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DOTTORATO DI RICERCA in
CONTEMPORARY HUMANISM – XXXVI CICLO

*The Islamic Republic in Iran. Constitutional Genealogies and
Institutional Development 1979-1989*

Settore Scientifico Disciplinare SPS/03

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Introduction

«Persiani, gente che scriveva gli editti su cilindri di terracotta quando noi già si assassinava un Servio Tullio»

V. Manasse, *Candori giovanili all'ombra della facoltà di studi biblici* (1967)

«*L'ayatollah Khomeini per molti è santità*».

“Ayatollah Khomeini is a holiness to many”. It might seem odd to find such a sentence in a piece of pop music – but this is exactly what happens when one reads the text of and listen to the song *Up Patriots to Arms*, the first track of the album *Patriots*, published in 1980 by Italian singer-songwriter Franco Battiato (1945-2021). Besides the real sense that the author wanted to give to this verse in the context of the song – a hardly understandable sense, given Battiato’s texts’ well-known hermetism – it may be interesting analysing the quoted sentence in its pure and simple meaning: that is, that *āyatollāh* Ḥomeynī was, and perhaps still is, considered by many people a holy man. This can be a point of departure for a study concerning the Islamic Republic in Iran: namely, that the founder of this Republic hypostatised two different dimensions, one political and institutional, the other religious. Ḥomeynī, then, as institution-holder and as a religious figure; as the top official of a country and as a man endowed with holiness.

Precisely the combination of these two dimensions – politics and religion – features Iranian constitutionalism in a unique way. As a product of a peculiar kind of religious constitutionalism, the Iranian Islamic Republic lays its foundations upon the interaction between a specific Shī‘i understanding of politics on the one hand, and constitutional principles on the other. This is why an entire chapter of this work – the first one – is dedicated to the historical development of Shī‘i Islām, with a particular focus on its relationship to political regimes, from its early stages until the late-19th century. The first constitutional experience in Iran occurred at the beginning of the 20th century. The adoption of the 1906 Persian Constitution, as recalled in the second chapter, witnessed the active role, among many other actors, of Shī‘i clerics too, to the paradoxical point that the second article of the 1907 Supplementary Fundamental Laws – integral part of the Persian Constitution – was adopted under the initiative of an anti-constitutional *āyatollāh*. If religion played a non negligible role in shaping Iranian constitutionalism, both in 1906 – when the country was still officially named “Persia” – and, to a greater extent, in 1979, so did the Western-derived constitutional tradition. In 1906-07, Persian Constitution-makers resorted to the 1831 Belgian Constitution, along with its Ottoman avatar of 1876, as formal model, while in 1979 it was the 1958 French Constitution which served as paradigm of the republican institutional framework. In both cases, a specific role, alien to the Western tradition, was given to Shī‘i clerics: in 1906 through the religious Committee entrusted with the

control of the legislation's compliance to Islamic principles; in 1979 with the constitutional incorporation of Ḥomeynī's political doctrine, known as "*velāyat-e faqih*" ("guardianship of the Islamic jurist"). This interaction involving constitutionalism, religion, and all the karst rivers that disappeared and reappeared throughout the constitutional history of Iran forms the content of what is intended here by "constitutional genealogies". The Islamic Republic in Iran was somehow shaped even prior to 1979: it has a pre-history that can be analytically retraced, much like the personal pre-history of someone is grounded on his or her family genealogy.

If the first two chapters *grosso modo* deal with the issue of constitutional genealogies, the third and the fourth mainly address the historical context and the legal dimension of the notion that gives the title to this research: the Islamic Republic in Iran. This wording has been preferred to the official name of the country – Islamic Republic of Iran, *Ġomhurī-ye Eslāmī-ye Irān* – because it highlights the nature of the Islamic Republic as institutional and constitutional "product". The Iranian Republic, indeed, was not the first Islamic Republic: before 1979 both Pakistan and Mauritania had already adopted this phrase in their respective official names. Surprisingly though, even a superficial and quick comparative analysis of the three experiences – Pakistani, Mauritanian, and Iranian – reveals that ultimately "Islamic Republic" is a tautology: a Republic is Islamic when its Constitution defines it as such – a circumstance that the establishment of the Afghan Islamic Republic in 2001 would confirm. Every Islamic Republic has characteristics of its own and a history that has shaped them. The third chapter therefore analyses the institutional and political birthplace of the Islamic Republic in Iran, namely the 1979 revolution, pointing out Ḥomeynī's role as institution-builder, and making an assessment of the Constitution-making process. The major outcome of this process, the Constitution sanctioned in December 1979, is the subject of the fourth chapter, which compares the institutional framework of the Islamic Republic as modelled in the draft Constitution with that of the 1979 Constitution. The draft Constitution, as seen below, was prepared by the provisional Government headed by Mehdī Bāzargān and was then heavily modified by the constituent Assembly of Experts elected in the summer of 1979. From a general point of view, the main changes that the Assembly of Experts made to the draft concerned significant aspects, most of which pertained to the incorporation of *velāyat-e faqih*: a new institution, the Leadership of the revolution – constitutionally granted to Ḥomeynī –, enjoying considerable powers was established, along with another organ entrusted with the protection of the Islamic feature of the system, namely, the Council of Guardians. But the Parliament too was strengthened, by removing any power of dissolution: a change that, although having nothing to do with religion at all, would nonetheless have capital consequences on the institutional development of the Islamic Republic in Iran.

“Institutional development” is the third key concept of this work, besides “constitutional genealogies” and “Islamic Republic”. Indeed, the institutional development of Iran between 1980 and 1989 constitutes the theme of the fifth and sixth chapters. Constitutions – it’s almost a truism – are living documents that develop through a praxis settled by institutional and political actors. In the case of Iran, its development followed two main paths. The first was that of a “constitutional theocracy”, meaning by that a managed regime that – much like constitutional monarchies – allows a kind of popular or somehow democratic participation, in this case via direct parliamentary and presidential elections, but with a pervasive control by some specific institutions – above all but not exclusively the Leadership, the Council of Guardians, and the Judiciary. The second path was that of an assembly or conventional regime, whereas until 1989 the form of government of the Iranian Republic was ultimately a scarcely rationalised if not a monistic parliamentary system where the President, despite enjoying important constitutional powers, was totally subordinate to the Parliament as to the nomination of the Cabinet – Prime Minister and ministers. These two patterns characterised the history of the Islamic Republic since its inception up until the 1989 amendments, whatever the majority of the *Mağles* (Parliament) and whatever the political belonging of the President. This whole picture underwent – as described in the sixth chapter – a sudden change between 1988 and 1989, when a series of events changed first some elements of the material Constitution of the country, and then, soon after Ḥomeynī’s death in 1989, several amendments to the Constitution were adopted. The amendments somehow disavowed the 1979 Constitution-making process, and indeed with Ḥomeynī’s departure a new and novel chapter of the political and institutional history of Iran – which is not addressed in this study – began.

“Political and institutional history” can be a fair definition for the methodology this work is based upon – whereas the two attributes, political and institutional, being the subject of this historical research, are to be interpreted as a hendiadys. It is, hence, a history of political institutions – ultimately, a constitutional history if we assume, as E. Rotelli does, that the history of political institutions comprises both administrative and constitutional history¹, and considering that here there is no administrative history. With the exception of the first chapter, what can be found in this work is, in F. Bonini’s words, a «History of power [...] centred on institutions, on the formal datum [...]. History of the State constitutional organs’ normative and political behaviours and their relationship

¹ See E. ROTELLI, *Storia delle istituzioni politiche: nascita di una storiografia*, «Amministrare. Rivista quadrimestrale dell'Istituto per la Scienza dell'Amministrazione pubblica» 1 (2016), pp. 355–356: according to him the history of political institutions «consists of both constitutional history, which is not limited to the age of the Constitutions, and of administrative history [...]. The former cannot be identified with the history of constitutional law, nor the latter with the history of administrative law». The English translation of all the quotes from Italian works – including this one – has been made by us.

to the constitutional text, [...] history of the Constitution as document provided with normative effectiveness»². Clearly, this is not a work of pure political science, for its purpose is not to study and analyse power and its distribution among the political institutions of the Islamic Republic; not is it a work of pure legal science, because its focus is not simply the “formal” dimension of the Constitution. Nevertheless, it also uses perspectives of political and legal sciences, since the constitutional history itself, as discipline, «has a reciprocal relationship not only with socio-political history, but especially with both constitutional law [...] and political science»³.

These methodological remarks bring into question the issue of sources. The descriptive parts of this work are based mainly on historiography and secondary sources. The analysis of documents like Constitutions, laws, decrees, official speeches, etc., has been made through English translations published on scientific journals. The greatest exception is represented by Ḥomeynī’s texts, which nonetheless are quoted from the official English translation edited by the Institute for Compilation and Publication of Imam Khomeini’s Works⁴. The extremely basic knowledge of Farsi has not allowed to resort to primary or secondary sources written in that language – besides minimal references –, and yet this demonstrates that the English, Italian and French literature concerning the political and constitutional history of Iran provides scholars with sufficient material to attempt a fairly articulate reasoning on that topic – although there will inevitably be something missing without a linguistic expertise.

The following abbreviations have been used in bibliographical notes:

EP = *Encyclopaedia of Islam*, second edition.

EQ = *Encyclopaedia of Quran*.

CHoIr = *The Cambridge History of Iran*.

NCHoIs = *The New Cambridge History of Islam*.

² F. BONINI, *Storia costituzionale della Repubblica. Un profilo dal 1946 a oggi*, Carocci, Roma 2007, p. 15.

³ *Ibid.*, pp. 16–17.

⁴ We are referring to the collection of *Ṣaḥīfeh-ye Imam. An Anthology of Imam Khomeini’s Speeches, Messages, Interviews, Decrees, Religious Permissions, and Letters*, voll. 5–21, The Institute for Compilation and Publication of Imam Khomeini’s, Tehran 2008; they are accessible at the website http://en.imam-khomeini.ir/en/s5_167/English/Book (retrieved on 30 September 2023).

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I. ROOTS OF AN ISLAMIC REPUBLIC:
RELIGION AND CONSTITUTIONALISM

1. The Religious Feature of Iranian Constitutionalism: Shī'i Islām throughout History

«How can we explain “religious” politics without either essentializing or bypassing religion?»¹. In his work on the post-1979 State-building process in Iran, M. Ayatollahi Tabaar poses a capital question of methodology. Following his question, the aim of this chapter is precisely to avoid the double risk of either “essentialising” religion – namely, in the words of the quoted author, to «ascribe to religious actors a set of fixed theological and overpredictive characteristics that determine their behavior»² – or ignoring it. The lack of a minimum and non-stereotypical knowledge of Shī'i Islām would indeed weaken the understanding of that kind of religious constitutionalism that took form in Iran in 1979. This first chapter, then, addresses the topic of Shī'i Islām with a synthetic synopsis, investigating its main political developments since the death of Prophet Muḥammad in 632 CE until the end of the 19th century.

Nevertheless, one may ask: is it so necessary to trace back even until the beginning of the Islamic history a contemporary event such as the 1979 revolution in Iran? A positive answer can be upheld considering that this hermeneutic link is widely present in the historical, legal and political literature on the 1979 revolution. For instance, in 1983 N. R. Keddie edited a work in which the revolution itself is read in the light of the overall development of the political features of Shī'ism³. Similarly, a comprehensive work on Shī'i history edited in 1989 by S. H. Nasr, H. Dabashi, S. V. R. Nasr, dedicates many chapters to Shī'i political thought, from the early community until the 1979 revolution⁴. In Italy, the legal scholar P. L. Petrillo's monograph, before debating the constitutional system and the institutional cadre of contemporary Iran, deals with the topic of «The establishment of Islam and the division between Sunnites and Shiites»⁵. Even the recent study of N. Ghobadzadeh on Shī'i political theology is divided into two parts, the first analysing «The Formative Period of S Shī'ism», and the second addressing Ḥomeynī's thought and the 1979 Constitution-making process

¹ M. AYATOLLAHI TABAAR, *Religious Statecraft. The Politics of Islam in Iran*, Columbia University Press, New York-Chichester 2019, p. 17.

