environment, food and drink, international law, and air and space travel.^{dxxv} Discussion concerning these issues will inevitably result in disagreement, and Khomeini emphasizes in this letter that this disagreement is acceptable, and one cannot assume that because there is disagreement, one side necessarily acts against God. Khomeini’s view is pluralistic; he says “the books of the great jurists of Islam are full of different opinions and tastes and interpretations in various matters related to the military, culture, politics, economy, and [individual] worship...now, can it be imagined that because jurists disagreed with each other – God forbid – they acted against Truth and God’s religion? Never.”^{dxxvi}

Thus, at the level of political institutions, the Guardian Council and the Council for Determining the Interest of the Governing System may be able to obstruct the passage of legislation in parliament, on the grounds that this legislation violates Islamic law, or does not further the public interest, but at the level of civil society, discussion of Islamic law, and principles that underlie the law, including public welfare, should be free and uncensored, in Khomeini’s view. The six experts in Islamic law who sit on the Guardian Council must have come to intellectual maturity in a society in which diverse opinions on the law have been expressed. Even as they make decisions as members of the Guardian Council, they live in an environment in which perspectives on the law - and even their own positions - may be freely challenged.

Conclusion

This chapter has sought to illuminate Khomeini’s political theory through a study of his post-revolutionary writings. While Khomeini, on the one hand, does not simply hold that sovereign political authority is in the hands of experts in Islamic law, neither does he say that this authority is in the hands of the public. On a very basic, imprecise level, it is true to say that Khomeini’s ideal government is one that implements Islamic law, and in this ideal government, jurists ensure that government does not violate this law. However, Khomeini also

qualifies this position in numerous ways. First, as I have described in this chapter, as a constitutionalist, Khomeini argues that for an Islamic government to exist legitimately, citizens must have consented to be governed by it. Especially during the time immediately after the Revolution, as the constitution was being drafted and as citizens decided, in public referenda, that they wanted to replace the Pahlavi monarchy with an Islamic government and that they approved of the Islamic constitution that had been drafted by the Assembly of Experts, Khomeini says that the desire of the public to be governed by Islamic law enables this law to be legitimately implemented, and the drafting of the constitution by popularly elected representatives in the Assembly of Experts as well as the approval of the constitution in a national referendum enable the constitution to be legitimately implemented. In fact, Khomeini never offers an Islamic justification for the form of Islamic government set up by the constitution; instead, his defense of the constitution rests solely on the fact that it was drafted by experts who were elected by citizens and who listened to citizens publicly express their opinions on the constitution they were drafting. During the constitutional drafting, Khomeini had encouraged all citizens, all segments of society, to express their opinions on the constitution.

Khomeini's conception of guardianship is also shaped by a second factor: his belief that those who are subject to the legal authority of the jurispudent—citizens themselves—may also criticize him publicly and remove him from office by means of the Assembly of Experts. This, too, is consonant with the constitutionalist principle that citizens must approve of those who govern them. While the jurispudents in government are qualified by their expert knowledge to ensure that legislation stays within the boundaries of the *shari'a*, citizens are qualified to essentially declare unfit for office the guardian, who in turn, appoints the jurispudents on the Guardian Council who ensure that parliamentary legislation is compatible with Islamic law. It is not just Muslim citizens, moreover, who may assess whether the guardian deserves his post ethically and intellectually; Khomeini encourages religious minorities to participate in elections for the Assembly or even become representatives themselves.

He also encourages these religious minorities, and all citizens, to participate in parliamentary elections. As a constitutionalist, he speaks highly of parliament, optimistic about its ability to be influential in a way that it never was under the monarchs of previous eras. The inclusion of a parliament in government, like Khomeini's recognition of the need for popular consent to Islamic government and the right of citizens to criticize and even unseat the guardian, modifies and elaborates further his contention that an ideal government is simply one that implements Islamic law. Still, he weakens parliamentary authority insofar as he recognizes that the Guardian Council may intervene in the passage of legislation drafted by popularly elected representatives if they determine that the legislation violates Islamic law.

At times, however, Khomeini argues that parliament is best qualified to determine the need for so-called secondary ordinances of the *shari'a*—ordinances that suspend the primary ordinances found in the sacred texts in order to address conditions and questions that did not exist when the *shari'a* was first revealed. This is because members of parliament have knowledge of *'urf*, or social, cultural, scientific, technological, and other factors that may

determine the need for or the content of the law, and through *tashkhis-i mauzu*, a process of clarifying the subject of the law, they illuminate the empirical features of modern society that may necessitate a suspension of the *shari'a*. Just as the constitutionalist Na'ini had recognized that the *shari'a* would need to be supplemented by ordinances drafted in a parliament that addressed unprecedented circumstances, here Khomeini says that parliament may draft law that not only supplements but may suspend the *shari'a*. While on the one hand, Khomeini makes the theoretical argument for why parliament is uniquely qualified to determine the need for secondary ordinances, he nonetheless also continues to recognize, without paying as much theoretical attention to this position, that the Guardian Council may ultimately prevent the passage of secondary ordinances. Still, though the Guardian Council may obstruct the parliament's passage of secondary ordinances, debate in civil society over the way in which the *shari'a* must evolve must exist unconstrained. On the other hand, in his well-known 1988 letter to President Khamene'i, he says that government is not constrained by the letter of the law but instead may exercise "absolute" guardianship by suspending, in times of need, the *shari'a* for the sake of good government, but he does not allocate the authority to determine whether it necessary to suspend the *shari'a* to any particular body, saying generally that "government" must have this authority.

Ultimately, just before his death, he gave a new body, the Council for Determining the Interest of the Governing System, the power to settle disputes between the Guardian Council and the parliament over the need for secondary ordinances. Neither jurists on the Guardian Council, nor the parliament, could decide whether to pass law that violated the *shari'a*; instead, this body, composed both of the jurists on the Guardian Council and members of other institutions of government, could decide how far outside the boundaries of traditional jurisprudence the government could venture. Khomeini's support for the Council for Determining the Interest of the Governing System was never enthusiastic, however, and he continues to go back to the idea, toward the end of his life, that experts in parliament really are most qualified to pass secondary ordinances. Researchers who seek to elaborate a theory of Islamic government that grants parliament this role, however, may draw on Khomeini's writings, and researchers who seek to defend the prerogatives that the Guardian Council and the Council for Determining the Interest of the Governing System now retain can only hope to make a convincing argument if they address Khomeini's contention that parliament has unique insight in the way the divine law can be made to speak to the contemporary world.

Chapter 6: Political Thought in Contemporary Iran: Abdollah Javadi Amoli and Hasan Yousefi Eshkevari

Khomeini's theory of government, as well as revolution that he led, has changed the course of history in modern Iran. When the Islamic constitution was ratified in 1979, centuries-old questions related to the Islamic government were not resolved once and for all or rendered less urgent, but instead, they were rekindled. Many of the debates over these questions have been described in the last chapter, and the debates continue to the present. What role, it is asked, if any, must jurists play in government? What role do the ordinary citizens play? Does a government that violates Islamic law have any claim to legitimacy? How may a modern political institution such as parliament or popular representation fulfill a religiously meaningful function? What must be done with ordinances of Islamic law that do not address modern contingencies? The Islamic Revolution in 1979 pushed questions such as these to the forefront of intellectual debate in contemporary Iran. Often, thinkers preoccupied with these questions bring Khomeini into the conversation. As a both a primary influence on the Iranian constitution and a central political, spiritual, and intellectual figure in the Islamic republic's first decade, Khomeini's thought continues to be debated, and his writings critiqued, mobilized for political purposes, reinterpreted, defended, and invoked authoritatively and academically in contemporary Iran.

In this chapter, I explore the thought of two influential thinkers in contemporary Iran, Abdollah Javadi Amoli and Hasan Yousefi Eshkevari, who elaborate the features of an Islamic government in very different ways. They are not primarily concerned with Khomeini's scholarly or political writings but instead with critiquing and elaborating the roles of institutions of government in contemporary Iran. Each scholar can be associated with one of two intellectual trends in Iran: Javadi Amoli with what I will call the conservative trend, and Eshkevari with the reformist trend. Each trend arose after the Revolution and is defined by a number of principles concerning the relationship between religion and government that tend commonly, though not universally, to be accepted by scholars associated with the trend.

The purpose of this chapter is to demonstrate how two scholars whose thought, in many ways, is typical of reformists and conservatives, have interpreted the principles that underlie and the institutions that must comprise an Islamic government. In previous chapters, I have explored elements of Khomeini's theory that address diverse aspects of Islamic government, including the role of the jurist as an ethical guide to the public, the relationship between popular consent to government and political legitimacy, the malleability of Islamic law and the roles of various institutions in government in molding that law, the significance and meaning of popular representation, the fallibility of the guardian, the right or capacity of ordinary citizens to criticize the guardian, and the means by which the guardian is chosen, overseen, or dismissed. Since there isn't sufficient space in this chapter to explore these scholars' views on all these topics, this chapter focuses on some only some of these topics. In particular, this chapter focuses on Javadi Amoli's conception of the role of the Assembly of Experts, which chooses, oversees, and dismisses the guardian, his views on whether and to what extent ordinary people have the

capacity and right to criticize the guardian, his position on the fallibility of the guardian, and his theorization of the relationship between popular consent and political legitimacy. The chapter also focuses on Eshkevari's view of the significance of the democratic will as compared to the will of religious experts in government, his perspective on how government may best serve Islamic law and principles, and his discussion of the malleability of Islamic law.

In his book, *The Guardianship of the Jurisprudent: The Guardianship of Jurisprudence and Justice*, Javadi Amoli broadly accepts the institutional setup of Islamic government in contemporary Iran, but he offers his own perspective on the capacities, significance, and function—both practical and theoretical—of these institutions. He holds that the Islamic government's Assembly of Experts, whose constitutional function is to appoint, oversee, and dismiss the guardian, as well as the guardian himself, do not represent the opinions, beliefs, and desires of the people but instead act independently of the people to implement the divine will. Still, Javadi Amoli holds that the guardian may be criticized by citizens—although he prefers that experts, more than ordinary citizens, criticize him—and that the public must have consented, at the founding moment of an Islamic government, to be governed by an Islamic constitution that grants the guardian specific powers. However, Javadi Amoli ascribes value not to popular consent in and of itself, as Khomeini does more strongly in some texts (such as *The Unveiling of Secrets* and his post-revolutionary writings) than in others (such as *Islamic Government*). Instead, Amoli justifies popular consent by depicting it as a necessary precondition for a divine act: God's granting of an Islamic government to human society. Finally, Javadi Amoli argues that the guardian, so long as he can be considered truly a guardian and retain a divinely granted right to his position, will not sin, a view that mirrors the position Khomeini took in his post-revolutionary writings but contradicts his view in *Islamic Government* that the guardian does not have extraordinary spiritual status.

The cleric and intellectual Hasan Yousefi Eshkevari articulates a very different perspective on many of the topics addressed by Javadi Amoli—in particular, the significance of the popular will and the role of jurists in government. In Eshkevari's view, no human institution, including the Assembly of Experts, has sovereign authority to interpret God's will. Invoking Khomeini's statements on the need for government to respect the wishes of the public, Eshkevari says that not jurists, but the democratic will, is sovereign, even if this will is not to establish an Islamic government. Ideally, however, any government will promote what Eshkevari calls an Islamic ideology, an ideology that is elaborated by citizens and whose content is derived from interpretations of politically relevant principles of the authoritative texts of the Islamic tradition. These principles, in Eshkevari's view, may inform and serve as the basis of new law, including law that modifies or suspends traditional ordinances of the *shari'a*.

Conservatism and Reformism in Contemporary Iran

Javadi Amoli's and Eshkevari's political thought can be better understood against the background of reformist and conservative political thought in contemporary Iran. Reformist and conservative thought tend to exhibit several key features. First, reformists, including Eshkevari,

tend to emphasize that popular consent grants any government legitimacy, whether or not that government is bound by Islamic law and principles, whereas conservatives tend to either deny or qualify the value of popular consent. In Javadi Amoli's view, for example, popular will has no value when it is directed toward the wrong aim. The popular will only becomes valuable when it is directed toward the establishment of an Islamic government. The value of consent is not intrinsic but instead lies in its effects, since it is only when human society, on the whole, recognizes the merits of and, on that basis, wishes to establish an Islamic government, that God will permit such an event to happen. In the view of another prominent conservative scholar, Ayatollah Mohammad-Taqi Mesbah Yazdi, consent has even less significance; widespread opposition to Islamic government doesn't deter God from allowing the establishment of this government, but it is nonetheless preferable for the public to be supportive of Islamic government because with popular backing, this government may more easily subdue its opponents. Thus, in Mesbah Yazdi's view, consent has a practical function instead of any moral or theological significance.^{dxxvii}

Second, conservatives tend to theorize a more powerful role in government and politics for jurists, including the guardian and the jurists on the Guardian Council, than for lay citizens. This power is granted both institutionally and theoretically; on an institutional level, it may mean, for example, accepting that the Guardian Council has the right to constrain the scope of popular choice by vetting candidates in popular elections, or it may mean holding that the guardian may interfere authoritatively in other branches of government, including the parliament, such as when the current guardian, Ali Khamene'i, ordered parliament to stop its deliberations on a new press law that would have protected reformist newspapers from being shut down by the judiciary.^{dxxviii} On a theoretical level, conservatives, including Javadi Amoli, grant jurists in government greater power by claiming that these jurists, by virtue of their expertise, their piety, or both, can develop an understanding of the divine will and implement this will as they govern. For example, Abolfazl Shakuri, a political science professor at Tarbiat Modarress University, uses the terms "imamate" and "guardianship" interchangeably, giving the guardian "the right to determine the affairs of society as deemed appropriate by God."^{dxxix} The virtues of the guardian, often, are extolled by conservatives; Javadi Amoli claims that the guardian, so long as he is entitled to his position, cannot sin, which implies that Javadi Amoli considers it possible or likely that a guardian will go for a significant period of time without sinning.

Reformists, on the other hand, tend to emphasize the fallible and human nature of both clerical and non-clerical institutions, and they also underline the important role that ordinary citizens play in electing and criticizing their governors. Consonant with their respect for the popular will, they emphasize that even clerics in government must not act contrary to the beliefs and desires of citizens. For example, the prominent reformist scholar Ayatollah Hussein-Ali Montazeri, who was chosen by the Assembly of Experts in 1985 to be Khomeini's successor (though Khomeini, while initially in favor of the decision, deprived Montazeri of the position in 1989),^{dxxx} was an influential reformist thinker and activist who argued that the guardian should

be elected by the public,^{dxxxii} that limits should be placed on his powers, and that he should be subject to public criticism and held accountable politically by citizens.^{dxxxiii} Some reformists, like Montazeri, view jurists as having a role, however limited, in government, or, like Eshkevari, believe more generally that the state should serve eternal Islamic principles, principles that are comprehended by both jurists and lay citizens. Other reformists, however, are secular in orientation, holding Islamic values are pluralistic and there cannot be more or less authoritative interpretations of these values,^{dxxxiii} or else that Islam should be kept out of the public domain.^{dxxxiv}

Finally, conservatives tend to be averse to the suspension or modification of traditional strictures of Islamic law, while reformists have a malleable view of the law—if they are religious reformists—or dismissive view of Islamic law—if they are secularists. Religious reformists argue for the primacy of morality, arising from both the principles articulated in the authoritative sources and use of reason and logical argument, over the letter of the law, holding that religious law may be molded in such a way that it serves the communities situated in particular contexts, contemporary communities that are much different from the community to which the *shari'a* was originally revealed. These communities have distinct and unprecedented questions. According to the reformist author Emadeddin Baqi, “the reality is that our *fiqh* [jurisprudence] and our religious sciences belong to the preindustrial age. They show no traces of the complexities of [contemporary] capital, labor, economics, civil and political liberties, and medical and biological discoveries, or the needs of the computer age and satellite technology.”^{dxxxv} This contextually sensitive law would be deduced through the process of *ijtihad*. While conservatives agree with the reformists on the need for *ijtihad*—as discussed in Chapter 2, *ijtihad* is a central feature of Shi'a Usuli jurisprudence—they disagree on the scope of permissible *ijtihad*. Conservatives believe that most social problems can be resolved through a “narrative-centered” *ijtihad*, an *ijtihad* that stays closer to the authoritative texts by deducing rulings from a narrative that we discover and comprehend by taking time to deliberate these texts. Reformists, on the other hand, practice a “reason-centered” *ijtihad*, which, while not abandoning the authoritative sources, strays further from them, involving using reason to formulate principles that supplement, elaborate, and variously interpret these sources, and then deducing new rulings based on these principles. While proponents of narrative-centered *ijtihad* are hesitant to modify ordinances of the *shari'a* found in authoritative texts to respond to changed circumstances, reason-centered *ijtihad* entails greater openness to modifications of traditional ordinances even based on principles not found explicitly in the traditional texts but embraced by our reason^{dxxxvi} (as parliament had argued in debates over land reform in the Islamic Republic's first decade).

Needless to say, reformist and conservative thought has not remained isolated in universities and libraries, but has influenced politics in Iran, ranging from top-down governmental policies to bottom-up grassroots advocacy. Arjomand helpfully identifies three political tendencies in contemporary Iran that are associated with three separate elaborations of Khomeini's thought. The conservatives, who elaborate Khomeini's thought in a way that augments the political authority of clerics, are those political figures and activists who are

supportive of the guardian, Ali Khamene'i. These individuals are influential in the judiciary as well as among the commanders of Revolutionary Guards, the Basij,^{dxxxvii} thuggish groups such as Helpers of the Party of God (*Ansar-e Hezbollah*), the economically powerful and semi-governmental charitable foundations (*bonyads*),^{dxxxviii} and state media.^{dxxxix}

Reformists who emphasize and elaborate the democratic elements of Khomeini's thought—in particular, the “rule of law and participatory representative government,”^{dxxl} were allied with former president Mohammad Khatami and 2009 presidential candidate Mir Hussein Mousavi, and they also regularly win seats in parliament and have engaged in protests against conservative policies and speak in favor of political liberalization. Reformists achieved their first major victory with the 1997 election of President Mohammad Khatami. Khatami had run on a platform of the importance of civil society and the rule of law, and immediately after being elected, removed restrictions on the press and on political, advocacy, and professional organizations. After reformists attained a majority in the 2000 parliamentary elections, they developed a platform dedicated to aims such as the creation of a liberal press, an independent judiciary, parliamentary oversight over intelligence ministries, and a curbing of the guardian's powers. Hardliners in the judiciary reacted, however, by closing down most of the reformist press, and the Guardian Council barred parliamentary oversight of institutions over which the leader had authority: the judiciary (the leader appoints the head of the judiciary, who, in turn, has authority over the appointment of judges), the military, and national radio and television.^{dxxli} In 1999, when students at the University of Tehran protested the closure of the reformist *Salaam* magazine, they were beat brutally by security forces.^{dxxlii}

During the conservative presidency of Mahmoud Ahmadinejad, the reformist movement was given renewed energy when Mousavi lost to Ahmadinejad in the June 12, 2009 presidential elections, which many reformists believed were rigged. The protests that ensued were not just about the 2009 elections; protestors demanded, more broadly, that their civil and political rights as citizens of a democracy be respected. To quell what became called by its participants the “Green Movement,” Khamene'i dispatched security forces such as the Revolutionary Guards, the Basij, and plain clothes paramilitary forces, killing dozens and injuring hundreds,^{dxxliii} and prominent reformist activists and theorists were imprisoned and put on trial.^{dxxliiv} During the protests, prominent reformists in and out of government—including former president Hashemi Rafsanjani, who presided over the Assembly of Experts—came out in support of the reform movement, and Rafsanjani stated that Khomeini had narrated a *hadith* in which the Prophet told Imam Ali that the Imam must not govern without the consent of the people.^{dxxlv} Grand Ayatollah Asadallah Bayat-Zanjani, in an interview with the reformist newspaper *Etemad*, quoted Khomeini's post-revolutionary statement that “the criterion is the vote of the nation” and, in a critique of the conservative view of clerical authority, said that no political leader, including Imam Ali, can be considered to be appointed by God; political authority is always contractual.^{dxxlvi} President Rouhani, elected in 2013, has called for political liberalization, including freer access to internet resources and less interference by security forces in enforcing public morality (such as observance of hijab and modest public interaction between men and

women), but the president, like presidents before him, continues to exercise little influence over the conservative judiciary and intelligence ministry, which continues to arrest dissidents.^{dxlvii}

Finally, Aromand argues that a third political movement in contemporary Iran draws on Khomeini's rhetoric in defense of the poor and disinherited. Mahmoud Ahmadinejad mobilized this movement, with its cultural conservatism but economic leftism,^{dxlviii} and its concern for distributing the wealth outside of Tehran. Ahmadinejad was famous for making frequent trips to remote towns and provinces to emphasize his dedication to more even economic development throughout Iran. Ahmadinejad's economic policies were supported by the lower classes, but the reformist movement remained primarily a middle class movement. While a populist, Ahmadinejad was not an advocate of liberal freedoms or democratic principles. In his 2005 presidential campaign, he stated that Khomeini had not wanted democracy, either. "Some people keep saying that our revolution is aimed at establishing democracy," he said. "No. Neither the Imam [Khomeini]'s statements nor in the message of the martyrs...has any such idea been considered."^{dxlix} He curbed political freedoms; his Minister of Culture and Islamic Guidance, Saffar Harandi, censored the press, including by blocking websites and imprisoning bloggers, and Abbas-Ali Amid-Zanjani, who he appointed rector of the University of Tehran in 2005, initiated an ideological purging of university professors.^{dl}

Javadi Amoli's Theory of Guardianship

Ayatollah Javadi Amoli is a scholar, cleric, and politician whose thought exhibits features typical of conservative thought in contemporary Iran. He was born in 1933 in the city of Amol, which is located in the northern province of Mazandaran, and he began his seminary studies in Amol in 1946, later moving for advanced studies to the Marvi Seminary in Tehran and then in 1955 to Qom, where he studied under, among other prominent clerics, Ayatollah Khomeini. He first began teaching when he was an advanced seminary student in Tehran, and he continues to teach in the Islamic seminaries today, on various topics in the Islamic sciences,^{dli} with particular expertise in Quranic exegesis, Islamic philosophy (including, centrally, the philosophy of Mulla Sadra), mysticism and jurisprudence. He is the author of over 130 works and acts as the head of the Esra International Foundation for Revealed Knowledges, which is dedicated to the study and publication of his thought and the Islamic sciences generally.^{dlii} He is not only an academic but a cleric of the highest rank; he is a *marj'a*,^{dliii} a legal authority whose jurisprudential rulings are binding on his lay followers (the institution of *marja'iyat* was discussed in Chapter 2).