² *Ibid.*

³ See N. R. KEDDIE (ed.), *Religion and politics in Iran: Shi'ism from quietism to revolution*, Yale University Press, New Haven 1983, *ad indicem*, esp. the first part “The History of Shi'ism and Politics”.

⁴ S. H. NASR – H. DABASHI – S. V. R. NASR (eds.), *Expectation of the Millennium: Shi'ism in History*, State University of New York Press, Albany 1989, *ad indicem*. Similarly, S. A. ARJOMAND, *The Shadow of God and the Hidden Imam: Religion, Political Order and Societal Change in Shiite Iran from the Beginning to 1890*, University of Chicago Press, Chicago 1987, makes a reference to the 1979 Revolution in the *Epilogue* of his book, after having analysed the role of Shī'i religious authorities mainly during the Ṣafavid and the Qāḡār eras.

⁵ P. L. PETRILLO, *Iran, il Mulino*, Bologna 2008, pp. 45–49.

In Iran⁶. Besides scientific literature, even the main legal product of the 1979 revolution, that is to say, the Constitution of republican Iran, explicitly refers to «the absence of the Glorious Lord of the Age»⁷ (art. 5), the Twelfth Imām, who is expected by Shī‘ites as saviour of the world and is believed to be still alive although in occultation. The very role of Ḥomeynī as *muḡtahid* (Islamic jurist) too would be hardly understandable should the issues of the birth and development of Shī‘i jurisprudence not be addressed, however synthetically.

Therefore, the following topics form the content of this chapter: the formation of the Sunni-Shī‘i cleavage, and the origin of the Imāmate as both political and religious institution (section 1); the role of jurists-theologians after the end of the worldly presence of the Imām (section 2) and their relationship with political regimes (section 3); the structuration of the Shī‘i “clergy” and its role in Qāḡār Persia (section 4).

1.1. *The Imāmate as Shī‘i Root Religious and Political Institution*

Muhammad died without taking leave of his loyal Companions, and without leaving any instructions for the future of the community he had created. Death came with such lightning speed that neither he nor any of the Companions had the slightest suspicion that the end was so near [...].

Abū Bakr’s election was not legal in the true sense of the word: he had been proclaimed the Prophet’s successor by a group of people from Madina, gathered in a private house, without the participation of the rest of the population, who alone had the right to settle their own destiny. [...]

It is clear that there was a moment when, owing to the acute agitation of all the faithful for their future, no one except the members of the family thought about the deceased. ‘Ali, ‘Abbās and their sons and clients found themselves overwhelmed by the disaster, and – poor in mind and soul – they were unable to do anything, except gathering around the dead body, and – upset and nervous – giving the first care that was used for the dead. Locked up in that little room, they remained strangers to the paramount drama that was unfolding around them, resembling the mountain shepherds, who hide under a cliff while the storm rages on the peaks wrapped in clouds and flashes. They understood neither the importance nor the meaning of what was happening, they did not feel able to join the struggle of human passions, which abū Bakr faced and won with admirable courage and ingenious sagacity at that moment – after a struggle, which will always remain one of the epic episodes in the history of the world⁸.

Leone Caetani’s prose conveys with undisputed clarity the situation of the Islamic community – “*umma*” in Arabic – after the disappearance of its Prophet. As it is widely known, Muḡammad’s

⁶ N. GHOBADZADEH, *Theocratic Secularism. Religion and Government in Shi‘i Thought*, Oxford University Press, New York 2023.

⁷ From now on, the 1979 Constitution is quoted in the English translation made by R. K. RAMAZANI, *Constitution of the Islamic Republic of Iran*, «Middle East Journal» 34/2 (1980), pp. 181–204.

⁸ L. CAETANI, *Annali dell’Islām. Dall’anno 7 al 12 H.*, vol. II, Urlico Hoepli, Milano 1907, pp. 524, 528, 530.

leadership hypostatized political and religious power in his own figure⁹. Since, according to Muslims, the cycle of prophecy had ended with the divine revelation bestowed to him, no single person was entitled to exercise a religious power after his death. This is why the leaders of the post-Muḥammad Islamic community – starting from Muḥammad’s companion abū Bakr († 634), elected by acclamation – were called “*ḥalīfa Rasūl Allāh*”, that is to say, “deputy” or “vicar of the Messenger of God”, in charge of guiding the *umma* politically, and not spiritually¹⁰. Yet, the issue of Muḥammad’s succession was not enclosed in the nature of the power of his successors. Immediately after the Prophet had departed, a dispute arose as to who had the true right to rule in his place, and abū Bakr’s election was contested by Muḥammad’s relatives – his daughter Fāṭima († 632), and his cousin and son-in-law ‘Alī ibn Abī Ṭālib († 661), Fāṭima’s husband. Therefore “Shī‘a” refers to the party, or faction, of ‘Alī (lit. “*šī‘a ‘Alī*”), that is to say, the people defending ‘Alī’s claims. According to the most ancient Shī‘i traditions, the Prophet had indeed explicitly designed ‘Alī as his successor, nonetheless a scheme was devised in order to exclude Muḥammad’s young cousin from the exercise of power. In this view, the leadership of the community was deceitfully conferred to abū Bakr and, after his death, to ‘Umar ibn al-Ḥaṭṭāb († 644) and later to ‘Uṭmān ibn ‘Affān († 656) – yet it must be noted that ‘Alī was part of the group of people who elected ‘Uṭmān. The belief that Muḥammad’s immediate successors were corrupt marked so deeply the ‘Alid and Shī‘i community that one of the best known and most ancient – and controversial too – sources debating the struggle of ‘Alī, namely the *Book of Sulaym son of Qays (Kitāb Sulaym ibn Qays)* – whose core was presumably written in

⁹ Cfr. J. SCHACHT, *An Introduction to Islamic Law*, Oxford University Press, Oxford-New York 1982, p. 11: «His position as a Prophet, however, backed in the later stages of his career in Medina by a considerable political and military power, gave him a much greater authority than could be claimed by an arbitrator; he became a ‘Prophet-Lawgiver’. This fact influenced so deeply the development of political Islām that even *āyatollāh* Ḥomeynī justified the necessity of an Islamic Republic setting this hendiadys as political paradigm. In the very words of Ḥomeynī himself, Muḥammad «headed the executive and administrative institutions of Muslim society. In addition to conveying the revelation and expounding and interpreting the articles of faith and the ordinances and institutions of Islam, he undertook the implementation of law and the establishment of the ordinances of Islam, thereby bringing into being the Islamic state» (R. KHOMEINI, H. ALGAR (ed.), *Islam and revolution. Writings and Declarations of Imam Khomeini*, Mizan Press, Berkeley 1981, p. 40).

¹⁰ P. M. HOLT, *Khalīfa, EP*, IV, p. 948: «The title *khalīfat rasūl Allāh* implied the assumption by Muḥammad’s successor of Muḥammad’s functions as judge and temporal leader of the community. Muḥammad’s prophetic function, on the other hand, was held to have ceased with him and it was believed that the spiritual guidance of the community had been inherited by the community as a whole. The *khalīfa*, thus, had no authority to give new interpretations to religious matters: his function was merely to maintain old doctrines. His office was simply a delegation of authority for the purpose of applying and defending the *sharī‘a*». It must be noted that the nature of the powers of Caliphs evolved throughout time, and the canonical understanding of the prerogatives of Muḥammad’s immediate successors reflected the rule of later dynastic caliphates; on this point, cfr. C. F. ROBINSON, *The rise of Islam, 600-705*, in C. F. ROBINSON (ed.), *The New Cambridge History of Islam. The Formation of the Islamic World. Sixth to Eleventh Centuries*, vol. 1, Cambridge University Press, New York 2010, p. 203.

the third decade of the 8th century –, ascribed Fāṭima’s death to a miscarriage caused by the violence perpetrated by ‘Umar’s backers¹¹.

The political confrontation between ‘Alī and his relatives on one side, abū Bakr, ‘Umar and the ‘Umayyad clan on the other, acquired, in the narration of what would become the Shī‘ī community, a spiritual and religious content as well. Those supporting ‘Alī traced back his legitimacy to several traditions – narrated in both Sunni and Shī‘ī *hadīths* that Shī‘ites interpreted as reporting explicit investitures of ‘Alī by the Prophet¹². In addition, the early Shī‘ī community elaborated the idea that ‘Alī was the keeper of the true Qur’ānic revelation, and that the process of editing of the so called Vulgate of Caliph ‘Uṭmān had been characterised by arbitrary censorship, deletions and interpolations. Since for Shī‘ites the final text of the “official” Qur’ān was false, a necessity arose: the need to know the true meaning of the prophetic revelation, the hidden (*bāṭin*) sense of what was apparent (*ẓāhir*) but counterfeit. Being ‘Alī the bearer of such knowledge, he had the authority not only to lead the *umma* as political chief, but also and above all as spiritual guide¹³. Hence, he was not a simple vicar of the Prophet – as he became Caliph after the assassination of ‘Uṭmān, and he is still included among the so called *Rāšidūn* Caliphs and honoured by Sunnites. In addition to that, he was

¹¹ On the *Kitāb Sulaym ibn Qays*, cfr. M. A. AMIR-MOEZZI, *The Silent Qur’an and the Speaking Qur’an: Scriptural Sources of Islam Between History and Fervor*, E. ORMSBY (trad.), Columbia University Press, New York 2016, pp. 13–22; M. DJEBLI, *Sulaym b. Qays, EP*, IX, pp. 818–819. The translation of a shred concerning Fāṭima’s death in M. A. AMIR-MOEZZI, *The Silent Qur’an and the Speaking Qur’an*, cit., p. 30. This quote may be helpful in distinguishing the stances of the original ‘Alid community from those of the later Shī‘a. Different – or developing – opinions throughout time can be exemplified by the issue of the legitimacy of the first three Caliphs: as C. F. ROBINSON, *The rise of Islam, 600-705*, cit., p. 206, notes, «To most Shī‘a and all Kharijites [...] Abu Bakr and ‘Umar had ruled legitimately, but things went very wrong with the first Umayyad, ‘Uthman (some Shī‘a came to hold that the Prophet had designated ‘Alī, which meant that even Abu Bakr and ‘Umar were usurpers)».

¹² One instance is the *hadīth al-kisā’* (*hadīth* of the cloak), according to which «the Prophet took his two grandsons [al-Hasan and al-Ḥusayn] and their parents [Fāṭima and ‘Alī] under his broad mantle as a way of declaring them free of blemish, free of sin. They became known as the “Five People of the Mantle” (*ahl al-kisa* in Arabic, *panj tan-e al-e ‘aba* in Persian)» (M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi‘i Islam? An Introduction*, K. CASLER – E. ORMSBY (trads.), Routledge, Abingdon-New York 2018, p. 23); cfr. also C. LO JACONO, *Storia del mondo islamico (VII-XVI secolo). Il Vicino Oriente da Muḥammad alla fine del sultanato mamelucco*, vol. 1, Einaudi, Torino 2003, pp. 39–40.

¹³ Even though taken *cum grano salis* due to his peculiar ideas on the political nature of Twelver Shī‘a, this point is clearly explained by H. CORBIN, *En Islam iranien. Aspects spirituels et philosophiques. Le shī‘isme duodécimain*, vol. 1, Gallimard, Paris 1971, pp. 94 ff.: «l’herméneutique shī‘ite du Qurān est nécessairement une herméneutique “imâmocentrique”. Cela, parce que l’imâmologie recèle en elle-même le secret de Dieu et de l’homme». On the falsification of the Qur’ān, cfr. M. M. BAR-ASHER, *The Qur’an and its Shi‘i Interpretations. Introduction*, in F. DAFTARY – G. MISKINZODA (eds.), *The Study of Shi‘i Islam. History, Theology and Law*, I.B. Tauris-The Institute of Ismaili Studies, London-New York 2014, pp. 83–85, according to whom «The Shi‘a disputed the canonical validity of the ‘Uthmānic codex, the *textus receptus*, of the Qur’an and cast doubt on the quality of its editing, alleging political tendentiousness on the part of the editors – namely, the first three caliphs, particularly ‘Uthmān b. ‘Affān (r. 23–35/644–656). Shi‘i (mainly Imāmī) criticism of the Qur’anic text was most severe in the first centuries of Islam. The editors were accused of falsification (*tahrīf*) of the Qur’anic text both by the omission of some phrases and by the addition of others»; M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi‘i Islam?*, cit., pp. 48–52; M. A. AMIR-MOEZZI, *The Silent Qur’an and the Speaking Qur’an*, cit., pp. 62–65; A. VENTURA, *Confessioni scismatiche, eterodossie e nuove religioni sorte nell’islām*, in G. FILORAMO (ed.), *Islām*, Laterza, Roma-Bari 2007, pp. 335–336.

given the title of “*Imām*” – that is to say, someone who stands ahead and leads the community considered as spiritual commonality – by his followers¹⁴.

‘Alī’s caliphate (656-661), though, was marked by a high degree of instability, and his rule was challenged by the then governor of Syria, Mu‘āwiya ibn Abī Sufyān († 680) – member of the clan of Banū ‘Abd Šams, the same of Caliph ‘Uṭmān. ‘Alī eventually was assassinated in 661 when attending the prayer in the mosque of Kūfa, stabbed by a fanatic Ḥārīḡite in revenge for the battle of Nahrawān¹⁵. Mu‘āwiya took advantage of this event and seized the power, thus becoming Caliph and persecuting ‘Alids. From that moment on, ‘Alī’s followers, gathered around their second Imām, ‘Alī’s son al-Ḥasan († 670), were completely excluded from the exercise of power. Indeed, the new ‘Umayyad caliphate, by establishing a dynastic succession, put an end to the issue posed by Muḥammad’s disappearance – something which was well and dramatically represented by the clash between Mu‘āwiya’s heir and son, Yazīd († 683), and the third ‘Alid Imām, al-Ḥusayn, ‘Alī’s second-born. The massacre of Karbalā’, which occurred the 10th of Muḥarram of 61 AH (10th of October of 680), was a major turning point for ‘Alids, in so far as it defined the nature of the Shī‘a as a politically marginalised minority: as A. Ventura states, «After Karbalā’, the Prophet’s descendants succeeded each other without giving life to any kind of political opposition for many generations»¹⁶. The line of Shī‘i Imāms could continue through al-Ḥusayn’s son, ‘Alī Zayn al-‘Ābidīn (“ornament of the devout”, † 711), who had survived the massacre. Yet, it is after and because of Karbalā’ that what was to become Imāmī Shī‘a developed a sort of archetypical passiveness towards the political order, a kind of attitude that N. Ghobadzadeh as labelled as «theocratic secularism»¹⁷. This phrase, indeed, much

¹⁴ In the words of W. MADELUNG, *Imāma, EI²*, III, p. 1166, «the imām was entitled to political leadership as much as to religious authority». S. A. ARJOMAND, *The Shadow of God and the Hidden Imam*, cit., p. 225, talks about «twin functions of imamate – supreme political and religious leadership of the community». Cfr. also S. H. NASR, *Iḥnā ‘Ashariyya, EI²*, IV, p. 278: «The word imām itself means etymologically he who stands before, therefore, he who is a guide and leader». Of course, the meaning of the word is different with respect to the Sunni tradition, where the *imām* is essentially the leader of *ṣalāt*, see J. PEDERSEN, *Masḡid, EI²*, VI, pp. 674–675. The clear-cut dichotomy Sunni-*ḥalīfa* and Shī‘i-*imām* fades from a linguistic point of view when considering that the Caliph was also «*Imām* of the Muslim community» (*ibid.*, p. 672) and «the appointed leader of the *ṣalāt* and the *khaṭīb* of the Muslim community» (*ibid.*, p. 668). The difference is therefore more semantic than lexical.

¹⁵ Even though Ḥārīḡites cannot be considered Shī‘ites, this point is crucial in order to understand one of the main features of the Shī‘a, that is to say, its pluralistic development into many differing currents – cfr. *infra*, note 22. ‘Alids knew their first schism after the battle of Šifīn (657), when ‘Alī acquiesced to settle his dispute with Mu‘āwiya through an arbitration rather than *manu militari*. ‘Alī’s most maximalist supporters – known as “Ḥārīḡites” after their schism – did not accept such a solution though, and they started opposing him as well. Eventually they were defeated by ‘Alī in the battle of Nahrawān (658). Upon this first schism, cfr. G. LEVI DELLA VIDA, *Khārīḡites, EI²*, IV, pp. 1074–1077. After ‘Alī’s death, other branches developed within the Shī‘a; for our purposes their history is not as important as the Imāmī.

¹⁶ A. VENTURA, *Confessioni scismatiche, eterodossie e nuove religioni*, cit., p. 326.

¹⁷ See N. GHOBADZADEH, *Theocratic Secularism*, cit., pp. 1–39, according to whom “theocratic secularism” means that «Twelver Shī‘ism embodies a religious rationale for political secularism. [...] [B]elief in a pure and unattainable theocracy is the cornerstone of Twelver Shī‘ī Islam» (p. 1), while «theocratic secularism was formed not as an alternative to the Shī‘ī politico-religious ideal but from the sect’s politico-religious modus operandi in the post-Karbalā’s era» (p. 8).

more than the word “quietism”, catches the essence of the Shī‘i understanding of politics¹⁸: only the religiously legitimised Imām had the right to guide the community (theocracy), but this perspective could not come true anymore (secularism). With Karbalā’, the Shī‘i narrative featured the Shī‘a itself as the religion of the persecuted and martyrs, the religion of those who were kept out of any kind of political decision¹⁹.

Nevertheless, Imāmī Shī‘a developed its own dogmatics, mainly during the Imāmates of Muḥammad al-Bāqir († 737) – al-Ḥasan’s maternal and al-Ḥusayn’s paternal grandson – and his son Ğa‘far aṣ-Ṣādiq († 765). They are, according to Amir-Moezzi and Jambet, «the true founders of Imami Shi’ism. The principal written doctrines stem from their teachings. [...] [T]he number of traditions attributed to these two imams is greater than all others combined, including those of the Prophet Muhammad and Fatima»²⁰. The sixth Imām in particular, Ğa‘far aṣ-Ṣādiq, is traditionally recognised as the main setter of Imāmī law – which is precisely called “ḡa‘farī”²¹. Moreover, he witnessed one of the most important political events in the history of Islām, namely the fall of the ‘Umayyad Caliphate and the establishment of the ‘Abbāsīd dynasty in 750. What coalesced against the rule of Mu‘āwiya’s heirs in the middle of the 8th century were different groups related to Banū Hāšim and issued from the Shī‘a. One of the leaders of the revolt against ‘Umayyads was abū al-‘Abbās, later known as Caliph as-Saffāḥ († 754), a direct descendant of al-‘Abbās ibn ‘Abd al-Muṭṭalib († 653), Muḥammad’s paternal uncle and member of *ahl al-bayt* intended *lato sensu*²². Notwithstanding the

¹⁸ Upon quietism cfr., for instance M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi’i Islam?*, cit., p. 26, who state that «Shi’i imams adopt a quietist attitude, leaving to God alone the hour of their ultimate victory in the world. The technical expression for this attitude is *qu’ud*, literally “sitting” or “staying put”, as opposed to *qiyam* (revolt) or *khuruj* (coming out; i.e. insurrection). If we believe the many Shi’i accounts which came into existence much later, it appears that after Karbala the imams realized – and endeavoured to persuade their disciples – that the period of harmony between worldly and spiritual powers that had prevailed during the life of the Prophet was now gone forever. They apparently concluded that the religious realm (in the sense of the “true religion”, *din al-haqq*; i.e. the religion of the imams, Shi’ism) and the political realm had now become forever irreconcilable».

¹⁹ Concerning the consequences of the battle of Karbalā’, cfr. F. DAFTARY, *A History of Shi’i Islam*, I.B. Tauris-The Institute of Ismaili Studies, London-New York 2013, p. 33, who says that «Henceforth, the call for repentance and martyrdom became integral aspects of Shi’i spirituality»; N. GHOBADZADEH, *Theocratic Secularism*, cit. pp. 39–42.

²⁰ M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi’i Islam?*, cit., p. 29. “*Al-Bāqir*” stand for “*al-Bāqir al-‘ilm*”, which refers to the vastness of the fifth Imām’s knowledge, while “*ṣādiq*” means truthful, veracious. More broadly, on the conditions of religious minorities and the Shī‘a under the ‘Umayyad rule, cfr. P. M. COBB, *The empire in Syria, 705-763*, in *NCHoIs*, vol. 1, pp. 253–255.

²¹ M. G. S. HODGSON, *Dja‘far al-Ṣādiq, EP*, II, p. 375; upon the dogmatic developments of the Shī‘a under these two Imāms, cfr. F. DAFTARY, *A History of Shi’i Islam*, cit., pp. 44–46; M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi’i Islam?*, cit., pp. 29–31. For G. SCARCIA, *A proposito del problema della sovranità presso gli Imāmīti*, «Annali dell’Istituto Universitario Orientale di Napoli», VII (1957), pp. 103–104, “ḡa‘farī” is a «pseudo-technical term», since «Legally, it is the common term to indicate the *madhab* of Shiites. By using it, Western Islamic studies followed a not so long-standing tendency of overcoming the differences between Sunnism and Imāmism by forcibly reducing those differences to a purely technical feature [...]; the term *Imāmīyya* [...] besides its commonness is, for me, the best, in so far as, although neatly indicating the environment – that of the Twelver *Šī‘a* –, it does not contradict the largest and freest research of the doctrinal routes, basically *madhabs*, that are possible within the environment».

²² At that time, a part from the schism of Ḥārīḡites, Shī‘i Islām was divided into several branches. During the Imāmate of ‘Alī Zayn al-‘Ābidīn, his father’s step-brother Muḥammad ibn al-Ḥanafīyya († 700), issued from the marriage between

extent of the anti-‘Umayyad coalition, Ğa‘far carried on the quietistic attitude of his two predecessors, avoiding taking active part in the uprising against the Caliphate – just like his father had avoided helping his own younger half-brother Zayd in a riot in 740. Nonetheless, once in power ‘Abbāsids considered ‘Alids a serious threat, in so far as the latter were ideologically entitled to seize power as well as the former, being both part of the Prophet’s family. Therefore, Shī‘ites remained a persecuted minority – even worse when ‘Abbāsids abandoned their Shī‘i legacy favouring the then emerging Sunni orthodoxy –, to the point that Shī‘i hagiography states that Ğa‘far was poisoned by abū al-‘Abbās’ brother and successor, Caliph al-Manṣūr († 775)²³.