Javadi Amoli is a scholar with experience in politics. In 1979, he was appointed by Khomeini to the Supreme Judicial Council, composed of five jurists who would sit at the head of judicial branch^{dliiv} (this council was replaced in the revised constitution of 1989 with a single individual who would serve as head of the judicial branch).^{dliiv} He also served as the representative of the province of Mazandaran in first and second Assemblies of Experts (from 1983-1999).^{dlivi} Famously, in 1988, he was sent to the former Soviet Union to deliver Khomeini's letter to Mikhail Gorbachev, in which Khomeini advised Gorbachev to study Islam.^{dliivii}

In his book, *Guardianship of the Jurisprudent*, Javadi Amoli prescribes a stronger form of guardianship than Khomeini does in either *Islamic Government* or in his post-revolutionary speeches, statements, and correspondence. Centrally, Javadi Amoli insists that the guardian cannot be considered a representative of citizens; one must be sure, he says, to maintain the distinction between guardianship and representation. The guardian has not been put in his position by citizens but instead by God, who works through the Assembly of Experts who appoint him, and he is the vehicle through which God exercises His guardianship over mankind.^{dlviii} Members of the Assembly of Experts, which Javadi Amoli believes has the capacity to discern the divine will, are jurists; according to the Assembly's bylaws (which are determined by the Assembly itself), members must have knowledge of *ijtihad*. In addition, the six jurists of Islamic law who sit on the Guardian Council must approve the candidacy of anyone running for a seat in the Assembly of Experts, and in 1991, the Assembly decided that candidates for the Assembly must undertake an exam, administered by the Guardian Council, to demonstrate their religious qualifications for office.^{dlxix}

Unlike Javadi Amoli, Khomeini does not say that God acts through the Assembly of Experts or even the guardian himself. During the drafting of the constitution by the Assembly of Experts, Khomeini had emphasized that the Assembly does not enact the divine will but instead represents the citizens who have elected its members to produce a document that was nothing more than a human convention. In the years after the revolution, Khomeini encouraged citizens to vote in all public elections, including elections for the Assembly of Experts; while the first Assembly of Experts drafted the constitution, subsequent Assemblies would oversee, and perhaps select and dismiss, the guardian. Javadi Amoli, however, adds a significance to this democratic act that Khomeini had not given it. Javadi Amoli argues that through and by means of the people and the Assembly of Experts, God implements His plan; it is God who acts through the elections for the Assembly of Experts and deliberations of the Assembly to put the correct guardian in office (and dismiss any guardian who is discovered to be unqualified). There exists at least one jurist, says Javadi Amoli, who “has a right to guardianship, [given to him] by God, even before the people accept his guardianship...”^{dlxx} A guardian's right to his position, therefore, exists independently of any desire on the part of the people to make him their guardian. This is not the case for a representative, he says; a representative's right to his position is contingent upon the votes of the people.^{dlxxi} Because the guardian always had a right to hold this position, and he does not acquire this right after having been chosen by the Assembly of Experts, he cannot be a representative. According to Javadi Amoli, he is a representative not of the people, but of the last imam, and in turn, the Prophet and God Himself.^{dlxxii}

Javadi Amoli is very careful about the language he uses to describe the Assembly's selection of the guardian; only when there are two or more jurists who are equally qualified for office—who both have a divinely ordained right to guardianship—and the Assembly must choose between them, does the Assembly exercise any form of choice; otherwise, they “identify”^{dlxxiii} the most qualified jurist out of all the contenders. Drawing on their knowledge of Islam—its ethics, its law, its theology—members of the Assembly of

Experts “can identify the jurist who is most qualified for leadership.”^{dlxiv} This method of choosing the guardian he calls “*entesab*,”^{dlxv} or determination of appointment. Whatever decision the Assembly comes to make, Javadi Amoli argues, has attained “the signature of the sacred Lawgiver.”^{dlxvi}

In fact, he says, though the constitution uses the word “choice” (*entekhab*) when describing the process by which the guardian is selected, this must be understood not in the literal way—the way the word would normally be understood in Farsi—but instead it is to be interpreted in this context to have a meaning closer to “acceptance” (*paziresh*).^{dlxvii} This is because the nation does not *choose* its guardian. A jurist can be “chosen” to be a representative but not a guardian, since the word “choice” implies that a selection is made on the basis of opinions that may or may not be true or desires that may or may not be valid. Opinions or desires cannot create a religiously legitimate government. Instead, God works through the Assembly of Experts and through the people as they elect members of the Assembly of Experts. As a result, the Assembly does not *choose* the guardian but instead *accepts* the leadership of the guardian who has a divinely mandated right to rule.

Similarly, when the Assembly decides that it must dismiss the guardian, it does not “choose” to dismiss him; instead, it simply

announces that the governing jurist has abdicated, on account of his inability to fulfill his duties, or because he has lost one of the essential qualities for leadership, or because the [the Assembly] discovers that he always had this deficiency...the fundamental task of the Assembly of Experts is to determine whether the guardian-jurist is appointed or dismissed, not to appoint or dismiss him.^{dlxviii}

The moment that the guardian acts against God’s law, he is no longer guardian, for it would be impossible to be both a guardian, in the true, godly sense, and to act against God’s law. When this happens, the Assembly of Experts should dismiss him from office. Javadi Amoli emphasizes that it is not the Assembly of Experts who has made him no longer a guardian—no human decision can change a metaphysical truth. As long as he deserves to be guardian, he is guardian, and when he loses the required characteristics, he is no longer, on a metaphysical level. The Assembly may be said to deprive him of his institutional position, but it never deprives him of his metaphysical status.^{dlxix}

Interestingly, in his description of the conditions under which the guardian loses his position, he recognizes that the Assembly may discover that he “always had [a] deficiency.” This seems to imply that the Assembly was mistaken in appointing him, though previously Javadi Amoli had said that the Assembly’s deliberations are guided by God toward discovery of His will. Can experts who appoint and dismiss the guardian, or even ordinary citizens, be mistaken in their perception of who the rightful guardian is? Can members of the Assembly of Experts appoint the wrong guardian, or wrongfully dismiss the guardian? Can citizens appoint the wrong people to serve on the Assembly of Experts or wrongfully criticize the guardian?

Despite his admission that a guardian may not have the qualifications that the Assembly initially thought he had, he depicts the deliberations of the Assembly of Experts as almost mechanical, natural and almost unthinking, inevitably uncontroversial. After all, he wants to move the reader away from conceiving of the Assembly as a body that exercises choice. These experts, when put together in a room, by virtue, it is presumed, of their expertise, as well as God's guidance, are seemingly destined to fall upon the discovery of who is the rightful guardian. The Assembly of Experts does not "choose," but instead "discerns" who has already been appointed; they "identify" the guardian, as if his characteristics were already known and their job was simply to pick him out in a crowded room; experts on the Assembly, by "bearing witness" to "clear proof" or by their "expertise," attain "certainty" and "knowledge" of who is qualified to be leader, and they are led to agree on an answer to the question they all shared and gathered to resolve—there is no "contradiction" in evidence or expert reports.^{dlxx} The task, in the end, is portrayed to be more of a scientific enterprise than a conversation on what constitutes superior morality and intellect. For the eight years that they hold their seats, members of the Assembly of Experts have the authority to determine what God's will is.

Javadi Amoli holds that religious experts, and not ordinary people, have the capacity, more commonly, both to recognize who is the guardian with the divinely given right to rule and to discern when the guardian has lost this right to rule. However, he also says that on a rare occasion, the people may directly select the guardian in nation-wide elections in place of the Assembly of Experts, but this is only possible when "a people recognizes their leader"^{dlxxi} in an outstanding individual like Imam Khomeini. Since history rarely produces these outstanding figures, normally it is not so clear who is most qualified to lead, and it becomes the task of experts, not the public at large, to appoint the leader. This option—for the people to directly elect the guardian—was removed from the constitution in the 1989 revision because it is rare that an individual stands so apart in his morality and knowledge from others that common citizens can recognize him, Javadi Amoli says.^{dlxxii}

Even when the leader is so manifestly good that ordinary citizens may recognize him, these citizens, like the Assembly of Experts, do not, in granting him his office in the institutions of worldly government, also grant him the religiously justified right to rule. Again, Javadi Amoli's language is very specific when he describes the scenario in which the leader is granted office by means of nation-wide elections. The people do not "choose" a leader but instead "recognize" him; he was their leader even before they went to the ballot box because he was uniquely qualified for, and divinely appointed to, this position.^{dlxxiii}

If the people do not choose the guardian, and instead the guardian had been chosen long before the people went to the ballot boxes to vote for representatives to serve on the Assembly of Experts, or, on the rare occasion, voted directly for the guardian themselves, why, then, does Javadi Amoli maintain that the voting should be done in the first place? Why couldn't the experts who appoint the guardian have been selected by some other, non-democratic means? Javadi Amoli does not seek to erase the role of the people in the political process; in fact, he insists that they must be involved. Like Khomeini, he recommends their political involvement both during

and after elections. Various institutions and political processes are stipulated by the constitution to operate according to majority rule, he says. Unlike in Western democracies, where majority rule is more valued than truth in the political arena, in Islamic polities, the majority discovers the truth.^{dlxxiv} Ordinary citizens are equipped to discover who is best suited to serve on the Assembly of Experts, and a majority of the Assembly of Experts, in turn, selects the guardian. Democratic participation, in his view, is a vital element in the political process that leads to the discovery of the identity of the deserving guardian.^{dlxxv} However, it would be impossible for the majority to discover truth without being led directly to this truth by God Himself.

After elections for the Assembly of Experts, Javadi Amoli says that citizens should be involved in overseeing the guardian and may become aware that the guardian is not acting as he should. Though citizens always retain the right to “oversee and criticize” the guardian, they may not dismiss him by legal means. Furthermore, though this right to oversee and criticize the guardian is held by all citizens, it is “especially preserved for political, legal and *fiqhi*^{dlxxvi} experts,”^{dlxxvii} Javadi Amoli says. It is worth noting that Khomeini, unlike Javadi Amoli, does not make this distinction between experts and laypeople; instead, Khomeini says that all citizens, including non-experts, have the right to criticize the guardian.

Javadi Amoli’s theorization of the capacity of various citizens to oversee and assess the guardian is not served by the governmental institutions in place in contemporary Iran. He holds that experts, both in the general populace and on the Assembly of Experts, are best qualified to oversee and criticize—and thus have either a direct or an indirect role in appointing and dismissing—the guardian, but the Iranian constitution gives experts in the general populace no more power than ordinary citizens, who know nothing of politics and the law, to elect the Assembly of Experts. Javadi Amoli argues that the opinions of expert citizens are worth more than the opinions of citizens who lack this expertise, but the provisions of the Iranian constitution grant both opinions the same weight when Assembly elections are held.

Moreover, the institutions of government fail Javadi Amoli’s theory in a second way. While Javadi Amoli says that members of the Assembly of Experts are not representatives and should not act according to the preferences and opinions of their constituents, in practice, they are elected officeholders, and if they desire to stay in office for more than one term, it would behoove them to be at least somewhat attentive to the preferences and opinions of their constituents. Still, Javadi Amoli imagines that despite their elective vulnerability, members of the Assembly will not act as representatives, and will instead work to discern and implement a metaphysical truth, and not the demands of their constituents. In the end, it is only Assembly members who have the practical authority to declare what this truth is, and they, along with experts outside of the Assembly, have the theoretical authority to declare this truth. Still, Javadi Amoli does not address the possibility that members of the Assembly of Experts, to increase their chances of reelection, may act more like representatives than they should.

Since it is possible that the guardian may be dismissed by the Assembly of Experts and criticized by his subjects, it is evident that Javadi Amoli does not believe that the jurist is infallible and incapable of sin. At any point, through his own actions, he may lose the right of

political leadership, which can be held only by one with qualities of character and intellect that God has deemed necessary for this position. Still, Javadi Amoli implies that the ruling jurispudent may hold his position for a certain period of time—long enough, it is presumed, to have the opportunity to exercise effective leadership—without sinning. The jurispudent must fulfill three conditions, according to Javadi Amoli, to qualify for guardianship: first, he must be capable of *ijtihad*—he must flawlessly be able to deductively derive legal injunctions from the divine law. Second he must be perfectly just. Here, he uses the term “just” in the way that it is commonly used to describe a desirable quality of a religious scholar (as mentioned in Chapter 2)—it means more than just simply treating others equitably, but acting ethically and heeding the divine law. Finally, the jurispudent must have sufficient administrative abilities and leadership skills. The second quality, “*idalat-i mutlaq*,” or perfect justice, he says, means that the guardian will never sin as long as he can be considered guardian; as soon as he does, he loses his metaphysical status as guardian, and it is likely and hopeful that the Assembly will recognize that he has lost this metaphysical status and will deprive him of his this-worldly, political status as well.^{dlxxviii} This conception of the guardian’s spiritual capacity is incompatible with Khomeini’s statement in *Islamic Government* that assuming the post of guardian does not give the jurispudent “extraordinary status,”^{dlxxix} though it is reminiscent of Khomeini’s post-revolutionary position, when he said that the guardian is deposed from guardianship even if he commits a “minor sin.”^{dlxxx}

From his depiction of the qualities of the guardian, as well as the role of the Assembly of Experts and expert and non-expert citizens, it becomes clear that Javadi Amoli, more than Khomeini, seeks to retain the sacred in the political process. While Khomeini says simply that a guardian is chosen as a result of a political process designed by and participated in by ordinary citizens,^{dlxxx} Javadi Amoli does not wish to lose politics to the mundane. A guardian cannot be considered a representative of the people, in office to serve their wishes and susceptible to their criticisms and potential decision to dismiss him from office. When a guardian acts justly and in accordance with God’s law—a state of affairs that experts, more than ordinary citizens, can discern—he is none other than God’s representative on earth. He is not merely what human convention has determined to be a just ruler; instead, he is, in actual fact, a just ruler. Javadi Amoli thus imbues the guardian’s actions and decisions with divine sanctity while holding that the political realm is one in which humans do not have sovereignty. While Khomeini stops short of depicting government in a world without an infallible imam as capable of fully and faithfully serving the divine, Javadi Amoli is willing—and indeed, finds it necessary—to take this step.

At one point in the text, Javadi Amoli says that Islamic government was established by contract, the national constitution, and it is this contract that gives it legitimacy.^{dlxxxii} At first glance, this idea does not seem to comport with Javadi Amoli’s position that only the divine will, and not a human contract, can legitimate government, and it seems to bring Javadi Amoli’s view of government closer to Khomeini’s. When Javadi Amoli describes the article of the constitution that created the Assembly of Experts, for example, he says that members of the nation made “a covenant with one another that [stipulated that] the right [for a guardian] to govern over

them...would only be granted through the Assembly of Experts; experts that they had chosen, who would, after recognizing the jurisprudent with all the requisite qualities, appoint [him to his position]...^{dlxxxiii}

Javadi Amoli's constitution is set apart from Khomeini's, however, insofar as in his view, the contract, once made, seems to lose its human quality. While for Khomeini, the contract that forms the basis of Islamic government, the constitution, is a creation of representatives of the public, and it is a document that has been approved of by the public in a national referendum, to Javadi Amoli, it is an instrument of the divine. Once the Assembly is convened, it engages in activity that the citizens themselves—the same citizens who created the Assembly and elected its members—cannot fully understand, a deliberation that leads them, in effect, to discover a divine truth. It is here that Javadi Amoli moves above and beyond what Khomeini said about how the leader is chosen.

Though experts may have the capacity to discover elements of the divine truth, Javadi Amoli nevertheless holds that any Islamic government must have been consented to by the public. In Iran, this consent had been expressed, he says, when citizens voted in the referendum on the constitution in 1979.^{dlxxxiv} In arguing that Islamic government cannot be forced on the people, Javadi Amoli follows Khomeini's unambiguous position in his post-revolutionary speeches and in *The Unveiling of Secrets* that public consent is a necessary prerequisite for legitimate government, and he adopts a stronger position than Khomeini's ambiguous position in *Islamic Government* (when Khomeini had said that public consent is a desirable prerequisite for government but had stopped short of saying that it was necessary). "Islamic government," Javadi Amoli says, "is not a government of tyranny and imposition; if it was tyranny and force, it would become [like] the illegitimate government[s] of the Umayyids and Marwanids,^{dlxxxv} which after a while, passed from existence."^{dlxxxvi}

What is it about political tyranny that elicits Javadi Amoli's condemnation? In his view, there exists a metaphysical truth that entails that a certain individual deserves to be the political leader of a given society. If this truth were discovered, why could it not be imposed on human society? Consent is valuable and necessary, in his view, not simply because tyrannical government, one that exercises authority without the consent of citizens, will "pass from existence," like the Umayyad and Marwanid dynasties. He is concerned with more than preserving and strengthening government by hoisting it onto the shoulders of the popular masses. Instead, consent is necessary and valuable because God does not execute his plans before humans have understood and acquiesced to these plans. God does not govern the universe by force or deception. It is only when people request for God's will to be enacted that it will be enacted. This human will, it seems, could adequately be expressed, in Javadi Amoli's view, through majority vote, such as in the national referendum.^{dlxxxvii} "If the country needs to be governed," says Javadi Amoli,

as long as the people do not want it and are not present [as advocates for it in the political sphere], neither prophethood, nor imamate, nor the specific deputyship

[of those named by the last imam to be his representatives during the Lesser Occultation], nor the general deputyship [of jurisprudents during the Greater Occultation]—none of these will be manifested externally...^{dlxxxviii}

For the uniquely qualified jurisprudent to assume his role in practice exists “in potential,” but for this potential to be fulfilled, and for the jurisprudent to actually assume his deserved role, is dependent on the acceptance of the guardian by the people.^{dlxxxix} It is not that an Islamic government that governs without popular consent is illegitimate; it is that true Islamic government cannot exist without the consent of the people. Javadi Amoli speaks in metaphysical, and not normative, terms. “An Islamic government,” he says, “will never come into being without the desire and will of the people, and the fundamental difference between an Islamic government and a tyrannical government is in this: that an Islamic government is a government of the people and is not built upon force and tyranny; instead, it takes shape on the basis of the love and attraction that people feel toward religion and the Islamic governor...”^{dx} Javadi Amoli does not make an argument for consent using the language of rights. Instead, he uses the language of Islamic theology. Islamic government, as a metaphysical “good,” cannot and will not be imposed on an unwilling society; instead, for it to be established in human society, there must be a democratic act prior to its establishment, a widespread expression of acceptance of this government and the values that it would promote and that have shaped its design.

Whether people come to this acceptance does not affect whether Islamic government is legitimate on a metaphysical level. Because popular vote does not make a particular government more legitimate, in any true, divine sense, than it was before the people consented to it, and because lack of popular support does not deprive a government of a divine legitimacy, then we must refrain from saying that popular consent makes a government legitimate. Instead, popular consent grants government “power; because without the people, there would be no power for the guardian, and his ability to engage in any kind of action [in the political realm] is taken from him; though at the level of metaphysical reality, he has divine legitimacy.”^{dxci} This “power,” to Javadi Amoli, is not simply a form of raw, physical power that the guardian acquires from popular support but instead is a power granted to him by God, a power that is not simply derived from material strength. This power is granted to him by God because the people have come to accept the guardian’s political authority, and this act of belief entitles them to experience and access the object of their belief—the guardian’s political authority. In consenting to the guardian’s authority, the people do not make that authority legitimate, since it was always legitimate. Instead, they simply allow what is legitimate to be manifested in society, and to impact the course of human events, steering these events in a way that satisfies God.

This is not to say that every government that claims to be an Islamic government and has the support of the people is truly Islamic government, but for a government to be truly Islamic, one of its characteristics must be that it is supported by the popular masses. If popular consent does not make Islamic government legitimate, then neither does it make a non-Islamic government legitimate. While Javadi Amoli does not condone government by force, he stops

short of saying that popular consent can by itself be the basis for political legitimacy, both when government is Islamic and when it is not.

In this way, he is like Khomeini. In Khomeini's view, government can never be legitimate, even if it is backed by the people, unless it implements, operates within the boundaries of, and/or furthers the principles of Islamic law. Popular consent, by itself, is not a sufficient condition for legitimacy. However, Khomeini's conception of the significance of consent is different than Javadi Amoli's. Khomeini does not use the language of Islamic theology to explain the significance of consent.

Instead, as he argues in *The Unveiling of Secrets*, use of reason is essential to understanding the value of consent and the reprehensibility of force, as described in Chapter 4. Hakamizada had stated that Shi'a rituals, such as making pilgrimage to the shrines of saints in order to ask for healing from physical ailments, keep Iranians from developing their rational capacity. Khomeini agrees, critical of rituals that discourage Iranians from relying on their own intellect to overcome challenges, but he also points to a repercussion of this ritualistic culture in the political sphere: when their reason is so stunted, citizens fail to recognize the seriousness of the violation that they suffer from being forced to obey a government that was established without their consent. Such a violation is no different from the violation one suffers at the hands of a thief.

To Khomeini, the objectionable nature of political tyranny can be understood by use of human reason and not simply according to a theological conception of the relationship between human will and God's actions. It is not simply that God will not grant human society an Islamic government if they do not wish to be governed by it; it is also that God will not grant human society an Islamic government if they do not wish to be governed by it because this would violate principles of morality that can be understood, at least in part, rationally. While for Javadi Amoli, the objectionable nature of force, in the context of establishing an Islamic government, stems from the requirement that humans must desire what is good before they are granted what is good by God—and thus, consent is necessary based upon metaphysical laws that govern God's granting of blessings—Khomeini emphasizes that the objectionable nature of government without consent stems from the violence that it inflicts upon human beings. Though he may have accepted both the theological and the moral reason—after all, the reasons do not contradict one another—he only explicitly endorsed the latter.

In his post-revolutionary speeches, too, Khomeini speaks of the value of popular consent in moral terms; as mentioned in Chapter 5, he says that “it is unthinkable for a minority to impose itself on a majority; this is in contradiction with...freedom. It is inhumane for a small number – a minority – to impose itself upon a larger number.^{dxcii} Because freedom has inherent value, and because humans must be treated “humanely,” a minority must not impose itself upon a minority. This is not to say that the value of popular consent can be justified in moral terms that are entirely unconnected to a religious worldview—for example, one reason that political tyranny is reprehensible may be that it insults human dignity, and this dignity is granted to

humans by God—but it is clear that in Khomeini’s view, neither can the full value of consent exclusively be articulated in theological terms.

Hasan Yousefi Eshkevari

While Ayatollah Javadi Amoli builds on Khomeini’s proposition that jurists have a role in government, theorizing a more powerful role for them in government, a role that is sacred, another scholar, also trained as a religious cleric, Hasan Yousefi Eshkevari, has a drastically different vision of Islamic government. Eshkevari was born in 1949 in the town of Eshkevar, located in the northern Iranian province of Gilan. In 1961, he began attending the Rudsar Seminary in Gilan, and after completing his foundational courses in 1965, he moved to the Qom seminaries to continue his studies.^{dxci} In Qom, he studied subjects including philosophy, theology, Quranic exegesis, logic, literature, and jurisprudence. He came to Qom during an interesting time, when anti-Shah political mobilization was just gaining momentum (just the year before, in 1964, Khomeini had been exiled to Turkey because of his growing popularity as a political dissident). In 1962, he says in his autobiography, he became a follower of Ayatollah Khomeini and “one of his most passionate advocates.”^{dxci} As a student in Qom, Eshkevari would often travel to Tehran to hear lectures at the Husayniah Ershad^{dxci} by Dr. Ali Shari’ati and other intellectual figures. He developed a deep interest in Shari’ati’s thought, which would significantly influence his own perspective on religion and religious government. He so admired Shari’ati that when the Hosseiniyah Ershad was closed in 1972 and Shari’ati arrested, Eshkevari sought to spread Shari’ati’s ideas by printing and distributing his writings and tape recordings of his speeches.^{dxci}

After the Revolution, Eshkevari was elected to parliament and served as a representative for one term—until 1984. When his term was over, he dedicated himself fully to “academic, intellectual, and cultural activities”; Tapper and Mir-Hosseini say that “cultural activities” is “a euphemism for a different kind of politics that puts emphasis on critical thinking about both traditional Islamic ideas and the new revolutionary ideology.”^{dxci} From 1985-1989, he taught Islamic history at Allameh Tabataba’i University in Tehran. Throughout his adult life, including during his tenure as a parliamentarian and a university professor, Eshkevari has actively published articles in newspapers, academic journals, and magazines on various topics in Islamic modernism, theology, history, politics, and jurisprudence, among other topics.^{dxci} In 1992, he joined the editorial board of the monthly *Iran-e Farda*, which had been founded in that year by Ezzatollah Sahabi, who was part of the former Prime Minister Mehdi Bazargan’s provisional government^{dxci} (which held power from February 1979, when the Shah’s government fell, until November 1979, when he resigned a month before the constitutional referendum); Bazargan was associated with the Iran Freedom Movement, a political party that advocated for liberal and democratic ideas, grounding them in the Islamic tradition.^{dc} In 1996, he founded and served as director of the Dr. Ali Shari’ati Cultural Research Center, an institution dedicated to the propagation and study of Shari’ati’s thought.

Eshkavari's life would be changed by his decision to attend a conference in April 2000 in Berlin sponsored by the Heinrich Böll Institute, entitled "Iran after the Elections, and the Dynamics of Reform in the Islamic Republic."^{dc1} When he returned to Iran after the conference, he was arrested and tried by the Special Court for the Clergy on a number of charges, including apostasy and conspiracy to overthrow the government.^{dc2} He was sentenced to death and defrocking, but after Eshkevari appealed the court's decision, his sentence was reduced to seven years in prison^{dc3} and defrocking.^{dc4} He was released from prison after fewer than five years^{dc5} but continues to write prolifically on the subjects in which he has always maintained an interest, including politics,^{dc6} and he is a contributor to the *Great Encyclopedia of Islam*^{dc7}—a project he first became involved with in 1985.^{dc8}

While Javadi Amoli inflates the role of experts in an Islamic government, arguing that experts on the Assembly can discover God's will and that the foremost expert of Islamic government, the guardian himself, acts not to represent his subjects to but execute God's will, Eshkevari develops Khomeini's theory of Islamic government in a different direction. As has been argued in previous chapters, Khomeini believed that ordinary citizens had a vital role to play in an Islamic government; they elected representatives to the Assembly of Experts and the parliament, and this parliament—he ventured to say in his post-revolutionary speeches—could even be involved in determining when, out of concern for a the public interest, the *shari'a* itself could be suspended. In this way, Khomeini recognized that they could comprehend ethical values that stood above and took precedence over the *shari'a*, even though at times, in his post-revolutionary writings, he upheld the authority of the Guardian Council to determine that law drafted by parliament was incompatible with Islam, and by the end of his life, he gave ultimate authority on the religious acceptability of law drafted by parliament to the Council for Determining the Interest of the Governing System (see Chapter 5). Eshkevari emphasizes, like Khomeini, that ordinary citizens in parliament, as well as the constituents who elect them, may comprehend religious values and may have an indirect or direct impact on the legislative process by electing members to parliament or serving in parliament themselves, but unlike Khomeini, he says that ordinary citizens have the sovereign authority to define religious values and to determine whether and how the law may be modified or suspended in deference to these values. Moreover, even if ordinary citizens do not wish to promote religious values through the organs of government, Eshkevari maintains a commitment to the principle of popular sovereignty.

In his essay, "Islamic Democratic Government," which was originally written for oral delivery in a seminar series that took place in 1995, organized by the Islamic Association of Engineers, an association that promoted the work of reformist political thinkers, Eshkevari says that according to the theory of "absolute" guardianship of the theorist—the label he gives to a conservative interpretation of Khomeini's theory—"the ruler is generally appointed by God in accordance with the *shari'a* from among certain people who are religiously qualified; the essential and exclusive right to govern on behalf of God belongs to this group."^{dc9} Here, he describes the interpretation of guardianship espoused by, among other conservative scholars, Javadi Amoli, who believes that the ruler is "appointed by God" (through the Assembly of

Experts) and that only a limited number of people, identified by the Assembly, have the right to govern “on behalf of God” (although Javadi Amoli had implied that it would be more usual that only one such individual would be identified). His own political theory, Eshkevari says, is not a theory of absolute guardianship. Instead, he supports the idea of “religious democratic government,” a government that is both Islamic and democratic, and he says that this theory finds some support in the writings of Ayatollah Khomeini. Khomeini, after all, had “several times in Paris and Tehran declared that the democracy of the Islamic system as a strength and credibility that is unique among the democratic systems of the world.”^{dcx} (Here, Eshkevari stops short of addressing how other elements of Khomeini’s theory, or how his support for governmental institutions in post-revolutionary Iran, may stand in tension with his expressed support for democratic principles.) In a religious democratic government, Eshkevari states, there is no guardian who governs on behalf of God; instead, sovereign authority is held by the majority of citizens. What, then, makes this government Islamic, if it is not simply democratic, and what role, if any, do the religious clergy play in this government?

Eshkevari’s answer is that since democracy is an Islamic value, this makes Islamic government necessarily democratic. “Not only are Islam and democracy not incompatible,” he says, “but on the contrary, Muslim government cannot be undemocratic. That is to say, despotism, authoritarianism, and, more specifically, ruling people without their consent, are in contradiction with the essence of religion, human free will, and Islamic texts and sources.”^{dcxi} In Eshkevari’s view, democracy has two essential features: first, in a democracy, the state is set up and legitimated by the popular will; and second, that political power is distributed as widely as possible among the people and there is an embrace of “pluralism.”^{dcxii} As for what specific institutions promote these democratic goals, Eshkevari says that Islam does not prescribe a form of government that is best suited for all times and places, but it does, eternally, prescribe a principle—popular sovereignty—that must be heeded by any government.

Democracy has deontological value in Islam. This deontological value is both moral, in nature, and textual. On a moral level, democracy is valuable because it recognizes and respects the free will of human beings, a free will recognized, too, by God.^{dcxiii} (One might ask Eshkevari, here, how one would begin to justify law that limits the freedom of individuals, law which he would no doubt consider necessary, but he does not enter into this discussion here.) Secondly, the deontological value of democracy lies simply in the fact that its principles were respected by the revered personages of the Islamic tradition. The political authority of the Prophet, he says, “was realized with the consent, support, and acceptance of the people, not through the exercise of one-sided authority from above. Throughout the ten years of his rule, the tradition of consultation [a practice prescribed for political leaders by the Quran] and seeking people’s views continued...”^{dcxiv} This is not to say that the Prophet’s government was comparable to the democracies of the modern day, including features such as a parliamentary system or separation of powers; the Prophet governed in a way that conformed with the conventions of the time but also served eternal democratic principles.^{dcxv} In addition, the twelve infallible imams respected the principle of popular sovereignty, perhaps most dramatically by refusing to demand or use

force to secure what they believed were their rightful positions as divinely appointed successors to the Prophet's political rule.^{dcxvi}

Though democracy has deontological value, this doesn't make it ideal. A government is to be valued both for the principles by which it is defined and the ends that it promotes. Ideally, any democratic government would be oriented toward the promotion of an Islamic ideology.

It is here that we especially notice the influence on Eshkevari by the contemporary Iranian sociologist Ali Shari'ati (as mentioned, Eshkevari set up a research institution dedicated to the study of Shari'ati's thought). Shari'ati was famous for arguing that Islam, to be relevant and beneficial in the modern world, must be shaped by religious thinkers into an ideology. What did Shari'ati, and later Eshkevari, mean, here, by Islamic ideology? In Shari'ati's view, there are two ways in which Islam may be understood: first, and inadequately, as a "collection of sciences" or a "storehouse of scientific and technical information." In other words, this is the Islam of obedience to a series of law recorded and preserved from the time of the Prophet, the Islam of a series of abstract theological principles and of the memorization of a series of historical events. On the other hand, there is the "spirit" and "orientation" of Islam, an Islam that does not just speak of the past or of abstract principles and rules but also speaks to the present and of the future, of the ideals that must orient self and society, an Islam that creates "movement", "commitment", "responsibility", and "social awareness'." This is Islam as an "ideological school of thought."^{dcxvii} More concretely, this is an Islam that is created by human beings on the basis of the authoritative Islamic sources, where these sources are interpreted in a way such that they become relevant to contemporary questions.

Most fundamentally, Islamic ideology arises from the principle of *tawhid*—of monotheism—a principle that profoundly impacts the Islamic conception of man, history, and society.^{dcxviii} These concepts are implicated in a myriad of ways by the idea that there is one God who created man for a single purpose and according to his grand design—in the social sphere, for example, the principle implies that races, classes, families have equal value, since they were created by one hand, one will, one power who created difference for a single purpose. Insofar as all of God's creatures, as different as they are from one another, were created to serve this purpose, they have equal value. Though the religion of monotheism accepts difference, it does not accept hierarchy. One aspect of Islamic ideology, as it relates to the social sphere, is therefore opposition to inequality and hierarchy—a position, no doubt, that needs to be defined more precisely and more contextually by contemporary Muslims.^{dcxix}

Like Shari'ati, Eshkevari says that a government should—if the people so desire—promote an Islamic ideology that they work to define and elaborate, an ideology that he calls the ideology of "justice." If a democratic government does not wish to promote Islamic justice, but instead a form of justice not derived from religious principles, then its actions are to be commended insofar as this non-religious justice shares features with Islamic justice (and Eshkevari accepts that a justice based upon non-religious sources can nonetheless overlap with Islamic justice).^{dcxx} Eshkavari also follows Shari'ati in saying that the Islamic ideology, "Islamic justice," is based on one's Islamic monotheistic worldview and interpretations of "humanity,

society, and history” based upon this worldview.^{dcxxi} From these Islamic principles one may elaborate the features of the just social and political order. An order based on a monotheistic worldview, for example, could never tolerate slavery, since according to the monotheistic worldview “all human beings are servants of God and all are created equal, and...they acquire superiority to others only by [virtue of] humanity and piety.”^{dcxxii} That an Islamic government would not allow for slavery is as concrete as he gets in his description of the Islamic justice that he hopes an Islamic government will promote. By and large, it is the task of citizens of a given society to elaborate the tenets of Islamic ideology.

To Eshkevari, Islamic justice can be defined more precisely not just by thinking abstractly about how the principle of monotheism compels us to advance certain social ends, but by examining the authoritative Islamic sources to help clarify our view of the ideal society, even as our conception of an ideal society continues to be inextricably connected to and based in part on the principle of monotheism. In particular, Islamic justice can be elaborated by exploring the Quran and the actions and words of the prophets and imams. It cannot be denied that there are lessons that can be learned from the governments of the prophets and the twelve imams, and the traditional texts are attentive to matters such as “the importance and role of government, the attributes of rulers, the duties of governors, and their actions and conduct.”^{dcxxiii} After all, “which monotheist prophet did not struggle, to a greater or lesser extent, against his surrounding environment and the dominant political, social, and cultural system of his society?”^{dcxxiv}

However, each prophet’s (and imam’s) struggle took place in a particular context; each was critical of particular political formations, many accommodated existing political formations without claiming that they were ideal, each was concerned with resolving social and political problems that were particular to a time and place that was very different from ours. We cannot, therefore, simply adopt their political institutions or enliven their political causes once again. Since there is no religious dogma that entails the precise form that government takes or functions it must fulfill, it is up to citizens to decide how abstract principles of politics and government that are described in the sacred texts can be translated into concrete rules of behavior, in particular times and places, for citizens and governors.^{dcxxv} For example, when Imam Ali, while caliph, wrote to Malik al-Ashtar an-Nakha’i, his governor of Egypt, and said the ruler must be attentive to his impoverished subjects, “support of and help for whom is an obligation, and every one of them has (a share in) livelihood...every one of them has a right on the ruler according to what is needed for his prosperity,”^{dcxxvi} it is up to citizens to interpret this saying. What kind of share do the poor have in the livelihood of a nation? How is “prosperity” to be conceived? How is the ruler to be held accountable when this “right” of impoverished citizens isn’t respected? It is up to citizens today to decide, democratically, how to interpret the Imam’s saying, and how the principles implied in the letter should be translated into material terms that are familiar and understandable to them.

In sharp contrast to Javadi Amoli, Eshkevari says that no human has a final say on how Islamic values are to be applied to modern-day government; “no one can make an a priori and essential claim to be representing God or the Prophet in matters of government and the exercise

of political power.”^{dcxxvii} While ideally, Islam will continue to be the “philosophy, viewpoint, and doctrinal mission”^{dcxxviii} of the new government, it is up to the people to elaborate that it means for a government to be Islamic and to develop their own standards for an ideal constitution, a commendable political decision, or a good law, through elections and through the public and uncensored expression of their opinions. Eshkevari himself stops short of describing the institutions that should comprise an Islamic government; he says that this would stray outside the scope of his discussion.^{dcxxix} His purpose, simply, is to argue, like Khomeini, that Islam is relevant to politics, that the traditional Islamic sources must be mined for insight on social and political questions beleaguering contemporary society. Significantly, he does not hold that the sacred texts of Islam should be approached hermeneutically, and that the sacred will always, therefore, be infused with the human. There is an “ideological essence and mission” of religion that has existed since it was first revealed and must be re-discovered, its tenets reapplied to contemporary society and used to critique it.^{dcxxx} Still, members of a given society are in no way compelled to endeavor to rediscover this ideology and to build a government and civil society that serves its tenets. If the people choose not to be attentive to Islamic values, and to pay no heed to the authoritative sources of Islam, they have every right to do so.

Islamic values are perennial, but Islamic law is not, and the law may be modified if it does not promote Islamic ideology and justice. While two fundamental aspects of religion are worldview and ideology, a third is “practical rulings, which are based on ideals, principles, and ideological values, [and] concern the [appropriate] religious conduct for attaining the ideals.”^{dcxxxi} In Eshkevari’s view, practical rulings must further Islamic ideals—just as the practical ruling that obligates a believer to perform daily prayer is meant to promote an ideological orientation toward the worship and praise of a single omnipotent God, he says, an orientation which in turn stems from the “monotheistic worldview” and Islamic vision of the “human-God relationship.”^{dcxxxii} Practical rulings, in other words, must promote an ideology rooted in Islamic principles—an ideology that Shari’ati called the “spirit” of religion. This may be compared to Khomeini’s opinion that the letter of the law must always conform to and promote the spirit of the law.

Like Khomeini indicated when he said that parliament could formulate law that suspended the *shari’a* when the letter of the law contradicted its spirit in light of current economic, social, and political concerns that the *shari’a* was simply not written to address, Eshkevari, too, has a progressive view of Islamic religious doctrine. In a session at the Berlin conference, Eshkevari delivered a presentation on a panel entitled “Women’s Rights and the Women’s Movement,” and in this presentation he explains how—in law related to women’s issues—legal ordinances may need to be reformed. While the worldview and ideological values of Islam “cannot be relativized,”^{dcxxxiii} some practical rulings of Islam may change, he says. Practical rulings are divided into two categories: first, rulings related to worship, such as rulings that command prayer, fasting, or pilgrimage; and second, social rulings. Rulings related to worship do not change because they continue to have the same spiritual and moral effects on the

individual in all times and places; however, social rulings must be tailored to the features of individual societies.^{dcxxxiv}

Here, Eshkevari presents a term that Khomeini had used in his post-revolutionary speeches in debates over the reform of urban and agrarian property law in 1981: the “subject-matter” (*mozu*) of the law, which refers to the set of circumstances that the law addresses.^{dcxxxv} The law may change, Eshkevari says, when its subject matter changes. This principle is not his own, he says; the prominent scholar Morteza Motahhari made the point, in his book *Foundation of Islamic Economics*, that since capitalism is a particularly modern economic system, Islamic laws that address economic questions must be revised to take into account this new economic reality.^{dcxxxvi} The principle that law must be tailored to its subject matter has an array of implications for law related to women, but the issue he mentions particularly and spends a short amount of time discussing is the issue of hijab, the Islamic code of dress, as it relates to women. What the hijab entails, he says, is a matter of custom.^{dcxxxvii} While in one society it may be immodest to reveal one part of the body, such as the hair, in another it may not, and thus whether or not the hair needs to be covered depends on the society in which one lives. The social ruling changes based on the subject of the social ruling—the women of X society, living with X, Y, and Z cultural beliefs about the sexual attraction of various parts of the body. The way in which the social ruling changes is governed not only by changes in the subject matter but attention to the value that gave rise to the social ruling in the first place—in this case, maintaining a modest physical appearance.

A second argument that Eshkevari raises for the mutability of social rulings is that the Prophet, when he first acquired political authority (after his immigration from Mecca to Medina) “endorsed or approved” nearly 99% of the laws that existed at the time, so not as to very dramatically upset the existing social order and instead introduce more gradual change. Many of the laws that he endorsed addressed women’s issues. This means that Muslims today are not obligated to retain these laws and, in fact, in many cases, are obligated to reform them to better suit the needs of their own society. Many laws that are considered to be part of the *shari’a* today “were never meant to be eternal; they were to resolve the Prophet’s difficulties at that time and in that place.”^{dcxxxviii} While Islamic principles are eternal and revealed, much of Islamic law is neither eternal nor revealed.