It was precisely the succession to Ğa‘far that caused another schism within the Shī‘a. His son Mūsā al-Kāzīm (“the self-restrained”, † 799) was challenged by a group supporting Mūsā’s own eldest half-brother, Ismā‘īl, who had predeceased their father in 762, but was thought to be in occultation (*ḡayba*) and expected as saviour by some Shī‘i faithful²⁴. The branch of the Shī‘a recognising the Imāmate of Ismā‘īl rather than Mūsā’s became known as “Ismā‘īlī” or “Sevener”, since it counts seven ‘Alid Imāms – while Mūsā’s lineage, leaving out further minor breakups, continued until the twelfth Imām, Muḥammad ibn al-Ḥasan, thus those following this line are called “Twelver”²⁵. But besides this further division, detachment from power remained the main political

‘Alī and Ḥawla bint Ğa‘far, was proclaimed Imām by al-Muḥtār († 687), a revolutionary who had served ‘Alī as well. Those supporting al-Muḥtār and Muḥammad ibn al-Ḥanafīyya were called “Kaysānites”. Their importance lies in that «Certain aspects of the intellectual heritage of the Kaysaniyya [...] were later adopted and further elaborated in the teachings of the main Shi‘i communities of the early Abbasid times» (F. DAFTARY, *A History of Shi‘i Islam*, cit., p. 39), such as, for instance, the idea of *ḡayba* (“occultation”) of the Imām or the expectation of al-Mahdī, that is to say, the Imām itself considered as eschatological saviour (cfr. also M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi‘i Islam?*, cit., pp. 28 (esp. note 9), 36). Kaysānites split up in their turn into several currents: after Muḥammad ibn al-Ḥanafīyya’s death, many started waiting for his return, while some others recognised his son, abū Hāšim († 716), as Imām. Other divisions were triggered by abū Hāšim’s death as well, but they eventually flowed into the wider context of ‘Abbāsids. On Kaysānites, cfr. W. MADELUNG, *Kaysāniyya*, *EP*, IV, pp. 836–838. In addition to Kaysānism, following ‘Alī Zayn al-‘Abidīn’s death, his son Zayd claimed the Imāmate and gave birth to the so called Zaydite (or Fiver) Shī‘a, which was characterised by violent methods of political confrontation against the ‘Umayyad Caliphate: in 740 Zayd was killed after he had provoked an uprising in Kūfa, and yet Zaydism has survived until today in Yaman, where it was adopted by the ruling dynasties from 897 to 1962 and is still the religion of a large portion of the population. Upon Zaydism, cfr. M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi‘i Islam?*, cit., pp. 28–29; F. DAFTARY, *A History of Shi‘i Islam*, cit., pp. 145–174; W. MADELUNG, *Zaydiyya*, *EP*, XI, pp. 477–481. Abū al-‘Abbās’ father was Muḥammad ibn ‘Alī ibn ‘Abd Allāh ibn al-‘Abbās, who had been allegedly nominated heir apparent by abū Hāšim; this link is what connects ‘Abbāsids – that is to say, al-‘Abbās ibn ‘Abd al-Muṭṭalib’s descendants – to ‘Alī, but not to his Fāṭimid heirs.

²³ Cfr. T. EL-HIBRI, *The empire in Iraq, 763-861*, in *NCHOIs*, vol. 1, pp. 269–272: «the greatest potential threat that al-Manṣūr expected [...] came from the ‘Alid branch of the Hashimite family, which had the closest kin ties to the Prophet, and was thus viewed by Hashimite sympathisers as the most legitimate inheritor of the caliphate»; T. EL-HIBRI, *The Abbasid Caliphate: A History*, Cambridge University Press, Cambridge-New York 2021, pp. 65–67. Upon the death of the sixth Imām, cfr. M. G. S. HODGSON, *Dja‘far al-Šādiq*, cit., p. 374.

²⁴ Ğa‘far’s death caused the creation of many other factions in addition to Ismā‘īlīs and those supporting Mūsā: see F. DAFTARY, *The Earliest Ismā‘īlīs*, in E. KOHLBERG (ed.), *Shī‘ism*, Routledge, Abingdon-New York 2016, pp. 219–222; F. DAFTARY, *A History of Shi‘i Islam*, cit., pp. 106–107; M. G. S. HODGSON, *Dja‘far al-Šādiq*, cit., p. 375.

²⁵ The phrase “Twelver Shī‘a” conveys the literal meaning of the Arabic term “*‘Iṭnā ‘Ašariyya*” (where “*‘iṭnā ‘ašar*” is number twelve), and it is used as a synonym of “Imāmism” (from “*Imāmiyya*”).

feature of Imāmī Shī‘a²⁶ – while, for instance, Ismā‘īlis managed to establish a new empire between Morocco and Syria at the beginning of the 10th century. Mūsā was probably poisoned by Caliph Ḥarūn ar-Rašīd († 809); what is interesting of his son, ‘Alī ar-Riḍā († 818), is that Ḥarūn ar-Rašīd’s successor, al-Ma’mūn († 833), nominated him as heir to the Caliphate, in order to put an end to the conflict that the establishment of the ‘Umayyad dynasty had provoked within the Islamic *umma* and reconcile ‘Abbāsids with ‘Alids. The eighth Imām, though, was far older than the Caliph and died before this project could possibly come true²⁷.

The last Imāms, Muḥammad al-Ġawād († 835), ‘Alī al-Hādī († 868) and al-Ḥasan al-‘Askarī († 874), «seem to have played a less important role than the others. [...] Together they occupy a modest place in the canonical traditions»²⁸. When the eleventh Imām died in 873 or 874, most likely he had no offspring. The community split again into many branches; some faithful claimed that al-Ḥasan did have a son, later known as Muḥammad, who had disappeared – or, better, gone into occultation – along with his father. At first, during what Twelver dogmatics would later call the “minor occultation” (*al-ġayba aṣ-ṣuġrā*), the twelfth Imām was believed to communicate with the community through four intermediaries (*sufarā’*, pl. of *safīr*)²⁹. When the last *safīr* died in 941, the “major” or “complete occultation” (*al-ġayba al-kubrā* or *at-tāmma*) began: this is the period of absolute silence of the Imām, which will last until the end of the world. Twelver Shī‘ites therefore started waiting for the twelfth Imām’s return as *al-Mahdī* (“the rightly guided”) or *al-Qā’im* (“the riser”), that is to say, as eschatological saviour³⁰.

²⁶ Cfr. E. KOHLBERG, *Mūsā al-Kāzīm, EP*, VII, p. 645; M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi‘i Islam?*, cit., pp. 32–33.

²⁷ E. L. DANIEL, *The Islamic east*, in *NCHols*, vol. 1, p. 475; T. EL-HIBRI, *The Abbasid Caliphate*, cit., pp. 109–110; S. A. ARJOMAND, *The Crisis of the Imamate and the Institution of Occultation in Twelver Shi‘ism: a Sociohistorical Perspective*, in E. KOHLBERG (ed.), *Shi‘ism*, cit., pp. 113–114.

²⁸ M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi‘i Islam?*, cit., p. 34; “*al-Ġawād*” means bountiful, “*al-Hādī*” is a given name signifying guider, while “*al-‘Askarī*” (lit. “the military one”) refers to the condition of the second-to-last Twelver Imām, who probably died imprisoned in a military camp.

²⁹ W. M. WATT, *The Significance of the Early Stages of Imami Shi‘ism*, in N. R. KEDDIE (ed.), *Religion and Politics in Iran*, cit., pp. 26–28; just like the systematisation of a theology of the hidden Imām, the idea of him communicating through four intermediaries is an *a posteriori* depiction, see V. KLEMM, *The Four Sufarā’ of the Twelfth Imām: On the Formative Period of the Twelver Shi‘a*, in E. KOHLBERG (ed.), *Shi‘ism*, cit., pp. 135–152.

³⁰ Concerning the succession to the eleventh Imām, the figure of his alleged son, and the formation of a theology of the hidden Imām – which took several decades to be accomplished – cfr. W. MADELUNG, *al-Mahdī, EP*, V, p. 1236: «Twelver Shī‘ī doctrine on the Kā’im-Mahdī and on his Occultation [...] was authoritatively elaborated by Muḥammad b. Ibrāhīm al-Nu‘mānī (middle of the 4th/10th century) [...], by Ibn Bābūya (d. 381/991) [...], and by Shaykh al-Ṭūsī (d. 460/1068)»; for S. A. ARJOMAND, *The Crisis of the Imamate*, cit., pp. 119–125, the name of al-Ḥasan al-‘Askarī’s son appeared for the first time in a text of the early 10th century – while, more generally, J. C. J. TER HAAR, *Muḥammad al-Kā’im, EP*, VII, pp. 443, states that «Concerning the name of the twelfth *imām*, some sources claim that he was given the name of the Prophet, Abu ‘l-Kāsim Muḥammad. According to other sources, however, the followers of al-Ḥasan b. ‘Alī al-‘Askarī were explicitly forbidden to ask after the name of his son»; cfr. also F. DAFTARY, *A History of Shi‘i Islam*, cit., pp. 63–64. On the period of the occultation, cfr. W. M. WATT, *The Significance of the Early Stages of Imami Shi‘ism*, in N. R. KEDDIE (ed.), *Religion and Politics in Iran*, cit., pp. 26–28; just like the systematisation of a theology of the hidden Imām, the idea of him communicating through four intermediaries is an *a posteriori* depiction, see V. KLEMM, *The Four*

The absence of the Imām posed a grave issue for Twelver Shī‘i believers: without him, and after the death of the last *safīr*, who was entitled to guide the community? For instance, who would lead the collective prayer, collect the *zakāt*, proclaim *ġihād*, interpret the canonical sources of law – Qur’ān and Sunna –, appoint judges? More than that, given the tight interdependence between religion and politics, the occultation invested the Shī‘i community in its political dimension as well: indeed, al-Mahdī started being expected as establisher of an everlasting realm of justice and peace³¹. Hence, in the absence of the Imām, who could be considered as the right and legitimate ruler? If, using Ghobadzadeh’s terminology, theocratic secularism was once more reaffirmed as the *pivot* of the political praxis of Shī‘ites, as to religious matters the void caused by the absence of the Imām was progressively filled by a class of knowledgeable people that had developed since the Imāmate of Mūsā: «a new class of influential individuals [...] namely, the imam’s agents who are responsible for the hierarchical organization of the faithful»³². These people were called *wukalā’* (pl. of *wakīl*, lit. “agents” or “deputies”) and formed the class of ‘*ulamā’* (pl. of ‘*ālim*), that is to say, of scholars or savants, placed in a «hierarchical organization»³³ whose setter had been precisely Mūsā al-Kāẓim, and who were to play a capital role in the development of Imāmī Shī‘ism.

1.2. *The School of Baġdād and the School of Ḥilla: the Institutionalisation of Shī‘i Religious and Iġtihād*

The first conceptualisation of the duties of ‘*ulamā’* after the disappearance of the last Imām took place during what is called the “Shī‘a century”, between the mid-10th and mid-11th centuries³⁴. There is a temporal contiguity between the beginning of the major *ġayba* and one of the main historical events marking the Shī‘a century, namely the occupation of Baġdād – the capital of the ‘Abbāsīd caliphate since 762 – by Būyids in 945. Būyids or Buwayhīds (*Āl-e Buyeh* in Farsi, *al-Buwayhiyyūn*

Sufarā’ of the Twelfth Imām: On the Formative Period of the Twelver Shī‘a, in E. KOHLBERG (ed.), *Shī‘ism*, cit., pp. 135–152; J. C. J. TER HAAR, *Muhammad al-Kā‘im*, cit., p. 443.

³¹ Cfr. M. G. S. HODGSON – D. B. MACDONALD, *Ġhayba*, *EP*, II, p. 1026: «The *Ġhayba* has legal effects on account of the absence of the *imām*, whose active presence in the community is regarded as necessary for validating certain community actions»; W. MADELUNG, *al-Mahdī*, cit., p. 1236; N. GHOBADZADEH, *Theocratic Secularism*, cit., pp. 87–116, clearly explains the complex development of the figure of al-Mahdī as eschatological saviour within the Shī‘i dogmatics.

³² M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi‘i Islam?*, cit., p. 33; cfr. also the extensive analysis of N. GHOBADZADEH, *Theocratic Secularism*, cit., pp. 53–69; S. A. ARJOMAND, *The Crisis of the Imamate*, cit., p. 112.

³³ S. A. ARJOMAND, *The Crisis of the Imamate*, cit., p. 115.