Because Islamic government should not simply implement Islamic law but must be involved in modifying the law based on moral principles and empirical features of society, jurists, in Eshkevari’s view, should not have sovereign authority or exclusive control of government. In a series of interviews, under the title “The Seminaries and Government,” published in 1999 in the three consecutive issues of the newspaper *Nehsat*, Eshkevari says that a religion government should not be a *fiqhi* government—a government that functions within the confines of Islamic jurisprudence (*fiqh*)—but instead a government “that is managed in accordance with a series of values and broad directives that are rooted in religion.”^{dcxxxix} This means that government must not simply be exercised by experts in Islamic law but must include others who have the capacity to contribute to lawmaking by helping to theorize moral principles,

articulate the connections (or lack thereof) between moral principles and legal ordinances, and comprehend and explain features of society that must not go unnoticed by the law or the nature of social problems that the law must address. In fact, he says, Khomeini himself believed, at one point, that jurisprudents would not have a central role in government, and he wanted to put a first draft of the constitution to referendum, a draft that did not give jurisprudents the powerful role that they were assigned in the revision of that first draft by the Assembly of Experts (discussed in the previous chapter), though later, Eshkevari says, “for whatever reason, Khomeini himself accepted the phenomenon of clerical government.”^{dexl} Eshkevari does not make an argument for the precise role clerics are to exercise in government, but it is clear that he is critical of the current arrangement, as well as the arrangement that Khomeini himself eventually accepted.

How may Eshkevari’s theory be considered at all similar to or derived from Khomeini’s, if he holds that democracy is the ideal and religiously prescribed form of government, and he does not insist that jurisprudents have a role in government? While Eshkevari believes jurisprudents should have a less powerful role in government than they are given by the current constitution, he does not reject their having any role. “Even if we believe that in the ‘Era of Absence’ the *fuqaha* are general deputies of the ‘Imam of the Time,’ and that the right to govern belongs to this group, still it is the people’s choice and will that create political power and actualize it in practice....the legitimacy and acceptability of the government and the rulers comes from their election by the people, from nowhere else.”^{dexli} Citizens must decide the role that jurisprudents must play in government. Furthermore, for government to be democratic, the voting public, and not jurisprudents, must have sovereign authority—a position he holds without naming and critiquing particular institutions in contemporary government. Jurisprudents may be involved in government, but ultimately they must not have sovereign political authority. Even the Prophet did not have sovereign political authority, he says; “throughout the ten years [of the Prophet’s rule], the tradition of consultation and seeking people’s views continued; and people’s agreement was taken into account at least in important matters....For this reason too, in social and political matters, people often rose in opposition to the Prophet, and this tradition also existed in the era of Imam Ali; and no one at that time considered such opposition as irreligiosity or weakness of belief.”^{dexlii} If the Prophet’s followers could contest the Prophet’s political decisions, he seems to imply, a Prophet who was infallible and was the recipient of divine revelation,^{dexliii} why can’t members of parliament contest and override the decisions of the fallible and non-prophetic members of the Guardian Council?

Moreover, Eshkevari says that the opinions of the citizenry with regards to the form of government should not be asked only once—at the time of the constitutional drafting—and then becomes unimportant. If the people had originally agreed to setting up an Islamic government, and a government that gave authority to jurisprudents, this does not mean that they cannot later change their minds. The Prophet constantly sought—and heeded—the opinions of his followers. The principle of “consultation” by political leaders with the people, derived from the Quran (Chapter Shura, Verse 38, and Chapter Al-‘Imran, Verse 159), “begins with the establishment of the election of statesmen, extends to how the rulers should organize and take decisions, and how

their work should be supervised, and ends eventually with [how] to dismiss rulers, and if necessary to change the political system.”^{dexliv}

Since the popular masses must have sovereign political power, they must have knowledge of the teachings of their religion. In his autobiography, Eshkevari says that after serving on the first parliament, he gave up politics and, he says, “devoted myself to academic, intellectual, and cultural activities. This was because after the revolution I came to realize that, as [Ali] Shari’ati puts it, ‘Any revolution before awareness is a tragedy’; and I saw that the basic problem in the post-revolutionary crisis was theoretical weakness and intellectual maturity.”^{dexlv} Still, an elite class of people—the intellectuals—have an important role to play in guiding ordinary people in their intellectual development which, in turn, is linked to their “awareness” and “self-consciousness.”^{dexlvi} While Javadi Amoli believes that ordinary citizens have little role to play in what is perhaps the most important and consequential political issue—the selection, overseeing, and dismissal of the guardian—and that casting judgment on the guardian’s behavior and opinions must primarily be left up to experts in law and politics, Eshkevari considers it vital that the masses develop an enlightened view of religion. This position seems to flow naturally from his belief in democratic principles and his desire to see government serve religious principles, but by the will of the popular masses, who must, necessarily, understand these principles. In his second Berlin conference paper presentation, entitled “Reformist Islam and Modern Society,” he says that while some reformists are inclined to privatize Islam, a second group of reformists—which includes himself—wishes to see Islam become the basis of a social movement that promotes political and social reform that is grounded in Islamic principles and implemented through democratic institutions.^{dexlvii}

Conclusion

In this chapter, I have presented a rather brief discussion of the thought of two seminal thinkers in contemporary Iran. Both of their writings deserve more extensive study than what has been done here. The purpose of this chapter has not only been to explore and evaluate the thought of these two particular thinkers, but to demonstrate how Khomeini’s theory has been elaborated in two dramatically different ways by reformist and conservative thinkers in contemporary Iran. I have chosen these two thinkers in particular because their thought is typical of reformist and conservative thought in contemporary Iran, insofar as they take positions similar to other reformists and conservatives on issues including the significance of popular consent, the theoretical and institutional authority of jurists in government, the authority of citizens, the qualifications of ordinary citizens to participate in politics and government, and the malleability of Islamic law.

Javadi Amoli, a conservative scholar and cleric, enhances the role of jurists in government by arguing that neither the guardian nor the clerics on the Assembly of Experts should be considered, in any way, representatives of citizens. To be a guardian of, as distinguished from a representative of, the people, the guardian cannot have been selected by the people themselves, or their representatives on the Assembly of Experts, since those who need

protection and guidance by a guardian cannot know who should protect and guide them. Instead, God works through the Assembly of Experts to appoint the true guardian. Likewise, if and when the Assembly decides to dismiss the guardian, this, again, is a divine act, for Javadi Amoli, and not simply a potentially mistaken choice made by members of the Assembly. Though Javadi Amoli recognizes briefly that the Assembly may make a mistake in their decision to appoint or dismiss the guardian, this is contradicted by his depiction of Assembly deliberations as mechanical and almost sure to result in the realization of the divine will. Khomeini never makes an equivalent argument, portraying the Assembly of Experts as a body of representatives, put in office by the will of the people, who make human decisions. However, in his post-revolutionary statements (though not in *Islamic Government*) Khomeini shares Javadi Amoli's conception of the guardian as a figure who has such an exalted spiritual status that he may not sin when he is in office. In speaking of the guardian's near-infallibility, Javadi Amoli further augments the political power of the jurispudent.

While Javadi Amoli envisions greater political power for the jurispudent, he envisions less for citizens. Experts in the law and in politics, he says, are more qualified to criticize the guardian while he is in office, though ordinary citizens are not to be prevented from doing so. Still, both expert and lay citizens have equal say in the election of members of the Assembly of Experts, which oversees the guardian, and in this way Javadi Amoli's theoretical conception of the political prerogatives of citizens with various levels of knowledge is not served by the political institutions that are, in other ways, integral to his argument.

Though the opinions of ordinary citizens are important insofar as Islamic government may not be imposed on an unwilling public, popular consent cannot be the basis of political legitimacy. Consent is a prerequisite for the exercise of legitimate political authority, since God would never allow an Islamic government to be imposed upon human society, and it is only when humans desire to be governed by an Islamic government that God will grant them that blessing. In the particular world of causes and effects that God has designed, people must desire to be governed justly in order for just government to be established. Popular consent thus gives Islamic government power but not legitimacy, since an Islamic government is legitimate even before the people consented to be governed by it. Furthermore, a non-Islamic government that nonetheless governs by the consent of its citizens cannot be legitimate.

While Javadi Amoli envisions a more significant role for jurispudents in government than ordinary citizens, and holds that popular consent cannot be the basis of political legitimacy, Eshkevari puts ordinary citizens and the popular masses in the political spotlight. Islam is democratic because its theological tenets respect human free will, and the prophets and imams never imposed their will on their followers, even as political leaders. Ideally, in Eshkevari's view, citizens will choose democratically to govern according to an Islamic ideology, a political and social ideology rooted in Islamic principles and extracted from authoritative religious texts. While citizens strive to articulate Islamic solutions to social and political problems, no one can claim to represent God's opinion, and jurispudents have no more power than lay citizens in the institutions of government. Decisions must be made by majority rule. In arguing for democratic

principles, Eshkevari invokes Khomeini, who, at times, said he believed that an Islamic government was, in essence, democratic.

Eshkevari is like other reformists in holding that religious law is significantly malleable, and new law may be deduced from principles of the law. While this position is not unique to reformists, unlike conservatives, reformists tend to emphasize the importance of reason in formulating principles of the law. Eshkevari says that practical rulings of the law must promote religious ideology, which is discerned through our rational interpretation and reapplication of religious principles articulated in authoritative religious texts. Like other reformists, and like Khomeini in his post-revolutionary speeches, Eshkevari emphasizes that due attention must be made to the subject matter (*mozu* ') of the law, so that the law is responsive to changed realities. A fact often disregarded by conservatives, Eshkevari says, is that much of Islamic law originates in the law of 7th century Medina, since the Prophet adopted many of the conventions of his time; this law needs need to be discarded or rewritten if it is to adequately address questions in contemporary society.

In Eshkevari's view, when Islamic law is malleable, sensitive to context and at the same to religious principles we discern through our reason, when citizens are never obligated to implement Islamic law or govern according to Islamic principles, when sovereign political authority is in the hands of ordinary citizens and not jurists in government, then a democratic, and therefore Islamic, government will finally have been created. Khomeini never gave parliament sovereign authority in government—though there were moments when he seemed to side more with parliament than with the Guardian Council—but Eshkevari emphatically gives the popular will a sovereign position (though he stops short of recommending institutions that are to comprise a democratic government). While Eshkevari is more of a democrat than Khomeini, Khomeini is more of a democrat than Javadi Amoli, who, unlike Khomeini in his post-revolutionary speeches and *The Unveiling of Secrets*, says that popular consent has only theological, and not moral, significance, and unlike Khomeini in his post-revolutionary speeches, says that the Assembly of Experts does not represent the people and ordinary citizens are less qualified to criticize the guardian.

Though these two scholars, with their drastically different theories, never explicitly take issue with Khomeini's theory, neither of their theories are wholly compatible with Khomeini's ideas. Elements of each of their theories are in tension with Khomeini's. While on the one hand, it may be thought that they do not explicitly take issue with Khomeini because of state censorship, or because of Khomeini's continued intellectual authority in Iran, it may be that they don't take issue with Khomeini because there is no need. Khomeini's writings contain conflicting and ambiguous ideas. They are conflicting because, on the one hand, he defends democratic principles, and on the other, he defends (and even proposes) governmental institutions set up after the Revolution in 1979 that are undemocratic, and he also envisions the jurist to have a powerful role in government. Much of the ambiguity in his theory after the Revolution stems from his defense of institutions without fully explaining the theoretical principles that motivated the creation of these institutions.

Each scholar described here draws on and elaborates conflicting aspects of Khomeini's theory and endeavors to fill in ambiguity. If Khomeini contradicts himself, these scholars, too, both agree with and contradict Khomeini. For example, when Javadi Amoli says that experts in Islamic law and politics are more qualified to criticize the guardian, he perhaps extrapolates this position from Khomeini's endorsement of the Assembly of Experts, which is an elite group of people who have the power to select and dismiss the guardian, or perhaps more generally from Khomeini's belief in the important role that experts play in politics, such as on the Guardian Council, which may veto parliamentary law. Perhaps only the elite, and not the public at large, in Khomeini's view, had the true ability to discern whether the guardian continued to have the jurisprudential skills, religious knowledge, and ethical character required to hold his post. In arguing that experts had more of a right to criticize the guardian, he skims over some of Khomeini's post-revolutionary statements, in which Khomeini encourages all citizens to take part in overseeing and criticizing the guardian (see Chapter 5), and more generally does not address those moments in which Khomeini gives Islamic experts and non-experts an equal role in political institutions and processes, including when he stated that even religious minorities could participate in the Assembly of Experts and when he invited all citizens to participate in the referendum on the Islamic constitution.

Eshkevari also invokes some aspects of Khomeini's thought but not others. He brings to the forefront Khomeini's democratic views, including his post-revolutionary statements on the democratic nature of Islamic government. Khomeini had emphasized from the beginning of the constitutional drafting that this would be a constitution that would have to be accepted by the people if it was to be considered legitimate, and he strongly urged citizens to participate in elections for the Assembly of Experts and to be critical of their governors, including the guardian. At times, he even took sides with parliament in its dispute with the Guardian Council, and Eshkevari reminds us of Khomeini's endorsement of the draft constitution, which did not include a guardian and prescribed a weak Guardian Council. Eshkevari sides with Khomeini in his more democratic moments, arguing for popular sovereignty and tempering the role of experts in government. In doing so, he conflicts with Khomeini in his undemocratic moments, when Khomeini says that expert bodies in government, such as the Guardian Council or the Council for Determining the Interest of the Governing System, may overrule democratic institutions. My study of Khomeini's political thought, as well as contemporary thinkers in modern Iran, reveals that his writings are not determinative of a particular range of politics. Scholars with vastly different and conflicting views and political actors from opposite ends of the political spectrum both claim to offer theories of government that are supported by or at least are compatible with Khomeini's writings.

Insofar as these scholars and actors move away from Khomeini, elaborating concepts that he never or only superficially addressed—such as Javadi Amoli's elaboration of the theological significance of popular support of government, or Eshkevari's Shari'ati-influenced notion of Islamic political ideology—Khomeini's thought becomes marginal to a study of contemporary Iranian thought. However, since Khomeini's writings are often invoked by contemporary

scholars and political figures, and since, even when he isn't explicitly addressed, ideas that parallel his own reappear in the writings of contemporary scholars and political actors, it is important to include his thought in any study of contemporary Iranian political thought and politics. When his name is explicitly invoked as part of a conservative or reformist argument, scholars familiar with Khomeini may challenge or defend these interpretations of Khomeini, perhaps by citing other elements of his thought that support conflicting principles.

When his name is not explicitly invoked by contemporary scholars and actors but when ideas that overlap with his own appear in contemporary scholarship, the Khomeini scholar may engage with these writers by invoking and even elaborating elements of Khomeini's thought that support or challenge those ideas. As one of the most prominent theorists of Islamic government in the last century, Khomeini's writings, though not always coherent, contain building blocks for the elaboration of new and more refined theories of Islamic government. Khomeini remains an influential and important scholar of Islamic political thought who reintroduced and reinterpreted centuries-old ideas on Islamic government, and he took a central role in implementing a theory of Islamic government. For years, he was immersed in an intellectual study of Islamic government, and he also grappled with defining and interpreting the functions of the institutions of Islamic government in contemporary Iran. For scholars who seek to engage theoretically with the idea of Islamic government, as well as, more concretely, with the institutions of government in contemporary Iran, Khomeini's writings are an obvious source of concepts and arguments that can be marshalled, reinterpreted, and developed in their own writings on Islamic government. At the very least, his extensive and complex writings may be a source of theoretical inspiration for novel ideas.

Conclusion

This study of Khomeini's political works has been an exercise of cross-cultural political theory, or what is commonly today referred to as comparative political theory. As I have argued in Chapter 1, cross-cultural political theory must necessarily involve a study of the traditions of thought that served as the sources of concepts, principles, and arguments adopted, reinterpreted, or developed by the author we study. This study of the intellectual history must be undertaken in a study of any author, Western or non-Western (to draw the distinction crudely). Influenced by Fred Dallmayr, one of the first political theorists (at least in the modern political science sub-discipline) interested in exploring the non-West and theorizing the cross-cultural encounter in political theory, theorists of dialogue hope to avoid misunderstanding a culturally unfamiliar author—which sometimes results from reading our own concepts into their writings—by positing that cross-cultural political theorists should engage in dialogue with the cultural Other, allowing the Other to resist incorrect attributions of meaning, respond to positions he may disagree with, and remain, at least to a certain degree, always incomprehensible or different. Like the theorist of dialogue, I have been motivated, in this study, by the ideal of cross-cultural understanding, but I have sought to show that historical study can help to illuminate even the most foreign of worldviews, dismantling barriers that the theorist of dialogue claims must forever obstruct cross-cultural understanding and agreement. Unlike the positivist, I argue that the cultural Other must be understood as an intellectual being, influenced by though not compelled to think in a certain way by social structures or psychological propensities, learning from and molding ideas she encounters in traditions of thought that are native to her world.

In Khomeini's case, I have argued that there are three primary traditions of thought that he drew from in his political writings, and one tradition that was only marginally a source of ideas for him. These three primary influences are the Usuli legal tradition, the Shi'a jurisprudential tradition of political theory, and the Islamic constitutionalist tradition. There is evidence of all these traditions in Khomeini's writings, and a study of Khomeini's training and education indicates that he studied these traditions as a seminary student. The Islamic mystical-philosophical tradition, while of deep intellectual interest to Khomeini, had only marginal influence on Khomeini's political thought, contrary to widespread depictions of his thought in the secondary literature. Khomeini's guardian is not Plato's guardian, nor is he the Islamic mystic Khomeini speaks of in his mystical writings, such as in the *Lamp of Guidance*. Khomeini's guardian is a jurist, and as such he has expertise in the field of law, and not in the many other varieties of knowledge, religious and secular—ethics, philosophy, mysticism, sociology, medicine, economics, urban planning—that are relevant to government and politics. It is up to those who hold these other varieties of knowledge to participate in government and politics, so that government may benefit from non-jurisprudential knowledge. Though Khomeini does adopt one theme of the Islamic mystical-philosophical tradition—that the guardian must provide the public with spiritual and ethical guidance—he acknowledges the guardian does not provide this guidance as a philosopher or mystic, and he emphasizes that the guardian's primary

role is not spiritual or ethical but instead to ensure that government does not violate the strictures of Islamic law.

Only with an understanding of traditions of thought that significantly influenced Khomeini can we accurately understand and analyze the theoretical contours of Khomeini's political writings and can we avoid hasty characterizations of Khomeini's more ambiguous writings. *Islamic Government*, by far the most commonly read of Khomeini's political writings, is often misinterpreted to oppose constitutionalist principles. I have argued that in this work, perhaps because he spoke to an audience of seminary students, Khomeini focuses on describing the political prerogatives of the jurispudent instead of the political prerogatives of ordinary citizens. This latter topic he would explore in greater depth after the Revolution, and he had explored it much earlier, in *The Unveiling of Secrets*. Though he does not make a case for constitutionalist principles in *Islamic Government*—principles that would justify the granting of political prerogatives to ordinary citizens—he does not openly oppose these principles, and in fact some of his statements open up the space for these principles.

With the knowledge that Khomeini was influenced by the Usuli tradition, the Islamic constitutionalist tradition, and the Shi'a jurisprudential tradition of political theory, we are much less likely to misunderstand *Islamic Government*, as much of the existing secondary literature has done, to call for absolute political power to be granted to the jurispudent. For example, when Khomeini says that Islamic government features a planning body, and not a legislative body, we do not prematurely conclude that Khomeini opposed parliamentary government, and we may instead consider the idea that Khomeini uses the word "planning" to draw a distinction between legislating without attention to Islamic principles or law and legislating within the boundaries of the written law or principles sanctioned by the *shari'a*; this latter activity Khomeini calls "planning," and it is an activity based upon tenets of the Usuli legal tradition, which prescribes the derivation of new law based on its principles. With knowledge of the influence of the Usuli legal school on Khomeini, we comprehend that Islamic law cannot simply be administered by a planning body, but it must be supplemented and reapplied in new contexts based on its principles through a process called *ijtihad*. Law derived through *ijtihad*, in Usuli thought, is always contestable and perhaps may be debated in the halls of a parliament. In addition, with knowledge of the influence of the Islamic constitutionalist tradition on Khomeini's thought (and having done a study of Khomeini's early work, *The Unveiling of Secrets*), we would find it less likely that Khomeini's planning body bore no similarity to the parliament that Islamic constitutionalist scholars believed was a necessary part of an Islamic government. Still, there is no conclusive evidence in *Islamic Government* that Khomeini believed that members of the planning body were elected by citizens or that it was no different from a parliament.

The influence of the Shi'a jurisprudential tradition of political theory on Khomeini's thought, unlike the influence of the Islamic constitutionalist tradition and the Usuli legal tradition, may be more easily discerned *Islamic Government*, since here Khomeini calls for the jurispudent to exercise a role in government. It is in *The Unveiling of Secrets*, which he wrote in 1943, that we find conclusive evidence that Khomeini was an Islamic constitutionalist. In

criticizing the dysfunctional and corrupt political system then in existence, Khomeini reveals that he values principles such as the faithful representation of citizens' desires by parliamentary representatives and, more broadly, the need for a government to have acquired the consent of the citizenry. As both an Islamic constitutionalist and an Usuli jurist, Khomeini says that the *shari'a* may be supplemented by law that serves principles, such as national well-being and progress, that underlie the *shari'a*. Khomeini blends principles of the two traditions—the constitutionalist support for parliamentarianism and the Usuli notion that law must serve its principles—to argue that parliamentary representatives can participate in the development and supplementation of Islamic law by drafting law in a parliament that serves broader principles of the divine law. Having studied the Islamic constitutionalist and Usuli legal tradition, we may better understand what Khomeini is doing when he says that parliament may draft law that does not contradict the *shari'a* but instead supplements it to promote national well-being and progress. Though he does not state it explicitly, we can presume that when Khomeini says that this law must promote national well-being and progress, he means that these are principles that underlie the *shari'a* and are themselves served by the *shari'a*. This means that any law written by parliament to supplement the *shari'a* also, in fact, serves and elaborates the *shari'a*. Citizens elect representatives, in other words, to engage in the highly important and religiously significant task of passing law that promotes—and in doing so, further clarifies—their view of Islamic principles. Studying Khomeini's writings with knowledge of the traditions that have influenced him helps us not only to suggest likely interpretations of his writings but also to elaborate the theoretical implications of his expressed ideas.

After the Revolution, Khomeini reiterates many of the constitutionalist principles he describes in *The Unveiling of Secrets*, indicating that perhaps—since he had expressed support for these principles nearly 50 years before, and since he is a scholar of the Islamic constitutionalist tradition—that his reiteration of these principles was not insincere and done for the sake of political expediency. He states in 1979, just after the Revolution, that an Islamic republic can only be legitimate with popular backing, and he encourages ordinary citizens to be open about their opinions on the constitution as it was being drafted by the Assembly of Experts, a body elected by the citizenry. The precise form of Islamic government is thus a product of the popular will, and even after the constitution was ratified in the national referendum, Khomeini encourages citizens to participate in elections for the parliament and the Assembly of Experts. Significantly, he encourages non-Muslims to consider running for office in the Assembly of Experts, indicating that he believes that both Muslims and non-Muslims have the capacity to assess the guardian's ethical qualities and knowledge of the law. The identity of the guardian, one of the most powerful figures in an Islamic government, is determined and shaped by Muslims and non-Muslims alike.

In his post-revolutionary writings, Khomeini also draws upon Usuli themes in a way that augments the power of parliament and increases the flexibility of the *shari'a* law. In *The Unveiling of Secrets* and *Islamic Government*, he had not interpreted Usuli thought in this way. In particular, he now says that not only may principles of the *shari'a* serve as the basis for law

that supplements the *shari'a*, but this law may suspend the written ordinances of the *shari'a*. “Secondary ordinances” of the law may be passed by parliament to suspend “primary ordinances.” These secondary ordinances are responsive to *urf*—conditions, practices, states of knowledge in contemporary society to which the law must be responsive—and experts in various dimensions of *urf* can thus weigh in on the drafting of legislation that suspends God’s law. In theorizing the need for secondary ordinances, Khomeini augments the power of the parliament because parliament, as the sole legislative body in government, must draft these ordinances. Ultimately, however, Khomeini gave sovereign authority to determine the need for and the content of these secondary ordinances to the Council for Determining the Interest of the Governing System. A close study of Khomeini’s post-revolutionary statements reveals, however, that Khomeini, on several occasions, indicated that parliament, a body whose members could reflect on the ethical principles of the law and had access to expertise—or were experts themselves—in the conditions to which the law must be responsive, was qualified to have the final word on the need for secondary ordinances.

In his lifetime, Khomeini did not ultimately provide a theoretically clear justification of why the Council for Determining the Interest of the Governing System, and not parliament, had the authority to overrule both the Guardian Council and the parliament in decisions concerning secondary ordinances. Perhaps in part because of Khomeini’s ambiguous treatment of this topic, the concept of secondary ordinances of the law and the malleability of the social ordinances of the *shari'a* has inspired debate in contemporary Iran. Researchers, both Iranian and non-Iranian, Muslim and non-Muslim, who have interest studying how the concept of secondary ordinances of the *shari'a* bears on the nature of Islamic government, and in particular, the possibility for Islamic government to serve democratic principles, will find Khomeini’s writings to be useful, both in helping to clarify the concept and as a source of arguments for why parliament may or may not have authority to draft or have sovereign authority to pass secondary ordinances of the law.

Even beyond the issue of secondary ordinances, Khomeini’s writings are rich with discussions of other political concepts, many of which I have discussed in this study. Contemporary scholars in Iran, seeking to advance vastly different ideas of Islamic government, often invoke Khomeini’s writings as support for their ideas. If scholars outside of Iran seek to engage with Iranian scholars on political questions—an exchange that cannot be fully inhibited by animosity between governments—it would behoove them to understand Khomeini’s writings, since Khomeini continues to be very present in the writings of contemporary scholars. Studying Khomeini’s writings is especially important because they are ambiguous and inconsistent, and scholars with knowledge of where and how his writings are inconsistent can contest simplistic or inaccurate depictions of Khomeini’s thought.

More generally, researchers who are interested in clarifying Islamic political concepts and comparing them with political concepts that have been articulated in other traditions, or, in broader terms, are interested in theorizing the institutions of an Islamic government, may turn to Khomeini’s writings. Khomeini’s writings may help them to ask and answer questions such as: If

we are to include an Assembly of Experts in an Islamic government, which oversees the jurisprudent, how do we theorize the presence of non-Muslims in this body—a point that Khomeini made rather quickly, without explaining how representatives from diverse religious backgrounds may work together to oversee the guardian? What do we make of Khomeini's analogy between government without consent and theft? Can the reprehensibility of political tyranny, in the Islamic view, be justified and described in different ways? What can we learn from Khomeini's writings about the Islamic concept of political representation? Khomeini's writings contain the material out of which we may develop Islamic political theory and also provoke us to the ask questions that spark this development.

In short, this study has aimed to illuminate the thought of one of the most prominent Islamic activists and thinkers in the 20th century, not only so that we may engage with contemporary scholars who are influenced by his ideas—or contemporary scholars who live in a society in which political institutions were designed based, at least in part, on his ideas—but also so that we may be in a better position to contribute to discussions on Islamic government ourselves, having studied a theorist who made it his life's work to examine the relationship between Islam and politics. It would not be an exaggeration to say that at the end of his life, Khomeini could not provide a full answer when asked “what is an Islamic government,” and it is up to contemporary scholars to continue the discussion he inaugurated. Before we can engage with scholars who are influenced by Khomeini's views, and before we can use his writings as resources for our own scholarship, we must first be sure that we do not misunderstand Khomeini. In this study, I have shown that much of the secondary literature mischaracterizes Khomeini's thought, and this has been a significant impediment to conceiving of his writings as a resource for Islamic political theory and imagining that we might engage in dialogue with those who consider themselves students or followers of Khomeini.

In this study, I have demonstrated how we can understand Khomeini's theory best not by talking about his theory in terms that were not familiar to him, but by studying traditions of thought that served as theoretical resources for him. However, the aim of my research goes beyond clarifying Khomeini's thought and his intellectual heritage. My research has been an exercise in trying to understand the cultural Other. I have shown, in my research on Khomeini, that we can come a long way toward understanding the cultural Other by immersing ourselves in an unfamiliar intellectual world, studying the traditions of thought that inform the thinking of the person we study, instead of fruitlessly asking the cultural other to speak to us in our language.

ⁱ Often called the “father of comparative political theory,” the political theorist Fred Dallmayr was central in encouraging studies of non-canonical political thinkers, writing prolifically on Indian, Islamic, and Confucian political thought beginning in the early 1990s.

ⁱⁱ This approach is inspired by, though does not defend, Mark Bevir's historicist approach as he outlines it in his book *The Logic of the History of Ideas* (Cambridge: Cambridge University Press, 1999), 203).

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- ⁱⁱⁱ Andrew March, “What is Comparative Political Theory?” *The Review of Politics* 71 (2009): 536.
- ^{iv} See Andrew March, “What is Comparative Political Theory?” and Diego von Vacano, “The Scope of Comparative Political Theory,” *Annual Review of Political Science* 18 (2015): 18.1-18.16.
- ^v von Vacano, “The Scope of Comparative Political Theory,” 18.4-18.7.
- ^{vi} These are listed in brief in March, “What is Comparative Political Theory,” 538.
- ^{vii} von Vacano, “The Scope of Comparative Political Theory,” 18.7-18.10.
- ^{viii} Roxanne Euben, *Enemy in the Mirror*, (Princeton: Princeton University Press, 1999), 36-37.
- ^{ix} Thomas McCarthy, *The Critical Theory of Jurgen Habermas*, 175, as cited in Euben, *Enemy in the Mirror*, 36.
- ^x Fred Dallmayr, “Beyond Monologue: For a Comparative Political Theory,” *Perspectives on Politics* 2 (2002): 251-252.
- ^{xi} Dallmayr, “Beyond Monologue,” 252.
- ^{xii} Fred Dallmayr, “Introduction,” in *Beyond Orientalism: Essays on Cross-Cultural Encounter*, edited by Fred Dallmayr (Albany: State University of New York Press, 1996), ix.
- ^{xiii} Dallmayr, “Beyond Monologue,” 254.
- ^{xiv} Dallmayr, “Introduction,” xi.
- ^{xv} Hans Georg Gadamer, *Truth and Method*, trans. Joel Weinsheimer & Donald G. Marshall (New York: Continuum, 2004), 301-382.
- ^{xvi} Dallmayr, “Introduction,” xii.
- ^{xvii} Fred Dallmayr, “Conversation Across Boundaries: Political Theory and Global Diversity,” *Millennium – Journal of International Studies* 30 (2001), 341
- ^{xviii} Fred Dallmayr, *Integral Pluralism: Beyond Culture Wars* (Lexington: The University Press of Kentucky, 2010), 108.
- ^{xix} Leigh Jenco has written extensively on the tendency of political theorists who emphasize the importance of understanding culturally-unfamiliar political thought in their localized contexts to treat culturally-unfamiliar authors less seriously, insofar as these authors are viewed as subsumed by their own local concerns—just as we are subsumed by our own concerns—and therefore incapable of “disciplining” our thought. In her most recent article, she argues that political theorists should imagine culturally-unfamiliar authors as part of the history of a tradition of thought native to their own intellectual world, engaging with these authors as they engage with the historical giants of political theory (“Histories of Thought and Comparative Political Theory: The Curious Thesis of ‘Chinese Origins for Western Knowledge,’ 1860–1895,” *Political Theory* 42 (2014): 658-681.). Political theorists should not simply “construct a third space of dialogue (for cultural ‘others’), but take seriously their claims for wider-than-local significance.” I add to Jenco’s argument by emphasizing that it is crucial for a scholar to immerse herself in a historical study of foreign traditions of thought in order to engage with the tradition in a way that Jenco recommends is necessary, a way that could potentially alter her own questions, commitments, and categories (“Recentring Political Theory: The Promise of Mobile Locality,” *Cultural Critique* 79 (2011): 27-59).

^{xx} Bevir, *Logic of the History of Ideas*, 204.

^{xxi} Farah Godrej, *Cosmopolitan Political Thought: Method, Practice Discipline* (Oxford: Oxford University Press, 2011), 53.

^{xxii} Godrej, *Cosmopolitan Political Thought*, 55.

^{xxiii} *ibid.*, 53.

^{xxiv} *ibid.*, 54.

^{xxv} *ibid.*, 62.

^{xxvi} *ibid.*, 65.

^{xxvii} *ibid.*, 17.

^{xxviii} *ibid.*, 92.

^{xxix} *ibid.*, 92.

^{xxx} *ibid.*, 94.

^{xxxi} *ibid.*

^{xxxii} *ibid.*, 93.

^{xxxiii} *ibid.*, 79.

^{xxxiv} *ibid.*, 80-81.

^{xxxv} *ibid.*, 83-85.

^{xxxvi} Bevir, *Logic of the History of Ideas*, 184-185.

^{xxxvii} *ibid.*, 185.

^{xxxviii} *ibid.*, 207.

^{xxxix} *ibid.*, 187.

^{xl} Michael Freeden and Andrew Vincent, "Introduction: The study of comparative political thought," in *Comparative Political Thought*, edited by Michael Freeden and Andrew Vincent (London: Routledge, 2013), 7.

^{xli} Contrary to what I have argued, however, Freeden and Vincent interpret theorists of dialogue to be optimistic about discovering overlap and agreement, while I have argued that these theorists maintain that there are limits to this agreement—but then it is not clear that we agree on who counts as a scholar of dialogue. Freeden and Vincent cite Leigh Jenco and Fred Dallmayr; though Dallmayr is certainly a theorist of dialogue, Jenco, as I will argue, holds that dialogue fixes scholars in positions opposite to and outside of, and forever alienated from, one another ("Recentering Political Theory").

^{xlii} Freeden and Vincent, "Introduction," 12.

xliii *ibid.*, 8.

xliv *ibid.*, 12.

xlv *ibid.*, 13.

xlvi *ibid.*, 19.

xlvii *ibid.*, 20.

xlviii *ibid.*, 8.

xlx Mark Bevir, "In Defence of Historicism," *Journal of the History of Philosophy* 6 (2012): 114.

¹ In addition to his works of justificatory political theory (like *Islam and Liberal Citizenship*), where March studies the Islamic legal tradition to find concepts and arguments that can be used in support of a liberal theory of justice, March also produces what he would call, by his own categorization of what counts as comparative political theory (in his article "What is Comparative Political Theory?") works of "scholarly" political theory, described below. In these works of scholarly political theory, he, at times, uses a comparative methodology to illuminate the writings of Islamic scholars, evaluating Seyyed Qutb's theory of Islamic law and politics by comparing it to the idea of a "realistic utopia" ("Taking People as They Are: Islam as a 'Realistic Utopia' in the Political Theory of Sayyid Qutb," *American Political Science Review* 104 (2010): 189-207), and comparing Allal Al-Fasi's concept of "natural religion" to the concept of "natural law" ("Naturalizing Sharī'a: Foundationalist Ambiguities in Modern Islamic Apologetics," *Islamic Law and Society* 22 (2015): 45-81). At other times, his works present genealogical histories and surveys and critiques of current perspectives on the Islamic concept of sovereignty, or more broadly, "politics and state" ("Political Islam: Theory," *Annual Review of Political Science* 18 (2015): 103-123).

li Andrew March, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus* (Oxford: Oxford University Press, 2009), 26.

lii March, *Islam and Liberal Citizenship*, 26-27.

liii *ibid.*, 90.

liv *ibid.*, 68.

lv *ibid.*, 29.

lvi *ibid.*, 103.

lvii *ibid.*, 61.

lviii *ibid.*, 238.

lix *ibid.*, 239.

lx *ibid.*, 239-240.

lxi *ibid.*, 240.

lxii *ibid.*, 241.

lxiii *ibid.*, 240.

lxiv *ibid.*, 241.

lxv *ibid.*

lxvi *ibid.*

lxvii *ibid.*, 68.

lxviii Diego von Vacano, *The Color of Citizenship: Race, Modernity and Latin American/Hispanic Political Thought* (Oxford: Oxford University Press, 2012), 16.

lxix von Vacano, *The Color of Citizenship*, 144.

lxx *ibid.*, 128.

lxxi *ibid.*, 113.

lxxii *ibid.*, 86.

lxxiii *ibid.*, 86-87.

lxxiv *ibid.*, 83.

lxxv *ibid.*, 56.

lxxvi *ibid.*, 19.

lxxvii *ibid.*, 37-38.

lxxviii *ibid.*, 113.

lxxix Hamid Dabashi, *Theology of Discontent: The Ideological Foundation of the Islamic Revolution in Iran* (New York: New York University Press, 1993), 41.

lxxx Vanessa Martin, "A Comparison between Khumaini's Government of the Jurist and the Commentary on Plato's Republic of Ibn Rushd," *Journal of Islamic Studies* 7 (1996): 18.

lxxxi Vanessa Martin, *Creating an Islamic State: Khomeini and the Making of a New Iran* (London: I.B. Tauris & Co Ltd, 2000), 40.

lxxxii Abbas Amanat. "From *ijtihad* to *wilayat-i faqih*: The Evolving of the Shi'ite Legal Authority to Political Power," *Logos* 2 (2003): 11. Vanessa Martin, both in *Creating an Islamic State* and in "A Comparison between Khumaini's Government of the Jurist and the Commentary on Plato's Republic of Ibn Rushd," argues that Khomeini's political leader has the spiritual and intellectual qualities of one who has achieved intimate knowledge of the divine. In the latter work, she says, "to Ibn Rushd and Khomeini, knowledge of both law and philosophy provided a special vision which gave the one who possessed it an outstanding ability to understand the needs of the community as a whole" (Martin, 26). In the former work, Martin states that Khomeini's *Islamic Government* falls within the Islamic tradition of Platonic utopias, and she says that '*irfan*, or mystic knowledge of the divine, "is important for understanding how Khomeini constructed himself as a leader...and his vision, particularly in terms of authority, of the relationship between the leader and the community" (Martin, 35-36).

^{lxxxiii} Hamid Enayat, "Iran: Khomeini's Concept of the 'Guardianship of the Jurisconsult,'" in *Islam in the Political Process*, edited by James Piscatori (New York: Cambridge University Press, 1983), 163.

^{lxxxiv} Said Amir Arjomand, *The Turban for the Crown* (New York: Oxford University Press, 1988), 149.

^{lxxxv} Gregory Rose, "Velayat-e faqih and the Recovery of Islamic Identity in the Thought of Ayatollah Khomeini," in *Religion and Politics in Iran: Shi'ism from Quietism to Revolution*, edited by Nikki R. Keddie (New Haven: Yale University Press, 1983), 187.

^{lxxxvi} Hamid Algar, *Imam Khomeini: A Short Biography*, *The Institute for Compilation and Publication of Imam Khomeini's Works*, accessed January 25, 2016, <http://www.al-islam.org/imambibliography/>, "Chapter 2: Childhood and Early Education."

^{lxxxvii} *ibid.*

^{lxxxviii} Alexander Knysh, "'Irfan Revisited: Khomeini and the Legacy of Islamic Mystical Philosophy,'" *Middle East Journal* 46 (1992): 633.

^{lxxxix} Algar, *A Short Biography*, "Chapter 2: Childhood and Early Education."

^{xc} Ja'afari jurisprudence refers to the school of jurisprudence established by Imam Ja'afar al-Sadiq, the sixth Imam.

^{xc} Algar, *A Short Biography*, "Chapter 2: Childhood and Early Education."

^{xcii} Algar, *A Short Biography*, "Chapter 3: The Years of Spiritual and Intellectual Formation in Qum, 1923-1962."

^{xciii} *ibid.*

^{xciv} "Haeri Yazdi, Ayatollah Abdulkarim," last modified 2013, <http://www.ijtihad.ir/ScholarDetailsen.aspx?itemid=396>

^{xcv} Algar, *A Short Biography*, "Chapter 3: The Years of Spiritual and Intellectual Formation in Qum, 1923-1962."

^{xcvi} Abdul-Hadi Ha'iri, *Shi'ism and Constitutionalism in Iran: A Study of the Role Played by the Persian Residents of Iraq in Iranian Politics* (Leiden: E.J. Brill, 1977), 6.

^{xcvii} Algar, *A Short Biography*, "Chapter 3: The Years of Spiritual and Intellectual Formation in Qum, 1923 to 1962."

^{xcviii} *ibid.*

^{xcix} *ibid.*

^c Philosophy based upon discursive reasoning as opposed to mystical experience.

^{ci} Philosophy founded in the works of Ibn Arabi, who had a mystical perspective on the individual's encounter with truth and transformation into the "perfect man."

^{cii} *ibid.*

^{ciii} Mirza Muhammad Ali Shahabadi, *Shadharat al-Ma'arif* (Tehran: *Setad-i Bozorgdasht-i Maqam-i 'Irfan va Shahadat*, 2003), 14.

^{civ} Hamid Algar, "The Fusion of the Gnostic and the Political in the Personality and Life of Imam Khomeini," *Al Tawhid* (2003), accessed January 25, 2016, <http://www.al-islam.org/al-tawhid/fusion.htm>.

^{cv} Algar, *A Short Biography*, "Chapter 3: The Years of Spiritual and Intellectual Formation in Qum, 1923-1962." In Algar's words, their relationship was like the relationship between a *murid* and *murshid*; in other words, between a spiritual guide and a seeker of truth.

^{cvi} Algar, "The Fusion of the Gnostic and the Political."

^{cvi} Ahmad Kazemi Moussavi, *Religious Authority in Shi'ite Islam: From the Office of Mufti to the Institution of Marja'*, (Kuala Lumpur: International Institute of Islamic Thought and Civilization, 1996), 7-31.

^{cvi} Etan Kohlberg, "Akbariya," *Encyclopedia Iranica*, accessed June 15, 2015, <http://www.iranicaonline.org/articles/akbariya>.

^{cix} Kazemi Moussavi, *Religious Authority*, 7-31.

^{cx} Hamid Mavani, *Religious Authority and Political Thought in Twelver Shi'ism: From Ali to Post-Khomeini* (London: Routledge, 2013), 12-13.

^{cx} Hamid Algar, *Religion and State in Iran, 1785-1906*, (Berkeley: University of California Press, 1969), 35.

^{cxii} Arjomand, *Turban for the Crown*, 13.

^{cxiii} Algar, *Religion and State*, 7.

^{cxiv} Liyakat Takim, "Ijtihad and the Derivation of New Jurisprudence in Contemporary Shi'ism: The Rulings of Ayatollah Bujnardi," in *Alternative Islamic Discourses and Religious Authority*, edited by Carool Kersten and Susanne Olsson (London: Routledge, 2016), 20.