³⁴ Cfr. M. G. S. HODGSON, *The Venture of Islam. The Expansion of Islam in the Middle Periods*, vol. 2, University of Chicago Press, Chicago-London 1977, pp. 36–39, according to whom «The age of Fāṭimid and Būyid pre-eminence in some of the central lands of Islamdom has been called ‘the Shī‘i century’ because of the prominence of Shī‘is then in various capacities. It was not a Shī‘i century in the sense that Shī‘ism as such dominated either political or social and intellectual life. Yet the designation does point up a reasonably striking phenomenon-especially in its contrast to the immediately following period, when Shī‘is are much less heard from. In Shī‘i history, the century stands out as a time of creative religious writing which laid a foundation for all that followed».

in Arabic, from the eponym abū Šuġa‘ Būya, or Buwayh) were a Daylamite population of Gilān that had embraced Shī‘ism towards the end of the 9th century³⁵. Even though through the occupation of Baġdād they managed to submit *de facto* the Sunni Caliph – who maintained a purely nominal power –, they did not impose a State religion of their own. If it is true that at first «their attitude towards religious and confessional problems was one of indifference, in which practical considerations alone seem to have played a part»³⁶, nonetheless they supported Shī‘i traditions as well – promoting, for instance, the emerging celebration of ‘*Āšūrā*’, *i.e.*, the remembrance of the massacre of Karbalā’, which started being commemorated precisely under Būyids³⁷. The presence in power of a Shī‘i dynasty compelled ‘*ulamā*’ to deal with the issue of the exercise of political power in the absence of the Imām. Three theologians are the main representatives of the so-called school of Baġdād, the then new centre of Imāmī thought: Šayḥ Mufīd (abū ‘Abd Allāh Muḥammad ibn Muḥammad ibn Nu‘mān al-Ḥārītī al-‘Ukbarī, † 1022), Šarīf Murtaẓā (abū al-Qāsim ‘Alī ibn al-Ḥusayn, † 1044), and Šayḥ Ṭūsī (abū Ġa‘far at-Ṭūsī, † 1067)³⁸. It is mainly with them – among others – that the endeavour of rationalising Imāmī Shī‘a began – that is to say, of harmonising the *corpus* of Shī‘i traditions dating back to Imāms with the growing influence of Greek philosophy and Aristotelian logic. From the political point of view, Būyid rule was accepted by distinguishing the unfairness marking all governments – due to the absence of the sole just ruler, the Imām – from legitimacy, the latter depending on the confessional affiliation of the ruler. Hence, even though being unjust, Būyids were legitimate because they were Shī‘i. From this perspective, «jurists are authorized to collaborate with unjust but legitimate power if such involvement results in advancing the rights of the Shi‘i community and avoiding repression»³⁹. It must be underlined that the development of this kind of political thought occurred with a new theorisation concerning the religious role of Shī‘i ‘*ulamā*’. “Rationalisation” means that ‘*ulamā*’ started resorting to a new – or, as stated by Amir-Moezzi and Jabet, a renewed concept of a – theological category, that is to say, ‘*aql*, or reasoning. As intended by

³⁵ H. BUSSE, *Iran Under the Būyids*, in R. N. FRYE (ed.), *The Cambridge History of Iran. The Period from the Arab Invasion to the Saljuqs*, vol. 4, Cambridge University Press, Cambridge-New York 1975, p. 253: «Pretenders to the succession of ‘Alī, who were of the Zaidite persuasion, sought refuge amongst the Dailamites and began to proselytize them in the second half of the 3rd/9th century. But the real wave of conversion did not come until the turn of the century».

³⁶ *Ibid.*, p. 287.

³⁷ Cfr. H. KENNEDY, *The late ‘Abbāsīd pattern, 945-1050*, in *NCHoIs*, vol. 1, pp. 387–390; H. BUSSE, *Iran Under the Būyids*, cit., pp. 300–301; F. DAFTARY, *A History of Shi‘i Islam*, cit., pp. 68–69.

³⁸ G. SCARCIA, *Intorno alle controversie tra Aḥbārī e Uṣūlī presso gli Imāmīti di Persia*, «Rivista degli studi orientali», 33/3/4 (1958), p. 220, refers to them as to the «famous triad from the Buwayhid period» which contributed to the birth of the «Uṣūlī method»; cfr. *infra*, note 71.

³⁹ M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi‘i Islam?*, cit., p. 111; cfr. N. GHOBADZADEH, *Theocratic Secularism*, cit., pp. 125–145.

post-*gayba* theologians, ‘*aql* is a «logical Aristotelian reason»⁴⁰, and it serves as basis for the study of Imāmic traditions: Šayḥ Ṭūsī was, in this sense, the first to develop a rigorous science of *hadīths*⁴¹. Even though the normative hermeneutic (*iğtihād*) of the canonical texts – Qur’ān and Sunna – was not considered yet a completely legitimate source of law (*‘aql al-fiqh*), nonetheless by enhancing the role of jurists-theologians in the field of law, rationalist ‘*ulamā*’ managed to establish themselves as new religious *élite* within the Shī‘i community while, at the same time, gradually nuancing the original political stances of the Shī‘a as well. At the same time, the endeavour of Shī‘i ‘*ulamā*’ was completely alien to any theoretical justification that could legitimise the appropriation of political, or better governmental, functions⁴².

Whereas under Būyids Shī‘i rationalism started to develop, when the last representative of the Būyid “triad”, Šayḥ Ṭūsī, died in 1067 Būyids had already been driven out of power. In 1055 the Salḡuq Sultan Toḡril had entered Baḡdād and deposed the Būyid *amīr* of Iraq, while seven years later the same fate befell the last Būyid ruler in Fārs⁴³. More broadly, the arrival of Turks marked the end of Shī‘i dynasties. It is not by chance that one century after the fall of Būyids the Ismā‘īli Fāṭimid Caliphate of Egypt collapsed and was integrated into the new Ayyūbid Sultanate founded by the Sunni Kurdish Šalāḥ ad-Dīn – who had served the Turkish *amīr* of Damascus Nūr ad-Dīn. The arrival of

⁴⁰ *Ibid.*, p. 107–108: «‘*Aql*, as it appears in the earliest *hadith* texts (i.e. in the original traditions with their non-rational esoteric orientation), refers to cosmic Intelligence [...]. ‘*Aql* is an ability to apprehend the Divine and comprehend the metaphysical; it is the ultimate spiritual “organ”. It is intelligence of the sacred and sacred intelligence; it is the “inner proof” of God, as the Imam is His “outer proof”. [...] Important changes begin to occur with the “rationalistic” turning point within Islam when Aristotelian logical reasoning also frequently comes to be translated as ‘*aql*. This new meaning gradually replaces the old [...], a new science of *hadith* criticism took root and flourished in Shī‘i circles, the aim of which was to identify the criteria for authenticating or invalidating traditions». Also G. SCARCIA, *Intorno alle controversie tra Aḡbārī e Uṣūlī*, cit., p. 217, talks about ‘*aql* in similar terms: «‘*aql*, of course, as a religious Aristotelianism understands it, a *Thomism*».

⁴¹ M. A. AMIR-MOEZZI, *al-Ṭūsī*, *EP*², X, p. 745: his work on *hadīths* consisted in the «rehabilitation of the first traditionists, validity of traditions attested by a single authority so long as these are conveyed by reliable sources and conditional validity of traditions conveyed by transmitters professing “deviant” doctrines».

⁴² Upon the normative nature of *iğtihād* in this period, cfr. J. CALMARD, *Mardja ‘-i Taḡlīd*, *EP*², VI, p. 549: «The eminent scholars of the period of the Būyids [...] who formulated the Imāmī *uṣūl al-fiqh* (al-Mufīd, d. 413/1022; al-Murtaḡā, d. 436/1044; Šayḡḡ Ṭūsī, d. 460/1067) reject both *kiyās* and *iğtihād* [...]. Even while employing its techniques, the Imāmī ‘*ulamā*’ continue to reject *iğtihād*»; cfr. also A. J. NEWMAN, *Uṣūliyya*, *EP*², X, p. 935. Concerning the theological and political developments here described, cfr. F. DAFTARY, *A History of Shi‘i Islam*, cit., pp. 70–72; M. A. AMIR-MOEZZI, *al-Ṭūsī*, cit. Upon the absence of a justification of a ‘*ulamā*’-led government, cfr. N. GHOBADZADEH, *Theocratic Secularism*, cit., pp. 117–125: «scholars inherited the religious and political authority of the infallible Imām, both in theory and in practise. But the scope of the authority that Shī‘ī scholars of this period defined for themselves as leader of the Shī‘ī community [...] did not in any way include the management of the caliphate or acting as the head of state» (p. 118), «The authority of scholars has a very limited scope in the executive-political sphere, too, and perhaps the most important authority held by the infallible Imām and not transferred to the ‘*ulamā*’ was the right to form of government» (p. 123).

⁴³ C. E. BOSWORTH, *The Political and Dynastic History of the Iranian World (A.D. 1000-1217)*, in J. A. BOYLE (ed.), *The Cambridge History of Iran. The Salḡuq and Mongol Periods*, vol. 5, Cambridge University Press, Cambridge 1968, pp. 44–47; C. E. BOSWORTH, *The Steppe Peoples in the Islamic World*, in D. O. MORGAN – A. REID (eds.), *The New Cambridge History of Islam. The Eastern Islamic World. Eleventh to Eighteenth Centuries*, vol. 3, Cambridge University Press, New York 2010, pp. 41–43.

Turks entailed both political and religious long-lasting consequences in the history of Islām. From the point of view of political institutions, the arrival of Salġuqs resulted in a renewal of the religious role of the Sunni Caliphate, ideally allied with the new Sultanate founded by Toġril. If, as stated by the eminent Turkologist J.-P. Roux, «les Seldjoukides avaient dû en partie leur succès à leur adhésion au sunnisme et à leur fidélité au califat»⁴⁴, the expansion of the Salġuq Sultanate over Iraq «crystallized the new division of power and influence in the central lands of the *Dār al-Islām*»⁴⁵: a division consisting in the «duality – between the caliph-imāms as spiritual heads and the Saljuq sultans as secular rulers – [which] had eventually to be recognized in Islamic constitutional theory»⁴⁶. In this context, Baġdād faded as Shī‘ī theological centre, to the advantage of another Iraqi town, al-Ḥilla⁴⁷. Here, rationalist ‘*ulamā*’ carried on the endeavour started by their baghdadi peers: ibn Idrīs al-Ḥillī († 1202), for instance, «was apparently the first to explicitly include notions of “consensus of the jurists” and “reason” among the fundamental principles of canon law alongside the Qur’an and tradition»⁴⁸. More generally, «Shī‘ī theologians of this period [...] laid the bases of that methodical Shī‘ī theology which flourished especially in the next century»⁴⁹.

The 13th century marked an important hiatus in the history of the Islamic world, due to the arrival of Mongols. Between 1219 and 1222 the Ḥwārazmian Empire suffered the Mongolian invasion led by Chingis Ḥān († 1227) himself; the rest of Iran was subdued by his youngest heir, Ögedei († 1241), and in 1243 Mongols defeated the Salġuq Sultan of Rum in the battle of Köseadaġ⁵⁰. The subjugation of Iraq was organised and realised by Chingis Ḥān’s grandsons in the 1250s: one of them, Hülegü († 1265), besieged Baġdād at the beginning of 1258, conquering the city after one month of siege and having the Caliph, al-Musta‘šim, killed⁵¹. A Shī‘ī theologian was also present at the siege of Baġdād in the retinue of Hülegü: his name was Našīr ad-Dīn aṭ-Ṭūsī († 1274). From within the city, on the other hand, another Shī‘ī jurist, ibn Ṭāwūs († 1266), witnessed the capitulation of the Abbāsīd capital and the end of the caliphate. When Hülegü summoned the baghdadi ‘*ulamā*’, ibn Ṭāwūs himself stated

⁴⁴ J.-P. ROUX, *Histoire des Turcs. Deux mille ans du Pacifique à la méditerranée*, Fayard, Paris 2000, p. 206.

⁴⁵ C. E. BOSWORTH, *The Iranian World (A.D. 1000-1217)*, cit., p. 50.