^{cxv} Nikki R. Keddie, "Iranian Revolutions in Comparative Perspective," *The American Historical Review* 88 (1983), 582.

^{cxvi} Algar, *Religion and State*, 35.

^{cxvii} Those educated in the religious sciences.

^{cxviii} *ibid.*

^{cxix} Algar, *Religion and State*, 34.

^{cxix} Abdulaziz Sachedina, *The Just Ruler in Shi'ite Islam* (New York: Oxford University Press, 1988), 136.

^{cxxi} Wilfred Madelung, "Authority in Twelver Shi'ism in the Absence of the Imam," in *La notion d'autorite au Moyen Age: Islam, Byzance, Occident, Colloques internationaux de la Napoule 1978*, edited by George Makdisi and Dominique Sourdel (Paris: Presses Universitaires de France, 1982), 169.

^{cxix} Ruhollah Khomeini, *The Unveiling of Secrets* (n.d.), 44.

^{cxix} Martin, "A Comparison," 22-23.

^{cxxiv} Hossein Ziai, "The Source and Nature of Authority: A Study of al-Suhrawardi's Illuminationist Political Doctrine," in *The Political Aspects of Islamic Philosophy: Essays in Honor of Muhsin S. Mahdi*, edited by Charles E. Butterworth (Cambridge: Harvard University Press, 1992), 311.

^{cxxv} Martin, *Creating an Islamic State*, 35.

^{cxxvi} Ruhollah Khomeini, "Islamic Government," in *Islam and Revolution*, edited by Hamid Algar (Berkeley: Mizan Press, 1981), 36.

^{cxxvii} In Arabic, *al-mutakhayyil*.

^{cxxviii} Muhsin Mahdi, *Alfarabi and the Foundation of Islamic Political Philosophy* (Chicago: The University of Chicago Press, 2001), 135-136.

^{cxxix} Abu Nasr Farabi, *On the Perfect State*, trans. Richard Walzer (Chicago: Great Books of the Islamic World, Inc., 1985), 30.

^{cxxx} Farabi, *On the Perfect State*, 253.

^{cxxxi} *ibid.*

^{cxlii} James Morris, "The Philosopher-Prophet in Avicenna's Political Philosophy," in *The Political Aspects of Islamic Philosophy: Essays in Honor of Muhsin S. Mahdi*, edited by Charles E. Butterworth (Cambridge, MA: Harvard University Press, 1992), 156.

^{cxliii} Morris, "The Philosopher-Prophet," 163.

^{cxliiii} *ibid.*, 167.

^{cxliv} *ibid.*, 176.

^{cxlv} *ibid.*, 175.

^{cxlvii} *ibid.*, 171.

^{cxlviii} As mentioned earlier in this chapter, Khomeini studied and wrote about the works of these philosophers. The ideas of both of these philosophers are found in Khomeini's 1931 work on *'irfan*, *The Lamp of Guidance* (Martin, *Creating an Islamic State*, p. 32). In addition, in the 1930's, Khomeini wrote a supercommentary on a commentary composed by Sharaf al-Din Mahmud al-Qaysari (d. 1350) on Ibn Arabi's *Fusus al-Hikam*. This supercommentary was rediscovered in 1983 after having been confiscated by the SAVAK, the Shah Mohammad Reza Pahlavi's secret police, in 1968 (Knysh, "'Irfan Revisited," 631-632).

^{cxlix} Mehdi Ha'iri Yazdi, *Principles of Epistemology in Islamic Philosophy*, (Albany: State University of New York Press, 1992), 162-163.

^{cl} Ha'iri Yazdi, 163.

^{cli} *ibid.*

^{clii} This treatise was published and edited by Hamid Tahir under the title "*al Walaya wa al-Nubuwa 'inda Muhyi al-Din Ibn 'Arabi*"; this work is in turn discussed by Masataka Takeshita in his book, entitled *Ibn Arabi's Theory of the Perfect Man and its Place in the History of Islamic Thought* (Tokyo: Institute for the Study of Languages and Cultures of Asia and Africa, 1987).

cxliii Takeshita, 155.

cxliv *ibid.*, 157.

cxlv *ibid.*

cxlvi Martin, *Creating an Islamic State*, 35.

cxlvii James Morris, introduction to *The Wisdom of the Throne*, by Mulla Sadra (Princeton: Princeton University Press, 1981), 6.

cxlviii Morris, "Introduction," 24-25.

cxlix *ibid.*, 17-19.

cl Ruhollah Khomeini, *Misbah Al-Hidaya Ila Al-Khilafa wa Al-Wilaya [The Lamp of Guidance to Vicegerency and Guardianship]*, trans. Seyyed Ahmad Fihri (Tehran: *Payam-e Azadi*, 1981), 207.

cli *ibid.*

cliii *ibid.*, 212.

cliv *ibid.*, 213.

clv Khomeini, "Islamic Government," 121.

clvi *ibid.*

clvii *ibid.*, 59.

clviii *ibid.*, 60.

clix *ibid.*, 152.

clx *ibid.*, 84.

clxi Khomeini, *Misbah al-Hidaya*, 206.

clxii *ibid.*

clxiii *ibid.*

clxiv *ibid.*

clxv Khomeini, "Islamic Government," 60.

clxvi *ibid.*, 137.

clxvii *ibid.*, 125.

clxviii *ibid.*, 42.

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- clxix *ibid.*, 72.
- clxx *ibid.*, 74.
- clxxi *ibid.*, 66.
- clxxii *ibid.*, 73.
- clxxiii Hamid Algar, “Islam in Iran” (course taught at UC Berkeley, Berkeley, CA, Spring 2009).
- clxxiv Sachedina, *The Just Ruler*, 31.
- clxxv Madelung, “Authority in Twelver Shi’ism,” 166.
- clxxvi Sachedina, *The Just Ruler*, 103.
- clxxvii Madelung, “Authority in Twelver Shi’ism,” 166.
- clxxviii Hamid Algar, “Shi’a Islam” (course taught at UC Berkeley, Berkeley, CA, Fall 2001), <https://www.al-islam.org/search/media/algar>.
- clxxix Kazemi Moussavi, *Religious Authority*, 342.
- clxxx Khomeini, “Islamic Government,” 93.
- clxxxi Khomeini, “Islamic Government,” 96.
- clxxxii Abdul-Hadi Ha’iri, “The Legitimacy of the Early Qajar Rule as Viewed by Shi’i Religious Scholars,” *Middle Eastern Studies* 24 (1988): 271.
- clxxxiii Said Amir Arjomand, *Shadow of God and the Hidden Imam: Religion, Political Order, and Societal Change in Shi’ite Iran from the Beginning to 1890* (Chicago: The University of Chicago Press, 1984), 123.
- clxxxiv Arjomand, *Shadow of God*, 227.
- clxxxv *ibid.*
- clxxxvi Nikki R. Keddie, “The Roots of the Ulama’s Power in Modern Iran,” *Studia Islamica* 29 (1969): 32.
- clxxxvii Ha’iri, “The Legitimacy of Early Qajar Rule,” 274.
- clxxxviii Said Amir Arjomand, “The Qajar Era,” in *Expectation of the Millennium: Shi’ism in History*, edited by Hamid Dabashi, Seyyed Hossein Nasr, and Seyyed Vali Reza Nasr (Albany, NY: State University of New York Press, 1989), 203. Najafi also argues that the jurists can be counted as members of “those in authority among you,” mentioned in the Quran as one of the groups of people to be obeyed, alongside God and His Messenger. Also significantly, Najafi argues that the exercise of political authority by jurists is a necessary precondition for the Quranic injunction to “enjoin the good and forbid the evil,” a concept read by other scholars to involve more limited authority for jurists, and not the exercise of political authority (see Sachedina, *The Just Ruler*, 207).
- clxxxix Amanat, “From *ijtihad* to *wilayat-i faqih*,” 12.
- cx Noel J. Coulson, *History of Islamic Law* (Lahore: Lahore Law Times Publications, 1979), 62-70.

^{cxci} Khomeini, "Islamic Government," 93.

^{cxcii} Norman Calder, "Marja al-Taqlid," *Oxford Encyclopedia of the Modern Islamic World*, accessed June 16, 2016, http://www.oxfordislamicstudies.com/article/opr/t236MIW/e0505?_hi=2&_pos=1.

^{cxciiii} Farhang Rajaee, *Islamic Values and Worldview: Khomeyni on Man, the State, and International Politics* (Lanham: University Press of America, 1983), 233.

^{cxciiv} Kazemi Moussavi, *Religious Authority*, 174, 273.

^{cxciiv} Hamid Dabashi, "Mulla Ahmad Naraqī and the Question of the Guardianship of the Jurisconsult (Wilayat-i Faqih)," in *Expectation of the Millennium: Shi'ism in History*, edited by Hamid Dabashi, Seyyed Hossein Nasr, and Seyyed Vali Reza Nasr (Albany: State University of New York Press, 1989), 293-4.

^{cxciiv} Khomeini, "Islamic Government," 76-77.

^{cxciivii} In Persian, "‘*itibari*." According to Algar, by "extrinsic," Khomeini here refers to those functions of the Imam that the Imam did not exercise by virtue of his divinely-ordained position as an Imam, but instead those functions that may be fulfilled by one who develops the knowledge and know-how to do so. The jurisprudent, in other words, may exercise those functions that has the capacity to exercise by virtue of his acquired attributes (including knowledge of the law and justice) (Hamid Algar, *Islam and Revolution* (Berkeley: Mizan Press, 1981), 155).

^{cxciiviii} Khomeini, "Islamic Government," 48.

^{cxciix} Hasan Ali Turki Abbas, "Imam Kashif al-Ghita: The Reformist Marji' in the Shi'ah School of Najaf," (Ph.D. diss., University of Arizona, 1997), 233-234.

^{cc} Ahmad Kazemi Moussavi, "The Institutionalization of Marja'i Taqlid in the Nineteenth Century Shi'ite Community," *The Muslim World* 84 (1994): 280.

^{cci} Kazemi Moussavi, "The Institutionalization," 289.

^{ccii} *ibid.*, 282.

^{cciii} Calder, "Marja al-Taqlid," *Oxford Encyclopedia of the Modern Islamic World*.

^{cciv} Sachedina, *The Just Ruler*, 213.

^{ccv} Ann K.S. Lambton, "Concepts of Authority in Persia: Eleventh to Nineteenth Centuries A.D.," *Iran* 26 (1988): 101.

^{ccvi} Ann K.S. Lambton, "A Reconsideration of the Position of Marja' al-Taqlid and the Religious Institution," *Studia Islamica* 20 (1964): 116.

^{ccvii} Lambton, "Concepts of Authority," 101.

^{ccviii} Lambton, "A Reconsideration," 116.

^{ccix} Roger Savory, "The Safavid state and polity," *Iranian Studies* 7 (1974): 184.

^{ccx} Nikki Keddie, *Modern Iran: Roots and Results of Revolution* (New Haven: Yale University Press, 2003), 10.

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- ccxi Mohammad Nafissi, "Shiism and Politics," in *Routledge Handbook of Religion and Politics*, edited by Jeffrey Haynes (London: Routledge, 2016), 106.
- ccxii Ira Lapidus, *A History of Islamic Societies* (Cambridge: Cambridge University Press, 2002), 244.
- ccxiii Amanat, "From *ijtihad* to *wilayat-i faqih*," 6.
- ccxiv Algar, *Religion and State*, 12-13.
- ccxv *ibid.*, 27.
- ccxvi Abdul-Hadi Hairi, "Shaykh Fazl Allah Nuri's Refutation of the Idea of Constitutionalism," *Middle Eastern Studies* 13 (1977): 334-35.
- ccxvii Hamid Algar, "Hasan Shirazi," *Encyclopedia Iranica*, accessed June 15, 2015, <http://www.iranicaonline.org/articles/hasan-sirazi-mirza-mohammad>.
- ccxviii This refers to 4:59 of the Quran, which reads, "Oh believers, obey God, and obey the Messenger and those in authority [*ulu al amr*] among you." There have been various interpretations of who the phrase "those in authority" refers to; among these have been the interpretations that authority belongs to men of understanding, the caliphs and their appointees, specific military commanders, companions of the prophet (Asma Afsaruddin, "Ulu' l-amr," in *The Quran: An Encyclopedia*, edited by Oliver Leaman (London: Routledge, 2006), 672) or in one Shi'a interpretation, the twelve infallible imams (Mavani, *Religious Authority*, p. 11).
- ccxix Sachedina, *The Just Ruler*, 217-218.
- ccxx Lapidus, *History of Islamic Societies*, 544.
- ccxxi Ha'iri, *Shi'ism and Constitutionalism*, 127.
- ccxxii Algar, *Religion and State*, 45.
- ccxxiii Algar, *Religion and State*, 177.
- ccxxiv Algar, *Religion and State*, 178.
- ccxxv Khomeini, "Islamic Government," 76.
- ccxxvi Lambton, "A Reconsideration," 117.
- ccxxvii Norman Calder, "Accommodation and revolution in Imami Shi'i Jurisprudence: Khumayni and the classical tradition," *Middle Eastern Studies* 18 (1982): 7.
- ccxxviii Khomeini, *Unveiling of Secrets*, 200.
- ccxxix Martin, *Creating an Islamic State*, 30.
- ccxxx Khomeini, "Islamic Government," 82, 125. The two mentions of Na'ini occur on each of these pages.
- ccxxxi Ha'iri, *Shi'ism and Constitutionalism*, 210.
- ccxxxii Ha'iri, *Shi'ism and Constitutionalism*, 202.

ccxxxiii Ha'iri, "Shaykh Fazlollah Nuri's Refutation," 331.

ccxxxiv Ha'iri, *Shi'ism and Constitutionalism*, 199.

ccxxxv Ha'iri, *Shi'ism and Constitutionalism*, 213.

ccxxxvi See Chapter 4, page 62.

ccxxxvii Ha'iri, *Shi'ism and Constitutionalism*, 160-162.

ccxxxviii Mirza Hasan Na'ini, *Tanbih al-umma wa Tanzih al-Milla*, (Tehran: *Markaz-i Asnad-i Inqilab-i Islami*, 2007), 118-119.

ccxxxix Daniel Brumberg argues that Khomeini's theory, in his scholarly and in his post-revolutionary speeches, statements and correspondence, is ultimately contradictory, alternating between the "belief that people should play a role in choosing their government" and a "strong commitment to revolutionary action and clerical rule under the leader of a quasi-infallible, charismatic Supreme Leader" (*Reinventing Khomeini: The Struggle for Reform in Iran* (Chicago: The University of Chicago Press, 2001), 3).

ccxli See Sussan Siavoshi, who says, "'The reformists challenge the orthodox interpretation of Khomeini's ideas on politics by concentrating on aspects of his writings and declarations that address the role of the people in politics. By doing so their interpretation, without denying God as a source of legitimacy for a governing system, shifts the focus to popular sovereignty' ("Ayatollah Khomeini and the Contemporary Debate on Freedom," *Journal of Islamic Studies* 18 (2007): 38). On the other hand, she says, "the supporters of the "right" tendencies see the role of the people in politics differently, and so they interpret Khomeini's words differently. The position of the 'radical right' ... asserts that Khomeini's assigned role for the people was to be the obedient and passive followers of the leader" (*ibid.*).

ccxlii "It is highly significant," Arjomand argues, "that in Khomeini's book, *Islamic Government*, there is no mention of an Islamic republic. There is reason to believe that Khomeini considered the Islamic republic to be the appropriate form of government only for the period of transition to the truly Islamic government. In this final stage, sovereignty would belong to the hierocracy on behalf of God. There would be no room for sovereignty of the people nor for the supremacy of the state as the presumed embodiment of the national will" (Arjomand, *Turban for the Crown*, 149.)

ccxliii See Martin, pp. 122-123, 128. Martin argues that in *Islamic Government*, "Khomeini's long-contained doubts about legislation and representation find their fullest expression. The principle of authority derived from above, noted in his concept of the state emanating from the *'irfan* tradition, is again manifest. Here the state is a jurisprudential organization with the task of executing the law, but not creating it...In the event, Khomeini was to accept an elected assembly and the principle of popular will, providing that the state was Islamic (in other words, it implemented the *shari'a*). The question arises as to why he did not propose such an arrangement in *Islamic Government*" (*Creating an Islamic State*, 122-123).

ccxliv Baqer Moin, *Khomeini: Life of the Ayatollah* (London: I.B. Tauris, 1999), 74-91.

ccxlv Algar, *A Short Biography*, "Chapter 4: The Years of Struggle and Exile, 1952-1978." The Ba'ath party had come to power once before in 1963 after staging a coup, but they were overthrown by the Iraqi military nine months later (John F. Devlin, "The Baath Party: Rise and Metamorphosis," *The American Historical Review* 96 (1991): 1404-1405).

ccxlvi Hamid Algar provides this accurate assessment of the work's comprehensiveness and detail in the introduction to his translation of *Islamic Government*, cited above.

ccxvi Khomeini, 40-54.

ccxvii *ibid.*, 35.

ccxlviii *ibid.*, 55-125.

ccxlix *ibid.*, 126-149.

ccl *ibid.*, 28.

ccli *ibid.*, 30.

cclii *ibid.*

ccliii *ibid.*, 29.

ccliv *ibid.*

cclv *ibid.*, 62.

cclvi *ibid.*, 65-66.

cclvii *ibid.*

cclviii Enayat, “Iran: Khumaini’s Concept,” 172.

cclix Khomeini, 56.

cclx *ibid.*

cclxi In Persian, “*barname-rizi*.”

cclxii Khomeini, “Islamic Government,” 55. His term for “legislative power” in the original Persian is “*qodrat-i moqannan-e*.” In the same section, he uses the term “*qanoongozari*” for the act of legislating (from which humans are prohibited).

cclxiii *ibid.*, 56.

cclxiv See, for example, Vanessa Martin, in *Creating an Islamic State*, where she says that Khomeini did not accept the possibility of an elected assembly in *Islamic Government*, and that therefore must have changed his mind on the matter after the revolution. She speculates that Khomeini could not support an elected assembly because he believed it would impinge upon the sovereignty of God or the prerogative of the clergy to govern (106). Such an account of *Islamic Government* does not capture the ambiguity of this work.

cclxv Khomeini, pp. 44, 30.

cclxvi Roxanne Euben and Muhammad Qasim Zaman refer to what they call a “crucial ambiguity” in *Islamic Government*, where Khomeini says, on the one hand, that God’s law must be implemented “in exactitude,” and yet he also says that “Islam regards law as a tool, not as an end in itself. Law is a tool and an instrument for the establishment of justice in society, a means for man’s intellectual and moral reform and his purification” (Khomeini, 80). This statement, they argue, suggests a “malleable” view of the sacred law, a view which he turned to embrace fully before his death, in his letter to Ayatollah Khamene’i (the president of Iran at the time), in which he said that

the laws of the state speaks for the interest of Islam and the public and therefore may override stipulated aspects of Islamic law (Muhammad Qasim Zaman and Roxanne Euben, *Princeton Readings in Islamist Thought* (Princeton: Princeton University Press, 2009), 159-160).

cclxvii Mohsen Rahami, "Development of Criminal Punishment in the Iranian Post Revolutionary Code," *European Journal of Crime, Criminal Law, and Criminal Justice* 13 (2005): 598.

cclxviii Khomeini, p. 64. Like their English equivalents, the Persian terms he uses are different grammatical forms of the terms "legislation" and "planning," which he had used earlier.

cclxix *ibid.*, 88.

cclxx Fiqh, as distinguished from the *shari'a*, which refers to the divine law in its ideal, but ultimately unreachable, formulated. As helpfully explained by Aisha Quraishi-Landes, *shari'a* refers to the "Islamic rule of law," whereas fiqh refers to the body of law derived by fallible jurists from the authoritative religious sources (Quran and *hadith*), a "rigorous interpretation of these sources to extrapolate detailed legal rules covering many aspects of Muslim life" (A. Quraishi-Landes, "The Sharia Problem with Sharia Legislation," *Northern Ohio University Law Review* 41 (2015): 545, 548).

cclxxi Dabashi, *Theology of Discontent*, 412.

cclxxii Said Amir Arjomand, "Constitutional Revolution," *Encyclopedia Iranica*, accessed September 15, 2013, <http://www.iranicaonline.org/articles/constitutional-revolution-index>.

cclxxiii Dilip Hiro, *Iran under the Ayatollahs* (London: Routledge and K. Paul, 1985), 29-30.

cclxxiv *ibid.*, 30.

cclxxv Hamid Algar, "The Fusion of the Gnostic and the Political."

cclxxvi Algar, *A Short Biography*, "Chapter 3: The Years of Spiritual and Intellectual Formation in Qum, 1923-1962."

cclxxvii Moin, *Life of the Ayatollah*, 43.

cclxxviii Hamid Algar, "Imam Khomeini: The Pre-Revolutionary Years," in *Islam, Politics, and Social Movements*, edited by Ira Lapidus and Edmund Burke (Berkeley and Los Angeles: University of California Press, 1988), 264.

cclxxix Arjomand, *Turban For the Crown*, 60-62.

cclxxx Shahrough Akhavi, *Religion and Politics in Contemporary Iran: clergy-state relations in the Pahlavi Period*, (Albany: State University of New York Press, 1980), 58-59.

cclxxxi Keddie, *Modern Iran*, 92.

cclxxxii *ibid.*

cclxxxiii Peter Avery, *Modern Iran* (London: Ernest Benn Limited, 1965), 277.

cclxxxiv Arjomand, *Turban for the Crown*, 68.

cclxxxv Hiro, *Iran under the Ayatollahs*, 28.

cclxxxvi S. Bakhash, *Reign of the Ayatollahs* (New York: Basic Books, 1984), 21.

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- cclxxxvii A. Tabari, "The Role of the Clergy in Modern Iranian Politics," in *Religion and Politics in Iran*, edited by Nikki R. Keddie (New Haven, CT: Yale University Press, 1983), p. 47–72.
- cclxxxviii Hamid Algar, "Religious Forces in Twentieth Century Iran," *The Cambridge History of Iran: Volume 7*, edited by Peter Avery, Gavin R.G Hambly, and Charles Melville (Cambridge: Cambridge University Press, 1991), 741.
- cclxxxix Hiro, *Iran under the Ayatollahs*, 27.
- ccxc Arjomand, *Turban for the Crown*, 66.
- ccxci Avery, *Modern Iran*, 289.
- ccxcii According to Arjomand, after 1930, Reza Shah became "increasingly dictatorial," and his choosing of representatives resulted in the creation of a "rubber stamp" parliament (Arjomand, *Turban for the Crown*, 64).
- ccxciii Hiro, *Iran under the Ayatollahs*, 26.
- ccxciv Moin, *Life of the Ayatollah*, 54.
- ccxcv Akhavi, *Religion and Politics*, 39.
- ccxcvi Algar, "Religious Forces," 741.
- ccxcvii *ibid.*
- ccxcviii Avery, *Modern Iran*, 291-292.
- ccxcix Avery, *Modern Iran*, 40.
- ccc Mohammad Faghfoory, "The Ulama-State Relations in Iran: 1921-1941," *International Journal of Middle East Studies* 19 (1987): 427
- ccci Martin, *Creating an Islamic State*, 15.
- cccii Khomeini, *The Unveiling of Secrets*, 223.
- ccciii E. Browne, *The Persian Revolution of 1905-1909* (London: Cambridge University Press, 1910), 363.
- ccciv Khomeini, *The Unveiling of Secrets*, 223.
- cccv Browne, *The Persian Revolution*, 373.
- cccevi Khomeini, *The Unveiling of Secrets*, 185.
- cccvi Hiro, *Iran under the Ayatollahs*, 20.
- cccviii Keddie, "Iranian Revolutions in Comparative Perspective," 593.
- cccix Arjomand, "Constitutional Revolution," *Encyclopedia Iranica*.
- cccx The Senate, however, was not convened until 1950 (*ibid.*).

cccxi *ibid.*

cccxi Keddie, *Modern Iran*, 70.

cccxi *ibid.*, 71.

cccxi Martin, *Creating an Islamic State*, 8.

cccxi Arjomand, "Constitutional Revolution," *Encyclopedia Iranica*.

cccxi Keddie, *Modern Iran*, 81.

cccxi Arjomand, "Constitutional Revolution," *Encyclopedia Iranica*.

cccxi Algar, *A Short Biography*, "Chapter 3: The Years of Spiritual and Intellectual Formation in Qum, 1923-1962."

cccxi Tabari, "The Role of the Clergy," 68.

cccxi Algar, *A Short Biography*, "Chapter 3: The Years of Spiritual and Intellectual Formation in Qum, 1923-1962."

cccxi Tabari, "The Role of the Clergy," 64.

cccxi Ali Akbar Hakamizada, *Asrar-i Hizar Sala (Thousand-Year Secrets)*, accessed May 5, 2011, <http://ketabkhane.org/archives/2207>, 15.

cccxi *ibid.*, 29.

cccxi *ibid.*, 35.

cccxi Vanessa Martin, "Religion and State in Khumaini's 'Kashf al-asrar,'" *Bulletin of the School of Oriental and African Studies, University of London*, 56 (1993): 4.

cccxi Behrooz Ghamari-Tabrizi, "The Divine, the People, and the *Faqih*: On Khomeini's Theory of Sovereignty," in *A Critical Introduction to Khomeini*, edited by Arshin Adib-Moghaddam (New York: Cambridge University Press, 2014), 211–238.

cccxi *ibid.*, 216.

cccxi Tabari, "The Role of the Clergy," 61-62.

cccxi Babak Rahimi, "Contentious Legacies of the Ayatollah," in *A Critical Introduction to Khomeini*, edited by Arshin Adib-Moghaddam (New York: Cambridge University Press, 2014), 291–306.

cccxi Arshin Adib-Moghaddam, "Ayatollah Ruhollah Khomeini: A Clerical Revolutionary?" in *A Critical Introduction to Khomeini*, edited by Arshin Adib-Moghaddam (New York: Cambridge University Press, 2014), 12.

cccxi Bakhsh, *Reign of the Ayatollahs*, 61.

cccxi My translation; all translations from *The Unveiling of Secrets* and from *Asrar-i Hizar Sala* that are recorded in footnotes are my own.

cccxxxiii 5. Is their claim correct when they say that the *mujtahid*, during the time of the occultation, is the appointee of the Imam [in occultation]? If so, what are the boundaries [of this appointment]? Does it include government and guardianship, or not?

6. Wouldn't it be better for the clergyman to earn his salary by working, or by another stable and fixed means, so that he is free to speak the truth? Or should he, as is the case today, receive his salary directly from the masses and be forced to act in a way that satisfies their desires?

7. What do they mean when they say that government is oppressive? Do they mean that because the government does not act according to its duty, it is oppressive? Or do they mean that the government must be in the hands of the *mujtahid* [a jurist capable of employing the rational legal methodology of *ijtihad*]?

8. What do they mean when they say that taxes are *haram* [prohibited in Islamic law]? Does it mean that taxes must generally not be collected? Or does it mean that instead of taxes, *zakat* [an Islamically-specified tax] should be collected? If it is the latter, in modern-day contexts, such as the context of Tehran or the cities of Mazandaran or in industrialized countries, on what items should the *zakat* be imposed?

9. Do humans have the right to make law for themselves, or not? If they do, is obeying that law *wajib* [obligatory according to Islamic law], or not? If it is obligatory, if someone violates [this law], what is his/her proper punishment?

cccxxxiv Khomeini, *The Unveiling of Secrets*, 229-30.

cccxxxv *ibid.*, 365.

cccxxxvi *ibid.*

cccxxxvii *ibid.*, 230.

cccxxxviii *ibid.*, 229.

cccxxxix Equivalent to ten *rial*, which is the official currency of Iran.

cccxl Khomeini, *The Unveiling of Secrets*, 179.

cccxli *ibid.*, 180.

cccxlii *ibid.*

cccxliii *ibid.*, 229.

cccxliv *ibid.*, 228.

cccxlv *ibid.*, 229.

cccxlvi *ibid.*, 180.

cccxlvii *ibid.*

cccxlviii *ibid.*

cccxlx *ibid.*, 9.

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- cccl *ibid.*, 180.
- cccli *ibid.*, 232.
- ccclii *ibid.*
- cccliii *ibid.*
- cccliv *ibid.*, 282-83.
- ccclv In Persian, *majlis-i mu'asasan*.
- ccclvi *ibid.*, 234.
- ccclvii *ibid.*
- ccclviii *ibid.*
- ccclix *ibid.*, 232-33.
- ccclx *ibid.*, 241.
- ccclxi *ibid.*, 241-42.
- ccclxii *ibid.*, 371.
- ccclxiii Hakamizada, *Thousand-Year Secrets*, 47.
- ccclxiv Khomeini, *The Unveiling of Secrets*, 372.
- ccclxv *ibid.*, 373.
- ccclxvi *ibid.*
- ccclxvii *ibid.*, 295.
- ccclxviii *ibid.*, 374.
- ccclxix *ibid.*, 284.
- ccclxx *ibid.*, 285.
- ccclxxi *ibid.*
- ccclxxii *ibid.*
- ccclxxiii *ibid.*, 302.
- ccclxxiv Hakamizada, *Thousand-Year Secrets*, 29.
- ccclxxv Khomeini, *The Unveiling of Secrets*, 380.

ccclxxvi *ibid.*

ccclxxvii *ibid.*, 381.

ccclxxviii *ibid.*

ccclxxix In Persian, “*kheradmandan-e.*”

ccclxxx *ibid.*

ccclxxxi In Persian, “*qanungozar.*”

ccclxxxii *ibid.*

ccclxxxiii *ibid.*, 295.

ccclxxxiv *ibid.*

ccclxxxv *ibid.*

ccclxxxvi *ibid.*

ccclxxxvii *ibid.*, 235.

ccclxxxviii Hakimzada’s point, here, is quite prescient, since after the Revolution there was debate concerning the relative power of the *maraj’ e taqlid* (authoritative legal guides) and the guardian. Did the institution of guardianship undermine—or was it undermined by—the pluralism of Shi’a legal authority, or could the institution of *marja’iyat* and guardianship exist at the same time, and harmoniously? It was widely recognized that Shi’as could follow a *marja’* other than Khomeini while still considering themselves loyal to Khomeini as the guardian. To clarify the distinction between the roles of the *marja’* and guardian, Khomeini issued a fatwa after the Revolution in which he specified that in matters of public policy, the ruling the guardian should take precedence over the rulings of other *maraje’*, while in other fields of law, this was not the case, and it was up to the individual to decide which *marja’* to follow (Hamid Algar, “Response to Browers: Marja’iyya and Wilayat al-Faqih,” *Journal of Shi’a Islamic Studies* 5 (2012): 47). The question was complicated further by the fact that Khomeini’s successor, Ali Khamene’i, was not a *marja’* at the time of his appointment, and in its amendment of the constitution in 1989, the Constitutional Review Council had removed the stipulation in the constitution that the guardian must be a *marja’ taqlid*. On what basis, it was asked, did the guardian exercise political authority over and above jurisprudents who were more learned than he? (Saskia Gieling, “The *marja’iyya* in Iran and the nomination of Khamenei in December 1994,” *Middle Eastern Studies* 33 (1997): 779).

ccclxxxix Khomeini, *The Unveiling of Secrets*, 236.

cccx *ibid.*, 279-80.

ccxcxi *ibid.*, 280.

ccxcxii *ibid.*, 281.

ccxcxiii *ibid.*, 280-81.

ccxcxiv Hakamizada, *Thousand-Year Secrets*, 28.

^{cccxcv} Khomeini, *The Unveiling of Secrets*, 234. Farhang Rajaei interprets this statement differently, however, arguing that Khomeini is here “distinguish[ing] between holding office and acting as guardian” (*Islamism and Modernism: The Changing Discourse in Iran* [Austin: University of Texas Press, 2001], 67). According to Rajaei, Khomeini means here that jurists will not hold direct office but instead should exercise supervision over political offices, an opinion that contradicts, he claims, Khomeini’s later prescription for the direct rule of the jurists in his Najaf lectures. Rajaei argues that Khomeini “remains loyal to the prevalent ideas of Shi’ism—in the absence of an infallible imam, authority belongs to the jurists—but with a qualification. He distinguished between holding office and acting as a guardian” (67). The crucial words that Rajaei does not include in his translation of this statement, however, are the “and also” which separate each of the functions listed (the king *and also* the minister *and also* the military man...). Instead, he translates the statement as the following: “When we say government and guardianship in this period belongs to the jurists, we are not saying that the jurists should be king, minister, military officers, *or* street sweeper” (67). In this translation, the emphasis that Khomeini placed on the “and also” which separated each executive political office disappears with a placement of an “or” before the last term, and the statement reads as if Khomeini is saying that the jurist should not assume any one of those roles, instead of all of those roles together. The more accurate interpretation of Khomeini’s argument is that the jurist should not necessarily fulfill every executive political function—that each of these positions does not need to be filled by a jurist. Perhaps a certain ministerial position, for example, would be best fulfilled by a member of the clerical class, but other ministerial positions by specialists in other fields.

^{cccxcvi} *ibid.*, 294.

^{cccxcvii} *ibid.*, 235.

^{cccxcviii} *ibid.*

^{cccxcix} *ibid.*

^{cd} *ibid.*, 240.

^{cdi} *ibid.*, 287.

^{cdii} *ibid.*, 288.

^{cdiii} *ibid.*

^{cdiv} *ibid.*, 289.

^{cdv} *ibid.*, 236.

^{cdvi} Khomeini uses the word *shar’i* here. That is, affairs related to the *shari’a* law.

^{cdvii} Ruhollah Khomeini, *Sahifa-yi Imam*, Vol. 19, 403, (www.sahifeh.net, *Markaz-i Asnad-i Inqilab-i Islami*). Accessed 11 November 2014, my translation. All translations of excerpts from *Sahifah-yi Imam* are my own.

^{cdviii} Brumberg, *Reinventing Khomeini*, 99.

^{cdix} *ibid.*, 100.

^{cdx} Siavoshi, “Ayatollah Khomeini and the Contemporary Debate,” 14.

^{cdxi} *ibid.*, 35.

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- cdxii Bakhash, *The Reign of the Ayatollahs*, 51.
- cdxiii Brumberg, *Reinventing Khomeini*, 102.
- cdxiv Bakhash, *The Reign of the Ayatollahs*, 3.
- cdxv *ibid.*
- cdxvi Khomeini, *Sahifa-yi Imam*, Vol. 11, 458.
- cdxvii Khomeini, *Sahifa-yi Imam*, Vol. 11, 459.
- cdxviii Mohammad Faghfoory, "The Ulama-State Relations in Iran: 1921-1941," *International Journal of Middle East Studies*, 19 (1987): 416-17.
- cdxix Faghfoory, "The Ulama-State Relations," 418. There has been speculation, however, that he may never have been a republican and only wished to make a dramatic display of switching sides to please the '*ulama* (*ibid.*, 423).
- cdxx Lapidus, *A History of Islamic Societies*, 502.
- cdxxi Richard Pipes, *A Concise History of the Russian Revolution* (New York: Vintage Books, 1995), 333.
- cdxxii Ervand Abrahamian, *Iran Between Two Revolutions* (Princeton: Princeton University, 1982), 133.
- cdxxiii Faghfoory, "The Ulama-State Relations," 418.
- cdxxiv Said Saffari, "The legitimation of the Clergy's right to rule in the Iranian constitution of 1979," *British Journal of Middle Eastern Studies* 20 (1993): 66.
- cdxxv Asghar Schirazi, *The Constitution of Iran*, (New York: I.B. Tauris, 1998), 25.
- cdxxvi Khomeini, "Islamic Government," 64.
- cdxxvii Khomeini, "Islamic Government," 56.
- cdxxviii *ibid.*, 55.
- cdxxix Schirazi, *The Constitution of Iran*, 22-23.
- cdxxx Bakhash, *Reign of the Ayatollahs*, 74.
- cdxxxi See, for example, his speeches to the Assembly of Experts on August 18, 1979 (27 Mordad 1358) and October 4, 1979 (12 Mehr 1358), as well as his message to the Assembly of Experts and the people, dated August 20, 1979 (29 Mordad 1358).
- cdxxxii *ibid.*
- cdxxxiii See, for example, his speeches to the Assembly of Experts on August 18, 1979 (27 Mordad 1358) and October 4, 1979 (12 Mehr 1358), as well as his message to the Assembly of Experts and the people, dated August 20, 1979 (29 Mordad 1358).
- cdxxxiv Khomeini, *Sahifa-yi Imam*, Vol. 9, 299.

cdxxxv Khomeini, *Sahifa-yi Imam*, Vol.10, 322.

cdxxxvi See June 20, 1979 (30 Khordad 1358); August 18, 1979 (27 Mordad 1358); August 20, 1979 (29 Mordad 1358); September 14, 1979 (23 Shahrivar 1358); October 4, 1979 (12 Mehr 1358); October 23, 1979 (1 Aban 1358).

cdxxxvii Bakhash, *Reign of the Ayatollahs*, 81.

cdxxxviii Khomeini, *Sahifa-yi Imam*, Vol. 9, 299.

cdxxxix *ibid.*

cdxli Bakhash, *The Reign of the Ayatollahs*, 84.

cdxli *ibid.*, 86.

cdxlii “Iran Ministers try to ban clerics’ council,” *Reuters (in Tehran)*, Nov. 6, 1979, 8.

cdxliv Khomeini, *Sahifa-yi Imam*, Vol. 10, 320.

cdxlv Khomeini, *Sahifa-yi Imam*, Vol. 8, 218-219.

cdxlv Khomeini, *Sahifa-yi Imam*, Vol. 8, 219.

cdxlvii Khomeini, *Sahifa-yi Imam*, Vol. 8, 220.

cdxlviii Khomeini, *Sahifa-yi Imam*, Vol. 9, 173.

cdxlviii Khomeini, *Sahifa-yi Imam*, Vol. 11, 23.

cdxlix Khomeini, *Sahifa-yi Imam*, Vol. 11, 124.

cdli *ibid.*

cdlii Khomeini, *Sahifa-yi Imam*, Vol. 14, 377.

cdliii According to the text of the constitution, “Article 91: 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 [parliament] with Islam, a council to be known as the Guardian Council is to be constituted with the following composition: six 'Adil Fuqaha' [just jurists] conscious of the present needs and the issues of the day, to be selected by the Leader; six jurists, specializing in different areas of law, to be elected by the Islamic Consultative Assembly [parliament] from among the Muslim jurists nominated-by the Head of the Judicial Power. Article 92: Members of the Guardian Council are elected to serve for a period of six years, but during the first term, after three years have passed, half of the members of each group will be changed by lot and new members will be elected in their place...Article 96: The determination of compatibility of the legislation passed by the Islamic Consultative Assembly with the laws of Islam rests with the majority vote of the Fuqaha' [jurists] on the Guardian Council; and the determination of its compatibility with the Constitution rests with the majority of all the members of the Guardian Council” (Foundation for Iranian Studies, “Constitution of the Islamic Republic of Iran,” accessed December 22, 2014, <http://fis-iran.org/en/resources/legaldoc/constitutionislamic>).

cdliiii Khomeini, *Sahifa-yi Imam*, Vol. 14, 377.

cdliv *ibid.*

cdlv Khomeini, *Sahifa-yi Imam*, Vol. 9, 521; Khomeini, *Sahifa-yi Imam*, Vol. 12, 151.

cdlvi See 27 Aban 1361 (November, 18, 1982); 16 Azar 1361 (December 7, 1982).

cdlvii Foundation for Iranian Studies, “Constitution of the Islamic Republic of Iran.”

cdlviii Khomeini, *Sahifa-yi Imam*, Vol 10, 482.

cdlix Khomeini, *Sahifa-yi Imam*, Vol 10, 482.

cdlx Foundation for Iranian Studies, “Constitution of the Islamic Republic of Iran.”

cdlxi Khomeini, *Sahifa-yi Imam*, Vol. 11, 306.

cdlxii Khomeini, *Sahifa-yi Imam*, Vol. 11, 465.

cdlxiii In Islamic legal terminology, an individual of the opposite gender to whom the Quran has specified a marriage would be lawful. Those who are mahram include one’s parent and siblings, one’s siblings’ children, maternal and paternal ancestors, and maternal and paternal siblings, one’s spouse, one’s children and grandchildren, the spouses of one’s children, and the parents of one’s spouse.

cdlxiv Khomeini, *Sahifa-yi Imam*, Vol. 11, 465.

cdlxv Khomeini, *Sahifa-yi Imam*, Vol. 17, 102.

cdlxvi *ibid.*

cdlxvii *ibid.*

cdlxviii Khomeini, *Sahifa-yi Imam*, Vol. 9, 521.

cdlxix Khomeini, *Sahifa-yi Imam*, Vol. 12, 199.

cdlxx *ibid.*

cdlxxi Khomeini, *Sahifa-yi Imam*, Vol. 14, 370.

cdlxxii Khomeini, *Sahifa-yi Imam*, Vol. 19, 153.

cdlxxiii Here it is pertinent to mention that Khomeini’s father, Sayyid Mustafa Khomeini, was killed in 1903, only about five months after Khomeini’s birth, by the cousin of one of the richest landowners in the region of his hometown of Khomein. The motivation for the murder is uncertain, but it may have been because of his father’s advocacy on behalf of the peasantry. In addition, Khomeini personally witnessed violent acts undertaken by property owners and provincial governors against their subordinates, and in 1982 he remarks that witnessing these acts helped to inspire his political activity. One such event occurred when a new governor had “arrested and bastinadoed the chief of the merchants’ guild of Gulpaygan for no other purpose than the intimidation of its citizens” (Algar, *A Short Biography*, “Chapter 2: Childhood and Early Education”).

cdlxxiv Khomeini, *Sahifa-yi Imam*, Vol. 12, 151.

cdlxxv See 25 Mehr 1360 (October 17, 1981), 19 Mehr 1360 (October 11, 1981), 22 Bahman 1361 (February 11, 1983).

cdlxxvi Mahmoud Raygan, “*Negahi bi ‘urf dar fiqh va huquq-i Islami: Bayisti-ha va Asib-ha,*” *Ma’rifat* 20 (1390 [2011]): 55.

cdlxxvii Raygan, 94-97. Linguistic transformations too, as mentioned, are an important subject of study in ‘*urf*. When the subject of a given ordinance is not defined by the ordinance itself, then the jurist must be attentive to the way in which the subject that the divine law addresses was differently understood, or had different features, than the subject does today. For example, knowledge of ‘*urf* allows us to understand when an event, about which the *shari’a* has legislated, has occurred (for example, when can we say that one has encroached on another’s land?); while the language of the *shari’a* might have used the same term for encroach that we use today, the term has come to acquire a different meaning today, and the scholar of ‘*urf* must determine what the term means today and whether, given this understanding, the *shari’a* can be applied in the same way. At other times, the ‘*urf* scholar must not only study the variable meaning of language but must also apply scientific expert knowledge.

cdlxxviii Khomeini, *Sahifa-yi Imam*, Vol. 17, 320-321.

cdlxxix Khomeini, *Sahifa-yi Imam*, Vol. 15, 311.

cdlxxx Khadija V. Frings-Hessami, “The Islamic Debate about Land Reform in the Iranian Parliament, 1981-1986,” *Middle Eastern Studies* 37 (2001): 140.

cdlxxxi Moin, *Life of the Ayatollah*, 197.

cdlxxxii Schirazi, *The Constitution of Iran*, 170.

cdlxxxiii In Persian, “*qa’edeh-yi zarurat.*”

cdlxxxiv Schirazi, *The Constitution of Iran*, 178.

cdlxxxv Mehrdad Haghayeghi, “Agrarian Reform Problems in Post-Revolutionary Iran,” *Middle Eastern Studies* 26 (1990): 35.

cdlxxxvi Haghayeghi, “Agrarian Reform Problems,” 38.

cdlxxxvii Hamid Algar, “Social Justice in the Ideology and Legislation of the Islamic Revolution of Iran,” in *Social Legislation in the Contemporary Middle East*, edited by Laurence O. Michalak and Jeswald W. Salacuse (Berkeley: Institute of International Studies, University of California, Berkeley, 1986), 42.

cdlxxxviii Haghayeghi, “Agrarian Reform Problems,” 38.

cdlxxxix Algar, “Social Justice,” 42.

cdxc *ibid.*, 44.

cdxci Frings-Hessami, “The Islamic Debate about Land Reform,” 140.

cdxcii Algar, “Social Justice,” 44.

cdxciii Haghayeghi, “Agrarian Reform Problems,” 40.

cdxciv Bakhash, *Reign of the Ayatollahs*, 209-210.