⁴⁶ *Ibid.*

⁴⁷ M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi‘i Islam?*, cit., p. 112: «The fall of the Buyids [...], the restoration of a rigorous form of Sunni Islam, and the brutal repression of the Shia were the chief reasons for the gradual relocation of the intellectual centre of Shi‘ism from Baghdad to Hilla, [...], the scholars of the Hilla school [...] continued to consolidate the theoretical foundations of Usuli theology and jurisprudence»; see also J. CALMARD, *Mudjtahid, EI²*, VII, p. 297; F. DAFTARY, *A History of Shi‘i Islam*, cit., pp. 72–74.

⁴⁸ M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi‘i Islam?*, cit., p. 112.

⁴⁹ A. BAUSANI, *Religion in the Saljuq Period*, in *CHoIr*, vol. 5, p. 295.

⁵⁰ Cfr. B. FORBES MANZ, *The Rule of the Infidels: the Mongols and the Islamic world*, in *NCHoIs*, vol. 3, pp. 131–141; J. A. BOYLE, *Dynastic and Political History of the Īl-Khāns*, in *CHoIr*, vol. 5, pp. 307–338.

⁵¹ Cfr. B. FORBES MANZ, *The Mongols and the Islamic world*, cit., pp. 142–144; J. A. BOYLE, *History of the Īl-Khāns*, cit., pp. 347–349.

that «the just infidel ruler is preferable» to «an unjust Muslim ruler»⁵². This episode – considered in the wider context of Mongol rule – gave an important drive to the political engagement of Shī‘i ‘*ulamā*’. Indeed, under Mongols Shī‘i scholars undertook considerable political functions: for instance, «Hülegü [...] entrusted [Naṣīr ad-Dīn] al-Ṭūsī with important duties, such as the administration of all religious foundations (*wakf*) and of the finances»⁵³; likewise, al-‘Allāma al-Ḥillī (Ġamāl ad-Dīn Ḥasan ibn Yūsuf ibn ‘Alī ibn Muṭahhar, † 1325) – who was a disciple of Naṣīr ad-Dīn al-Ṭūsī and maternal nephew of the Shī‘i scholar Muhaqqiq al-Ḥillī († 1277) – served as advisor to the eighth Ilhān, Öljeitü (r. 1304-1316)⁵⁴.

Just as over the 10th and 11th centuries the development of Shī‘i political thought was accompanied by an expansion of the religious role of ‘*ulamā*’, similarly after the foundation of the Middle Eastern Mongol Ilhānate in 1262 the link between the prerogatives of the Imām and those of jurists-theologians was tightened even more. It is this period that *iğtihād* (lit. “diligence”) was fully accepted among the legal sources of Shī‘i Islām – *iğtihād* intended as rational interpretation of the scriptural sources provided with normative validity, aiming at solving the cases in issue that were not contemplated in the canonical texts. The performance of *iğtihād* implied a significant knowledge of legal science (*fiqh*), hence only a jurist (*faqīh*) could become *muğtahid* (i.e., “someone performing *iğtihād*”) – while common believers were *muqallids*, that is to say, “people performing *taqlīd*”, or imitation, of savants⁵⁵. Therefore, between the 13th and 14th centuries and mainly through the work

⁵² E. KOHLBERG, *A Medieval Muslim Scholar at Work: Ibn Tāwūs and His Library*, E. J. Brill, Leiden 1992, p. 10.

⁵³ H. DAIBER, *al-Ṭūsī, Naṣīr al-Dīn, EP*, X, p. 746.

⁵⁴ “Al-‘Allāma” means “the highly knowledgeable”. Cfr. S. H. M. JAFRI, *al-Ḥillī, EP*, III, p. 390; M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi‘i Islam?*, cit., p. 112; F. DAFTARY, *A History of Shi‘i Islam*, cit., p. 77. Öljeitü’s brother and predecessor, Ilhān Ġāzān (r. 1295-1304), was the first openly Muslim ruler in the Mongol Ilhānate; Öljeitü himself was baptised as Christian, then converted to Buddhism, and finally died as Shī‘i Muslim: cfr. A. BAUSANI, *Religion Under the Mongols*, in *CHoIr*, vol. 5, pp. 541–543.

⁵⁵ Cfr. G. SCARCIA, *Intorno alle controversie tra Aḥbārī e Uṣūlī*, cit., pp. 240–241: «*Muqallid* is for Uṣūlism every believer who, lacking ‘*ilm*, is compelled to turn to an *a‘lam*, to “someone who knows more than him”. And since the problem of action is the most important, whoever is in such condition must necessarily turn to a *muğtahid*. *Taqlīd* indeed means “clarification obtained by the specialist on the point in issue, plus related behaviour. [...] But then, from all this comes, as natural consequence, an emphasis on the person of the expert». J. CALMARD, *Mardja‘-i Taklīd*, cit., p. 552, mentions «the doctrinal formulation of the concept of *a‘lamiyyat* according to which the Imāmī community must follow or imitate the precepts of the most learned jurisconsult. Its premisses may be traced back to the Īlkhānid period», when – not by chance – ibn Muṭahhar al-Ḥillī was given the name “al-‘Allāma” (see *supra*, note 54); cfr. also M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi‘i Islam?*, cit., pp. 113–114; F. DAFTARY, *A History of Shi‘i Islam*, cit., pp. 77–78. Some features of Shī‘i *iğtihād* must be underlined. First of all, the presumption of fallibility of jurists. The only tool a *muğtahid* can resort to when settling a legal issue is *zann* (conjecture, opinion): cfr. A. BOOZARI, *Shi‘i Jurisprudence and Constitution. Revolution in Iran*, Palgrave Macmillan, New York 2011, pp. 21–24, who talks about «Probative Value of *Zann*». Secondly, as a consequence of this fallibility, the subjectivity of the *res iudicata*, which means, in contrast to Sunni jurisprudence, that the sentence of the *muğtahid* has legal effect only for the person concerned in the case in issue, and only as long as the *muğtahid* is alive: on this point, cfr. G. SCARCIA, *Intorno alle controversie tra Aḥbārī e Uṣūlī*, cit., pp. 242–243, according to whom there exist both «*uniqueness of jurisdiction [unicità di cognizione]*» – in the sense that it is «*methodologically appropriate that the muğtahid pronounces upon every single case just once*» – and «*topicality of jurisdiction [attualità della cognizione]*» – meaning by that the «*refusal of taqlīd al-mayyit (taqlīd of non-living muğtahid)*».

of ibn Ṭāwūs, Muhaqqiq al-Ḥillī and al-‘Allāma al-Ḥillī, there was a further consolidation of the rationalist principles of Shī‘i canonical law, expressed in the progressive and systematic integration of the personal hermeneutic effort of ‘*ulamā*’.

1.3. *The Creation of a State Religion under Ṣafavids: the “Caesaropapist” Shī‘i State*

It must be reminded, however, that Shī‘i Islām was not the prevalent confession in Iran until the 16th century – *i.e.*, until the rise of Ṣafavids. Actually the eponym of this dynasty himself, the Ardabili Ṣayḥ of Kurdish origins Ṣafī ad-Dīn († 1334), formally adhered to the Ṣāfi‘ī *maḏhab*, even though the Ṣūfi congregation (*ṭarīqa*) he led, the Ṣafaviyya, professed heterodox stances – a mixture that B. Scarcia Amoretti defines a «coexistence of juridical Shafi‘ism and heretical beliefs»⁵⁶. This is consistent with the general development of religious movements within Persian Islām whose formal confessional belonging was profoundly shaded by a heart-felt devotion towards ‘Alī and ‘Alid figures⁵⁷. Ṣafī ad-Dīn’s successors at the head of the Ṣafaviyya, besides managing to extend their political and military power, accentuated the *guluww* (lit. “extremism”, in the sense of devotional paroxysm) traits of their *ṭarīqa* by promoting, for instance, chiliastic expectations and a sort of “deification” of the Ṣūfi leader. This feature of mystical radicalism characterised somehow Esmā‘īl I – the founder of the Ṣafavid Empire who proclaimed himself Ṣāh after entering Tabriz in 1501 – as well⁵⁸. Whatever the reasons that led such a heterodox ruler to proclaim Twelver Shī‘ism as State religion in the new Empire, the establishment of an officially Twelver Shī‘i political entity represented a breakthrough for this minority confession. This decision marked, in the words of G. Scarcia, the «passage of Imāmism from religious Imāmite Community to Imāmite State, from pure Imāmite

⁵⁶ B. SCARCIA AMORETTI, *Religion in the Timurid and Safavid Periods*, cit., pp. 618–621. Cfr. also S. A. QUINN, *Iran Under Safavid Rule*, in *NCHoIs*, vol. 3, pp. 203–204; R. M. SAVORY, *Ṣafawids*, *EP*², VIII, p. 766; S. H. NASR, *Spiritual Movements, Philosophy and Theology in the Safavid Period*, in *CHoIr*, vol. 6, pp. 656–657, and A. J. NEWMAN, *Ṣafawids*, *EP*², VIII, p. 777, according to whom, «Initially, the [Ṣafavid] order had comprised mainly *Shāfi‘ī* Sunnīs».

⁵⁷ Cfr. A. BAUSANI, *Religion Under the Mongols*, cit., pp. 545–547, who talks about «Ṣūfism with a *Shī‘ī* tinge»; M. G. S. HODGSON, *The Venture of Islam. The Expansion of Islam*, cit., pp. 493–500, has called this religious phenomenon «ṭarīqah Shī‘ism», including in his description the Ṣafaviyya too.

⁵⁸ Upon the mystical role of Safavids leaders, cfr. R. M. SAVORY, *Ṣafawids*, cit., pp. 766–767; S. A. QUINN, *Iran Under Safavid Rule*, cit., pp. 204–206. Esmā‘īl’s poetry was full of references to himself as – among others – Jesus, the last Imām, or even God, as if he were an intermediary between the human and the divine: cfr. T. GANDJEI, *Ismā‘īl I*, *EP*², IV, p. 187; S. A. QUINN, *Iran Under Safavid Rule*, cit., pp. 206–207; A. J. NEWMAN, *Safavid Iran: Rebirth of a Persian empire*, I.B. Tauris, London-New York 2006, pp. 13–15; C. P. MITCHELL, *The Practice of Politics in Safavid Iran: Power, Religion and Rhetoric*, I.B. Tauris-British Institute of Persian Studies, London-New York 2009, pp. 31–32, according to whom «Ismā‘īl saw poetry as a powerful vehicle for presenting an eschatological message that drew on a panoply of spiritual, mythical, and historical metaphors and imagery. [...] We also see Sufi mystical ideas [...] combined with this powerful apocalyptic imagery».

system to national Persian-Imāmite system»⁵⁹. It took several decades, though, before a clear institutionalisation of the orthodox Twelver Shī‘i creed could occur within the Ṣafavid State. In an early stage, Esmā‘īl († 1524) maintained some heterodox features that had characterised the Ṣafaviyya theretofore, while his son Tahmāsb (r. 1524-1576) – tempering some claims such as the self-identification of the ruler with the Imām – pursued a more determined path aiming at officialising Twelver Shī‘ism within the new Empire, creating a new national Shī‘i religious establishment⁶⁰. Nonetheless, the vast majority of Arab Shī‘i ‘*ulamā*’ refused to join the Ṣafavid court in the first decades of its existence. The most notable exception, coming from Jabal ‘Āmil – current Lebanon –, was the scholar al-Karakī (Nūr ad-Dīn ‘Alī ibn al-Ḥusayn ibn ‘Alī ibn Muḥammad ibn ‘Abd al-Ālī al-‘Āmilī, † 1534), who served both the first and the second Ṣafavid Šāhs and was given the titles of “seal of *muğtahids*” and “representative (*nā‘ib*) of the Imām”, while starting – especially under Tahmāsb – an effort to impose a public religious orthodoxy⁶¹. This policy had incisive consequences, being the starting point of an endeavour that was carried on by al-Karakī’s students and descendants, along with a new generation of Arabic scholars who joined the Ṣafavid court during Moḥammad Ḥodābandeh’s and – above all – ‘Abbās the Great’s reigns (1578-1587 and 1588-1629 respectively). Under the former, any kind of messianic or mystical legacy was eventually abandoned in favour of an established and fixed Shī‘i orthodoxy and orthopraxis whose custodians were precisely Shī‘i ‘*ulamā*’⁶². Eṣfahān, the shining Ṣafavid capital founded by ‘Abbās, became the centre of an influential

⁵⁹ G. SCARCIA, *Intorno alle controversie tra Aḥbārī e Uṣūlī*, cit., p. 212, esp. note 1. Similarly, for S. A. ARJOMAND, *The Shadow of God and the Hidden Imam*, cit., pp. 160–170, this is the passage «From Sectarian Shi‘ism to Shi‘ism as a National Religion». According to A. J. NEWMAN, *Ṣafawids*, cit., p. 777, «The establishment of Twelver Shī‘ism by Shāh Ismā‘īl I in 907/1501-2, at the Ṣafavid capture of Tabrīz, portended [...] an “event” which must later have appeared to stem more from *Realpolitik* than from genuine conviction. [...] Ismā‘īl’s interest in the faith had no basis in the history of the Ṣafavid Šūfī order. [...] [T]he Ṣafavid’s commitment to orthodox Twelver Shī‘ism seemed problematic»; cfr. also S. A. QUINN, *Iran Under Safavid Rule*, cit., pp. 207–208.

⁶⁰ On Esmā‘īl I, cfr. *supra*, note 58. As to Tahmāsb I, if it is true that he «did not want to be regarded as a semi divine figure, and he took steps to crush any sort of religious expression that considered him a messianic figure», on the other hand, «although Shāh Tahmāsp may have suppressed groups who proclaimed him as the Mahdī, he continued to promote the notion that he had a special relationship with this figure» (S. A. QUINN, *Iran Under Safavid Rule*, cit., p. 212); upon Tahmāsb I, cfr. also B. SCARCIA AMORETTI, *Religion in the Timurid and Safavid Periods*, cit., pp. 640–643. S. A. ARJOMAND, *The Shadow of God and the Hidden Imam*, cit., p. 110, explicitly talks about «Suppression of Millenarian Extremism».

⁶¹ Cfr. W. MADELUNG, *al-Karakī, EP*, IV, pp. 610; A. J. NEWMAN, *Safavid Iran*, cit., pp. 24, 37–38, according to whom «both junior and senior Arab clerical contemporaries abroad both directly and indirectly condemned Karakī’s association with Ismail and, implicitly therefore, the legitimacy of the Safavid project itself»; upon the development of al-Karakī’s religious policy under Esmā‘īl and Tahmāsb, cfr. C. P. MITCHELL, *The Practice of Politics in Safavid Iran*, cit., pp. 69–88, who gives a precise description of al-Karakī’s efforts: «al-Karakī embarked on a program of imposing doctrinal uniformity and ensuring that Safavid cities and villages alike received instruction by the local religious elite in the tenets of Ja‘fari Shi‘ism [...], Sunnis were formally banished [...]. There is a *farmān* – [...] dated 7 Rabī‘ I 941/16 September 1534 – that orders the closure of public spaces associated with licentiousness and irreligious behaviour [...]. Babayan has correctly seen this as part of a greater anti-Sufi program to challenge those who opposed this Arab-inspired wave of juridical orthopraxy» (p. 72).

⁶² Cfr. A. J. NEWMAN, *Safavid Iran*, cit., pp. 45–47; S. A. ARJOMAND, *The Shadow of God and the Hidden Imam*, cit., pp. 129–131, talks about «the considerable immigration of Shi‘ite ‘*ulamā*’ from Jabal ‘Āmil to Isfahan» and points out

theological and philosophical school, where eminent scholars – such as Mīr Dāmād († 1630), who was al-Karakī’s son-in-law’s son, and his own pupil Mollā Ṣadrā († 1640) – studied and taught. The spiritual role of religious authorities was mixed with political engagement, in a dynamic reciprocal support whose acme was reached with Moḥammad Baqer Maḡlesī († 1698)⁶³. Coming from an influential family of ‘*ulamā*’, Baqer Maḡlesī managed to acquire such power to offset against the political inertia of the last Ṣafavid rulers – B. Scarcia Amoretti calls him indeed «the mujtahid prince of the late Safavid period»⁶⁴. His inflexible religious policies – defined somehow hyperbolically by M. Axworthy as «a kind of Islamic revolution»⁶⁵ – were the most radical expression of the institutionalisation of Shī‘i Islām under Ṣafavids. From Maḡlesī’s death until the definitive demise of the Empire between 1722 and 1736, the ‘*ulamā*’ played a role that had already been set in its main features: they were part of «an institutionally differentiated but heterocephalous hierocracy»⁶⁶.

Considered by a general point of view, the “special relationship” established between Ṣafavid Ṣāhs and Shī‘i ‘*ulama*’ – from Esmā‘īl I to Abbās III – encouraged the development of the rationalist school. As to religious sciences, Baqer Maḡlesī was the most prolific traditionist of the Ṣafavid era, just like Ṣayḡ Ṭūsī under Būyids. He himself corroborated the appropriation by Shī‘i clerics of some important religious prerogatives originally belonging to the Imām. This process, whose foundations were laid with the school of Baḡdād onwards, was strengthened by al-Karakī, who was the first *faqīh* to set that the Friday collective prayer (*ṣalāt al-ḡum‘a*) be led by Shī‘i religious (whence the title of “*imām al-ḡum‘a*” or leader of the collective prayer). Likewise, the collection and distribution of religious taxes (*ḥums*) and alms (*zakāt*) became a duty conferred upon ‘*ulamā*’, while the management of charitable trusts (*awqāf*, pl. of *waqf*) provided them with a considerable source of income⁶⁷.

also that «the Shi‘ite religious professionals [...] thus came to constitute a decentralized and heteronomous Shi‘ite hierocracy in Iran. [...] As *mujtahids*, *shaykh al-Islams*, scholars, and *pish-namaz* of the most important mosques, the members of the Shi‘ite hierocracy became increasingly conspicuous in Safavid society». The relationship between ‘Abbās the Great and ‘*ulamā*’ is clearly described by C. P. MITCHELL, *The Practice of Politics in Safavid Iran*, cit., pp. 191–193, according to whom «‘Abbās was careful to avoid any undue accruing of power by a particular hierocrat or group of clerics [...]. Nonetheless, Shāh ‘Abbās continued to fill the role of patron and protector to these orthodox Shi‘ite elements and sought their opinions and rulings on various legal matters while at the same time disseminating their treatises throughout the Safavid empire».

⁶³ Mīr Dāmād and Mollā Ṣadrā are just two examples among others, and perhaps their eclecticism was not the rule; upon them, cfr. A. S. BAZMEE ANSARI, *al-Dāmād*, *EP*², II, pp. 103–104; D. MACEOIN, *Mollā Ṣadrā Shīrāzī*, *EP*², VII, pp. 547–548. As to Shī‘i religious figures in this period, cfr. S. A. QUINN, *Iran Under Safavid Rule*, cit., pp. 221–224; A. J. NEWMAN, *Safavid Iran*, cit., pp. 55–60.

⁶⁴ B. SCARCIA AMORETTI, *Religion in the Timurid and Safavid Periods*, cit., p. 648.

⁶⁵ M. AXWORTHY, *Iran: Empire of the Mind*, Basic Books, New York 2008, p. 147.

⁶⁶ S. A. ARJOMAND, *The Shadow of God and the Hidden Imam*, cit., p. 155.

⁶⁷ In the words of A. J. NEWMAN, *Safavid Iran*, cit., p. 99, Baqer Maḡlesī «reinforced the position of senior clerics, including himself, as delegated by the Imam to interpret issues of jurisprudential and theological import and to undertake such matters of daily practical import to the community as the conduct of Friday prayer and the collection and distribution of religious taxes, during the occultation and firmly linked these clerics to, and thereby legitimised, the broader Safavid project»; on his role in the science of *hadīth*, and in expanding the influence of Shī‘i clerics, cfr. A.-H. HAIRI, *Madjlisī*,

1.4. The “*Aḥbāri-Uṣūli Controversy*” and the Institutionalisation of Marḡa‘iyya

It would be simplistic, however, to consider Shī‘i ‘*ulamā*’ as a homogenous body professing the same stances. Actually, in the late Ṣafavid era a major cleavage resurfaced among Shī‘i jurists-theologians. The long path of rationalisation that had started with the Būyid triad and that Baqer Maḡlesī upheld in what is called the Uṣūliyya was challenged by another branch of the Shī‘a, the Aḥbāriyya⁶⁸. In the words of H. Algar,

the close association of state and religion had been irretrievably broken by the downfall of the Safavids. [...] The religious policies of Nādir Shāh and Karīm Khān Zand both served, in their differing ways, to emphasize the permanence and autonomy of Shī‘ism in Iranian soil. From the firm roots it had struck, Shi‘ism continued to put forth numerous branches; and it became apparent that the Shi‘ism of Iran, far from being a mazḡhab capable of assimilation with Sunnī Islam, contained within itself a variety of mazḡhabs⁶⁹.

These statements are consistent with the analysis G. Scarzia made in 1958: Uṣūliyya and Aḥbāriyya can indeed be considered as two different *madḡhabs* within Imāmism differentiated by the method their respective *fiqh* is based upon: a ‘*aqlī* (or rationalist) method for Uṣūlīs, a *naqlī* (scripturalist, or textualist) method for Aḥbārīs⁷⁰. “Uṣūlī” etymologically refers to “*uṣūl al-fiqh*”, that is to say, the legal sources of Islamic law: the Qur’ān, prophetic and Imāmic Sunna, *iḡmā’* (consensus), and ‘*aql* (reasoning). As seen above, Uṣūlīs emphasise the role of reason in interpreting Islamic scriptural sources⁷¹. On the other side, Aḥbārīs base their theology and praxis upon the original *aḥbār* (plural of *ḡabar*, in the sense of “transmitted *hadīṡ*”, or “tradition” *lato sensu*) of Imāmī Shī‘a. What is interesting is the different relationship of Aḥbārīs and Uṣūlīs towards the spiritual

*EP*², V, pp. 1086–1088; B. SCARCIA AMORETTI, *Religion in the Timurid and Safavid Periods*, cit., pp. 652–653. Upon the development of the process of appropriation of religious functions by clerics, cfr. R. GLEAVE, *Khums*, *EP*², XII, pp. 533–534; A. K. S. LAMBTON, *Wakf*, *EP*², XI, pp. 85–87.

⁶⁸ The confrontation between rationalist and traditionalist ‘*ulamā*’ dated back to the Būyid period, when the proto-Uṣūlī theology of the school of Baḡdād was contested by the Aḥbārī school of Qom. The so called Aḥbārī-Uṣūlī controversy, though, became a major turning point in the history of Shī‘i Islām in late Ṣafavid Persia with Moḡammed Amīn Astarābādī († 1698): cfr. W. MADELUNG, *Aḥbāriyya*, *EP*², XII, p. 56; A. K. MOUSSAVI, *The Usuli-Akhbari Controversy*, in S. H. NASR – H. DABASHI – S. V. R. NASR (eds.), *Expectation of the millennium*, cit., pp. 284–285.

⁶⁹ H. ALGAR, *Religious Forces in Eighteenth- and Nineteenth-Century Iran*, in P. AVERY – G. R. G. HAMBLBY – C. MELVILLE (eds.), *The Cambridge History of Iran. From Nadir Shah to the Islamic Republic*, vol. 7, Cambridge University Press, Cambridge 1991, p. 710. Cfr. also J. CALMARD, *Mardja ‘-i Taklīd*, cit., pp. 550–551.

⁷⁰ See G. SCARCIA, *Intorno alle controversie tra Aḥbārī e Uṣūlī*, cit., pp. 211–218.