^{cdxcv} Khomeini, *Sahifa-yi Imam*, Vol. 15, 297.

^{cdxcvi} *ibid.*

^{cdxcvii} Schirazi, *The Constitution of Iran*, 173.

^{cdxcviii} *ibid.*, 233.

^{cdxcix} Khomeini, "Islamic Government," 30.

^d Khomeini, *Sahifa-yi Imam*, Vol. 17, 321.

^{di} *ibid.*

^{dii} Schirazi, *The Constitution of Iran*, 181.

^{diii} Khomeini, *Sahifa-yi Imam*, Vol. 15, 312.

^{div} Khomeini, *Sahifa-yi Imam*, Vol. 15, 311. Literally, "we will have to read Chapter Fatiha [from the Quran] for Islamic government and the constitution." This chapter is usually read in memory of and to add to the virtue of the soul of an individual who has recently passed away.

^{dv} Schirazi, *The Constitution of Iran*, 223.

^{dvi} Khomeini, *Sahifa-yi Imam*, Vol. 20, 452.

^{dvii} *ibid.*

^{dviii} *ibid.*

^{dix} Vanessa Martin, for example, argues in her book, *Creating an Islamic State*, that Khomeini "introduced the concept of 'absolute government by the jurist'" in his letter to Khamene'i, and his argument that the jurist should be granted this power was a reflection of the influence of "Plato and Al-Farabi," who, she claims, like Khomeini, believed that "the philosopher ruler is the state" (170). Hamid Mavani also interprets Khomeini's letter in this way, arguing in his book, *Religious Authority and Political Thought in Twelver Shi'ism*, that in this writing Khomeini prescribed for the jurisprudent "a full-fledged and comprehensive authority that would permit the jurisprudent to override primary injunctions" (92). Said Amir Arjomand, in his book, *Turban for the Crown*, says that in this letter Khomeini revealed a conviction that he had been hiding all along (though it is not clear why Arjomand assumes that Khomeini had been hiding his opinion, rather than having simply changed his mind); with the publication of this letter, he says, "all pretense has finally been set aside. The absolute mandate of the jurist has replaced the mandate of the jurist in the official terminology of the rule of God in Iran" (183).

^{dx} Sharif Lakzai, "Chisti-yi Vilayat-i Mutlaqi-yi Faqih dar Andishi-yi Siasi-yi Imam Khomeini (rah)," *The Research Journal on Islamic Revolution Studies*, 2 (1384): 18.

^{dxii} Lakzai, "Chisti-yi Vilayat-i Mutalaqi-yi Faqih," 21-22.

^{dxiii} In Baqer Moin's words; he says that Khomeini, in this letter, made the "historic statement" that government takes precedence over the primary injunctions of the *shari'a* (Moin, *Life of the Ayatollah*, 156).

^{dxiiii} It is also important to note, here, that in this letter he uses terminology that is different from the terminology he used in his previous writings. In these writings, he had said that ordinances drafted by parliament that suspend the

shari'a are “secondary” ordinances. However, he had also stated that these secondary ordinances are equivalent to and equally binding as primary ordinances (rejecting a secondary ordinance after it had been called necessary by parliament, he had said, is like rejecting a primary ordinance of the *shari'a*). In this letter to Khomeini, he says that legislation drafted by government in the service of the public interest may be considered a “primary ordinance” of the *shari'a*. This is not a radical theoretical departure from his previous writings; instead of saying that this legislation belongs to a category of secondary ordinances and arguing that they have authority that is equal to primary ordinances, he says that they themselves may be considered primary ordinances.

^{dxiv} Thus, Arjomand is wrong when he argues that Khomeini first introduces the concept of governmental ordinances, or “*ahkam-i hokumati*,” in his letter to Khomeini (Arjomand, *Turban for the Crown*, 183).

^{dxv} Hamid Algar, “Hasan Shirazi,” *Encyclopedia Iranica*, accessed June 15, 2015, <http://www.iranicaonline.org/articles/hasan-sirazi-mirza-mohammad>.

^{dxvi} Khomeini, “Islamic Government,” 76.

^{dxvii} Khomeini, *Sahifa-yi Imam*, Vol. 20, 464.

^{dxviii} Bakhsh, *Reign of the Ayatollahs*, 253.

^{dxix} Schirazi, *Constitution of Iran*, 234.

^{dxix} Khomeini, *Sahifa-yi Imam*, Vol. 21, 217-218.

^{dxxi} World Intellectual Property Organization, “Constitution of the Islamic Republic of Iran,” accessed June 16, 2015, <http://www.wipo.int/edocs/lexdocs/laws/en/ir/ir001en.pdf>.

^{dxxii} A member of Khomeini’s staff (Maziar Behrooz, “Factionalism in Iran under Khomeini,” *Middle Eastern Studies* 27 (1991): 610).

^{dxxiii} Khomeini, *Sahifa-yi Imam*, Vol. 21, 176.

^{dxxiv} *ibid.*

^{dxv} Khomeini, *Sahifa-yi Imam*, Vol. 21, 177.

^{dxvi} Khomeini, *Sahifa-yi Imam*, Vol. 21, 176.

^{dxvii} Mehran Kamrava, *Iran’s Intellectual Revolution* (Cambridge: Cambridge University Press, 2008), 103.

^{dxviii} Said Amir Arjomand, *After Khomeini: Iran under his successors* (Oxford: Oxford University Press, 2009), 97.

^{dxix} Kamrava, *Iran’s Intellectual Revolution*, 101.

^{dxix} Disagreements between Khomeini and Montazeri first arose in 1985, when Khomeini asked Montazeri to disassociate himself from Mehdi Hashemi, the head of a unit in the Revolutionary Guards who had a family connection with Montazeri. Hashemi had begun behaving like a rogue officer, pursuing his own agenda at home, in Lebanon, and in other areas of foreign policy, and he was even implicated in at least one murder. An additional factor that led to friction between Khomeini and Montazeri may likely have been that after the Iran-Iraq war in 1988, Montazeri began making public criticisms of state restrictions on civil liberties (Bakhsh, *Reign of the Ayatollahs*, 281-283).

^{dxxx} Charles Kurzman, “Critics Within: Islamic Scholars’ Protests Against the Islamic State in Iran,” *International Journal of Politics, Culture, and Society* 2 (2001): 346.

^{dxxxii} Adel Hashemi-Najafabadi, “The Shi’i Concept of Imamate and Leadership in Contemporary Iran: The Case of Religious Modernists,” *Studies in Religion* 18 (2011): 9.

^{dxxxiii} Naser Ghobadzadeh and Lily Zubaidah Rahim, “Islamic reformation discourses: popular sovereignty and religious secularisation in Iran Reformation Discourses,” *Democratization* 2 (2012): 343.

^{dxxxiv} Kamrava, *Iran’s Intellectual Revolution*, 174.

^{dxxxv} *ibid.*, 146.

^{dxxxvi} *ibid.*, 90-92.

^{dxxxvii} The Islamic Revolutionary Guards Corps is Iran’s most powerful internal and external security force (Alireza Nader, “The Revolutionary Guards,” in *The Iran Primer*, ed. Robin Wright [United States Institute of Peace], accessed May 7, 2016, <http://iranprimer.usip.org/resource/revolutionary-guards>). It is institutionally separate from the regular army; according to the constitution, it has the particular duty of promoting and protecting “the Islamic Revolution and its achievements,” while the army has the more conventional duty of protecting Iran’s “territorial integrity” and maintaining order inside its borders. The separate duties and jurisdictions of the army and the Revolutionary Guards is to be determined by law (“Constitution of the Islamic Republic of Iran (1989 Edition),” translated by Firoozeh Papan-Matin, *Iranian Studies* 47 (2014): 194). The Revolutionary Guards maintains, parallel to the regular military, domestic land, air, and sea forces and is active internationally as it trains, through its elite Qods force, foreign military groups such as Hezbollah in Lebanon, Hamas in the Palestinian territories, or Iraqi security forces in their fight against the Islamic State, also known as ISIL, ISIS, or Daesh (Nader, *The Iran Primer*). The Guards also has authority over the all-volunteer Basij militia, in charge of maintaining internal security—including by suppressing protests—and morals policing (Ali Alfoneh, “The Basij Resistance Force,” in *The Iran Primer*, ed. Robin Wright [United States Institute of Peace], accessed May 7, 2016, <http://iranprimer.usip.org/resource/basij-resistance-force>). In addition its primary role the nation’s primary military force, it also is an economic powerhouse, often receiving contracts from the government and dominating sectors of the economy including energy, construction, telecommunication, auto making, and banking and finance. Finally, the Revolutionary Guards are a significant political force. The Guards have their own intelligence wing. Though they are not ideologically monolithic, conservative predominate in their leadership, and they have often been involved in campaigning for political candidates (such as Ahmadinejad) and suppressing protests, including in the aftermath of the contested 2009 elections (Nader, *The Iran Primer*).

^{dxxxviii} Said Amir Arjomand, “The Iranian Revolution in the New Era,” *Current Trends in Islamist Ideology* 10 (2010), accessed May 7, 2016, <http://mobile.hudson.org/content/researchattachments/attachment/1299/arjomand.pdf>, 10.

^{dxxxix} Kamrava, *Iran’s Intellectual Revolution*, 31.

^{dxl} Arjomand, “The Iranian Revolution,” 9.

^{dxli} Shaul Bakhash, “The Seven Presidents,” in *The Iran Primer*, ed. Robin Wright (United States Institute of Peace), accessed May 7, 2016, <http://iranprimer.usip.org/resource/seven-presidents>.

^{dxlii} Arjomand, *After Khomeini*, 95.

^{dxliii} Abbas Milani, “The Green Movement,” in *The Iran Primer*, ed. Robin Wright (United States Institute of Peace), accessed May 7, 2016, <http://iranprimer.usip.org/resource/green-movement>.

dxliv *ibid.*

dxlv Arjomand, “The Iranian Revolution,” 14-15.

dxlvi Arjomand, “The Iranian Revolution,” 16.

dxlvii Bakhsh, *The Iran Primer*.

dxlviii Arjomand, “The Iranian Revolution,” 10.

dxlix Arjomand, *After Khomeini*, 117.

dl Arjomand, *After Khomeini*, 159.

dlii “A Life Centered on Knowledge and the Quran” (“*Hayat-i ‘Ilmi va Qur’ani*”), Abdollah Javadi Amoli, accessed May 7, 2016, <http://javadi.esra.ir/web/office/master>.

dliii “A Brief Introduction of Isra’,” Esra International Foundation for Revealed Knowledges, accessed May 7, 2016, <http://www.portal.esra.ir/Pages/Index.aspx?Command=Y29udGVudHMmNDMwNg%3d%3d-5xY9unMNa8M%3d&admin=200&skinid=69&lang=258&Argument=IyMjQ29udGVudCMjIw%3d%3d-NXnF4ID5GRE%3d>.

dliiii “A Life Centered on Knowledge and the Quran.”

dliiv *ibid.*

dliiv Papan-Matin, “Constitution of the Islamic Republic of Iran,” 181.

dlivi “A Life Centered on Knowledge and the Quran.”

dliiii Reuters, “Study Islam, Khomeini Suggests to Gorbachev,” *New York Times*, January 5, 1989, accessed May 7, 2016, <http://www.nytimes.com/1989/01/05/world/study-islam-khomeini-suggests-to-gorbachev.html>.

dliiii Abdollah Javadi Amoli, *Vilayat-i Faqih: Vilayat-i Fiqahat va ‘Idalat*, (Qom: *Markaz-i Nashr-i Asra’*, 1379 [2000-2001]), 208. My translation. All translations from this book are my own.

dlix Patrick Schmidt, “Understanding Iran’s Assembly of Experts,” *The Washington Institute for Near East Policy*, February 16, 2016, accessed May 8, 2016, <http://www.washingtoninstitute.org/policy-analysis/view/assembly-test>.

dlx Javadi Amoli, *Vilayat-i Faqih*, 210.

dlxi *ibid.*

dlxii *ibid.*, 209.

dlxiii *ibid.*, 448.

dlxiv *ibid.*

dlxv *ibid.*, 230-232.

dlxvi *ibid.*, 445.

dlxvii *ibid.*, 404.

dlxviii *ibid.*, 231.

dlxix *ibid.*, 211.

dlxx *ibid.*, 445.

dlxxi *ibid.*, 448.

dlxxii *ibid.*, 449.

dlxxiii *ibid.*

dlxxiv *ibid.*, 90-91.

dlxxv *ibid.*, 80.

dlxxvi That is, experts in *fiqh*, or Islamic jurisprudence. When Javadi Amoli uses the term “legal,” he refers to the secular legal science, a science centered on the study of law that is not derived from authoritative Islamic sources.

dlxxvii *ibid.*, 446.

dlxxviii *ibid.*, 136-137.

dlxxix Khomeini, “Islamic Government,” 62.

dlxxx Khomeini, *Sahifa-yi Imam*, Vol. 11, 306.

dlxxxii Khomeini, *Sahifa-yi Imam*, Vol. 14, 377.

dlxxxiii Javadi Amoli, *Vilayat-i Faqih*, 447.

dlxxxiiii *ibid.*, 445.

dlxxxv *ibid.*

dlxxxv Here, Javadi Amoli refers to the Marwanid branch of the Umayyad dynasty, which prevailed over the Sufiyanid branch—who were the descendants of Abu Sufiyan—in 684, reigning until 750, when the Umayyad dynasty, destabilized by internal dissension and suffering setbacks in its wars of expansion, was overthrown, and later, in 756, would establish a caliphate in Cordoba, Spain (“Umayyad dynasty,” *Encyclopædia Britannica*, accessed May 7, 2016, <http://www.britannica.com/EBchecked/topic/613719/Umayyad-dynasty>). It was under the Marwanid Umayyids, between 736 and 740, that Shi’as began to mobilize against the caliphate, claiming, as they had since the founding of the Umayyad dynasty in 661, that the descendants of Ali were the rightful rulers of the Muslim community because of their knowledge of religion and their spirituality. In 740, Zayd b. Ali, the grandson of the third imam, Hossein, led a rebellion against the dynasty but was soon defeated. (Lapidus, *A History of Islamic Societies*, 47-54).

dlxxxvi Javadi Amoli, *Vilayat-i Faqih*, 402.

dlxxxvii *ibid.*

dlxxxviii *ibid.*

dlxxxix *ibid.*, 390.

dx *ibid.*, 83.

dxci *ibid.*, 405.

dxcii Khomeini, *Sahifa-yi Imam*, Vol.10, 322.

dxciiii Hasan Yousefi Eshkevari, "Autobiography," in *Islam and Democracy in Iran: Eshkevari and the Quest for Reform*, edited by Ziba Mir-Hosseini and Richard Tapper (London: I.B. Tauris, 2006), 41-42.

dxciiv Eshkevari, "Autobiography," 43.

dxce The Husaynieh Ershad, located in North Tehran, is an educational institute and religious center, built in the 1960s to educate the younger generation of Iranians (Mojtaba Mahdavi, "One bed and two dreams? Contentious public religion in the discourses of Ayatollah Khomeini and Ali Shariati," *Studies in Religion/Sciences Religieuses* 43 (2014): 50).

dxcevi Eshkevari, "Autobiography," 44.

dxceyii Ziba Mir-Hosseini and Richard Tapper, "Editor's introduction," in *Islam and Democracy in Iran*, 40.

dxceyi "Writings" ("Asar"), Hasan Yousefi Eshkevari, last modified 2016, http://yousefieshkevari.com/?page_id=11.

dxceix Ziba Mir-Hosseini, "The Conservative-Reformist Conflict Over Women's Rights in Iran," *International Journal of Politics, Culture, and Society* 16 (2002): 48.

dc Bakhash, *Reign of the Ayatollahs*, pp. 51, 68, 70.

dcii Mir-Hosseini and Tapper, "Islam and the Struggle for Democracy in Iran," in *Islam and Democracy in Iran*, 36.

dciii Mir-Hosseini and Tapper, "Epilogue," in *Islam and Democracy in Iran*, 173.

dciiii "Biography" ("Zendegi nam-e"), Hasan Yousefi Eshkevari, last modified 2016, http://yousefieshkevari.com/?page_id=2.

dciv Mir-Hosseini and Tapper, "Epilogue," 173.

dcv "Biography."

dcvi Hasan Yousefi Eshkevari, last modified 2016, <http://yousefieshkevari.com/>.

dcvii "Biography."

dcviii Eshkevari, "Autobiography," 48.

dcix Eshkevari, "Islamic Democratic Government," in *Islam and Democracy in Iran*, 76.

dcx *ibid.*

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- dcxi *ibid.*, 86.
- dcxii *ibid.*, 82.
- dcxiii *ibid.*, 86.
- dcxiv *ibid.*, 91.
- dcxv *ibid.*, 94.
- dcxvi *ibid.*, 100.
- dcxvii Ali Shari'ati, *Islamology*, Part 1, accessed May 8, 2016, <http://www.shariati.com/english/islam/islam1.html>.
- dcxviii Ali Shari'ati, *Islamology*, Part 4, accessed May 8, 2016, <http://www.shariati.com/english/islam/islam4.html>.
- dcxix Ali Shari'ati, *Religion vs. Religion*, trans. Laleh Bakhtiar (Albuquerque: Abjad, 2000), 26-27.
- dcxx Eshkevari, "Islamic Democratic Government," 83.
- dcxxi *ibid.*, 79-80.
- dcxxii *ibid.*, 84.
- dcxxiii *ibid.*, 88.
- dcxxiv *ibid.*, 96.
- dcxxv *ibid.*, 98.
- dcxxvi Ali Ibn Abi Talib, "Letter 53: An Order to Malik al-Ashtar," in *Nahjul Balagha Part 2, Letters and Sayings*, ed. in Allamah Sharif Razi, accessed May 5, 2016, <http://www.al-islam.org/nahjul-balagha-part-2-letters-and-sayings/letter-53-order-malik-al-ashtar>.
- dcxxvii Eshkevari, "Islamic Democratic Government," 89.
- dcxxviii *ibid.*, 99.
- dcxxix *ibid.*, 98.
- dcxxx *ibid.*, 95.
- dcxxxi *ibid.*, 80.
- dcxxxii *ibid.*, 80.
- dcxxxiii Eshkevari, "Women's rights and the women's movement," in *Islam and Democracy in Iran*, 164.
- dcxxxiv Eshkevari, "Women's rights and the women's movement," 164-165.
- dcxxxv *ibid.*

dcxxxvi *ibid.*, 166.

dcxxxvii *ibid.*, 169.

dcxxxviii *ibid.*, 167-168.

dcxxxix Eshkevari, "The seminaries and government," in *Islam and Democracy in Iran*, 114.

dcxl *ibid.*, 113-114. In this draft, no mention was made of the principle of guardianship by the jurisprudent. It did, however, set up a Council of Guardians that would ensure the laws did not violate Islamic strictures, but this body was given only limited veto powers, and the majority of its members were experts in constitutional, and not Islamic, law (Bakhash, *Reign of the Ayatollahs*, 74).

dcxli Eshkevari, "Islamic Democratic Government," 90.

dcxlii *ibid.*, 91.

dcxliii *ibid.*

dcxliv Eshkevari, "Islamic Democratic Government," 90.

dcxlv Eshkevari, "Autobiography," 46-47.

dcxlvi *ibid.*, 50.

dcxlvii Eshkevari, "Women's rights and the women's movement," 163.

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