⁷¹ See *supra*, notes 40–42. According to A. K. MOUSSAVI, *The Usuli-Akhbari Controversy*, cit., p. 284, «‘*Aql* may be translated as intellect, but, technically, in the Shī‘i jurisprudence it applies to the four practical principles (*usul-i ‘amali*), namely, *bara’at* (immunity), *ihtiyat* (precaution), *takhyir* (selection), and *istishab* (continuity in the previous state). These principles should only be employed by qualified jurists when other religious proofs are not applicable. In fact, these principles are no more than speculative reasoning (*zann*)».

authority of the hidden Imām. While Uṣūlīs solved the problems posed by the absence of the Imām through the work of jurists and by rationalising the original Imāmīte traditions, Aḥbārīs insisted on the adherence to the example of Imāms calcified in Imāmīc Sunna.

Rationalist jurists consider Qur’ān and Sunna as a whole *corpus* that needs to be properly studied and interpreted – whence the studies of traditionists, such as Šayḥ Ṭūsī and Baqer Maḡlesī, who developed a rigorous science of *hadīths*⁷² performed through what Uṣūlīs hold to be a legitimate use of ‘*aql*, that is to say, *iğtihād*. Instead, Aḥbārīs postulate a dialogical correlation between Revelation and prophetic Sunna on the one hand, and Imāmīc Sunna on the other: the first ones must be interpreted in the light of the latter. Furthermore, in their view there exists no science concerning *aḥbār*: the fact that Imāmīc Sunna derives from the twelve Imāms is a sufficient condition for it to be legally bounding. For Aḥbārīs then, ‘*aql* is not needed’⁷³. The methodological dichotomy between Aḥbārīs and Uṣūlīs affects their respective views upon the spiritual role of jurists-theologians. As already mentioned, from the Uṣūlī perspective *iğtihād* must be performed exclusively by a *faqīh*. Aḥbārīs, on the contrary, by refusing ‘*aql* as a legal source, believe that the most orthodox praxis is the one implying the simple *taqlīd* of the Imām, according to the content of Imāmīc Sunna. This is why it is not completely true that Aḥbārīs reject *iğtihād*: rather, they accept an «*iğtihād* which is pure and simple *effort of understanding naql*»⁷⁴.

The confrontation between Aḥbārī and Uṣūlī ‘*ulamā*’ culminated soon after the collapse of Šafavids – a major event involving the end of what S. A. Arjomand calls the «caesaropapist state»⁷⁵ wherein the Shī‘ī religious apparatus had exercised a considerable power. Deprived of the political support of a deeply religiously connoted ruling dynasty, in the chaotic political context going from Nāder Šāh’s rise (1736) until Moḡammad Ḥān Qāğār’s coronation (1796) the para-clerical structure

⁷² There is, for Uṣūlīs, a «complete *equivalence* of the Quran and Sunna (both of the Prophet, and of the *Imām*), without distinction between what might be Revelation and what might be *Tafsīr*, interpretation. [...] Hence, methodologically, the Uṣūlī doctrine concerning *naql* consists: A) as to the Quran, in a true *philology of the text*, in order to first and foremost delve into the issue of the *most plausible* meaning of the divine text. [...] B) as to Sunna (of the *Ma’sūm*, without distinction between Prophet and *Imām*), in adding the contribution of the science of *riğāl* and of the most rigorous research method of *aḥbār* to the philology of the text» (G. SCARCIA, *Intorno alle controversie tra Aḥbārī e Uṣūlī*, cit., pp. 229–231).

⁷³ «In Aḥbārism we have instead: a) a dogma of unknowability and insufficiency of *šar’* when the kind of authentic interpretation represented by *tafsīr*, or *ta’wīl*, of the *Imām* is missing; but since this interpretation itself can be found in *naql*, it follows: b) a *dichotomy* Quran-Sunna, seized respectively as Revelation in allegorical language, and its interpretation. [...] For the *Aḥbārī* doctrine [...] everything fades in front of Imāmīc Sunna, which represents the last word in legal matters. The perception of its content represents the sole and true science, whose sole and true spokesman is indeed the *Imām*. But all this is associated with a bewildering absence of accuracy in the investigation of *aḥbār*. [...] It is therefore a pure *naql*, without infiltrations of ‘*aql* (not even in evaluating the authenticity!)» (*Ibid.*, pp. 230–232).

⁷⁴ *Ibid.*, p. 244. As put by W. MADELUNG, *Aḥbārīyya*, cit., pp. 56–57, «*Idjtiḥād*, leading to mere *zann*, and *taqlīd*, i.e. following the opinions of a *mudjtahid*, are forbidden. Every believer must rather follow the *akḥbār* of the *Imāms*».

⁷⁵ S. A. ARJOMAND, *The Shadow of God and the Hidden Imam*, cit., pp. 137, 154, 184, 211.

that had been set under Šafavids knew a period of crisis⁷⁶. On the contrary, the development of the politically unengaged Aḥbārī school was favoured by such circumstances. Nonetheless, the re-establishment of Shī‘ism as State religion under Karīm Ḥān Zand (r. 1751-1779) – after the Sunni interlude of Nāder Šāh – fostered the «Uṣūlī resurgence»⁷⁷, that was led by Moḥammad Bāqer Behbahānī († 1791), an eminent Uṣūlī scholar who was given the name of *muḡaddid* (lit. “renewer”, “reformer”). Behbahānī contested the Aḥbārī theology – that had been adopted by a large majority of theologians mainly in the Shī‘i centres of Iraq – and created a broad network of students who were to spread the influence of Uṣūlism. His passionate inflexibility led him to declare Aḥbārīs infidels and use violent means against them, paving the way for an almost complete hegemony of Uṣūlism⁷⁸. Although Uṣūlīs managed to emerge victorious in the controversy against Aḥbārīs, and their *fiqh* became the most important in Persian Shī‘ism, the issue of the relationship between the Shī‘i “clergy” and the new dynasty remained problematic. As stated by Arjomand, «The creation of a unified normative order regulating political and hierocratic domination of course did not eliminate conflicts between the hierocracy and the state but rather established the framework within which these conflicts would be played out»⁷⁹.

The presence of a ruling dynasty detached from any kind of association with religious figures – unlike the Šafavids, who asserted an alleged belonging to the seventh Imām’s lineage –, and thus detached from religious claims, produced the estrangement of ‘*ulamā*’ from the State as a separate system acting independently of it⁸⁰. This does not mean that they remained alien to political events: after the crisis rationalist ‘*ulamā*’ had experienced in the 18th century, during the 19th their influence went far beyond the regulation of religious issues through their jurisprudence. Once again, they became decisive political actors as well. Two episodes are frequently mentioned to show the significant involvement of ‘*ulamā*’ within the political arena in Qāḡār Persia. First, in 1812 the Iraqi

⁷⁶ Cfr. H. ALGAR, *Religious Forces in Eighteenth- and Nineteenth-Century Iran*, cit., pp. 706–710; S. A. ARJOMAND, *The Shadow of God and the Hidden Imam*, cit., pp. 215–220.

⁷⁷ J. CALMARD, *Mardja‘-i Taklīd*, cit., p. 551; A. TABARI, *The Role of the Clergy in Modern Iranian Politics*, in N. R. KEDDIE (ed.), *Religion and politics in Iran*, cit., p. 48, calls it «clergy’s resurgence».

⁷⁸ The Aḥbārī school «disappeared almost completely from the Shī‘i religious landscape around the end of the 12th/18th century or the beginning of the 13th/19th century when the virulent leader of the rationalist doctors of Law, Muhammad Baqir Wahid Bihbahani (d. 1208/1793–1794), loosed his anathema against them, followed by the attacks of his successor, Shaykh Kashif al-Ghita’ (d. 1227/1812)» (M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi‘i Islam?*, cit., p. 132). Upon Aḥbārīs and Uṣūlīs, cfr. also H. ALGAR, *Religious Forces in Eighteenth- and Nineteenth-Century Iran*, cit., pp. 711–713; A. K. MOUSSAVI, *The Usuli-Akhbari Controversy*, cit., pp. 285–286; H. ALGAR, *Bihbahānī, EF*, XII, pp. 134–135; G. R. GARTHWAITE, *Transition: The End of the Old Order - Iran in the Eighteenth Century*, in *NCHoIs*, vol. 3, pp. 523–525. Today, Aḥbārīs are an extremely little minority: according to W. MADELUNG, *Akhbāriyya*, cit., p. 57, «The only Aḥbārī community known to have survived to the present is in the region of Khurramshahr and Ābādān».

⁷⁹ S. A. ARJOMAND, *The Shadow of God and the Hidden Imam*, cit., p. 238.

⁸⁰ *Ibid.*, pp. 229–234, talks about «The Institutional Autonomy of the Hierocracy from the State»; cfr. also H. ALGAR, *Religion and State in Iran 1785-1906. The Role of the Ulama in the Qajar Period*, University of California Press, Berkeley-Los Angeles-London 1969, pp. 40–44.

rationalist *muğtahid* Ğa‘far Kāšif al-Ġitā’ (Šayḥ Ğa‘far ibn Ḥiḍr ibn Yaḥyā al-Mālikī al-Ġanāġī al-Naġafī, † 1812) issued a *fatwā* authorising the second Qāġār ruler, Fath ‘Alī Šāh († 1834), to lead *ġihād* against Russians during the 1804-13 Russo-Iranian war⁸¹. From a military point of view, though, the two empires had uneven forces, and Persians had to capitulate to Russians both in 1813 (Treaty of Golestān) and in 1828, after another war (Treaty of Torkmānčāy). The second episode is related precisely to the Treaty of Torkmānčāy. In 1829, a Russian delegation sent to enforce the settled terms of the Treaty, and guided by diplomat and writer Alexandr Griboyedov, was attacked in Tehrān by a crowd incited by ‘*ulamā*’: the delegates, as well as the minister plenipotentiary Griboyedov himself, were all killed⁸². N. R. Keddie neatly describes the shifting nature of the social and political influence ‘*ulamā*’ gained in Qāġār Persia, in particular in relation to the monarchy: «The Iranian ulama’s power over the masses and ability to move in ways not thoroughly approved by the government had been shown both in ulama action for jihad, which helped precipitate the second Russo-Iranian war, and in the Griboyedov incident. [...] On the other hand, before the mid-nineteenth century the ulama were rarely active in opposing government policies»⁸³. It is in this period that the key-concept of *marġa‘iyya* – as specific religious function conferred upon a highly knowledgeable *muğtahid* – acquired importance. Indeed, the most prominent *muğtahids* started being considered “source” or “model of emulation” (*marġa‘ at-taqlīd* in Arabic, plural *marāġi‘*; *marġa‘-e taqlid* in Farsi) for common believers – whereas the phrase “*marġa‘ at-taqlīd*” identifies precisely a jurist-theologian who has reached the highest rank in the Šhī‘i clerical hierarchy⁸⁴. This was, in a certain sense, the natural outcome of the practice of *iġtihād* as conveyed by rationalist jurists. In their view, *taqlīd* does not concern directly or simply or solely the figures of Imāms, but rather the right praxis recognised by the expert, or by common believers in following the jurisprudence of their own *marġa‘ at-taqlīd*. Despite their prominence, neither Behbahānī nor Ğa‘far Kāšif al-Ġitā’ bore the title of

⁸¹ Cfr. M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi‘i Islam?*, cit., p. 125: «For the first time in Shi‘i history, a doctor of the Law, Shaykh Ja‘far Kashif al-Ghita’ (d. 1227/1812), addressed an appeal to the state to engage in holy war. As *mujtahid* and representative of “the Master of the Time” (the Hidden Imam), he authorized the Qajar ruler Fath ‘Ali Shah to wage holy war on the Russian Tsar»; W. MADELUNG, *Kāshif al-Ġitā’*, in *EP*, IV, pp. 703.

⁸² Cfr. N. R. KEDDIE, *Modern Iran: Roots and Results of Revolution*, Yale University Press, New Haven-London 2003, pp. 42–43; Y. RICHARD, *Iran a social and political history since the Qajars*, W. M. FLOOR (trad.), Cambridge University Press, Cambridge-New York 2019, pp. 21–24; A. M. ANSARI, *Iran to 1919*, in F. ROBINSON (ed.), *The New Cambridge History of Islam. The Islamic World in the Age of Western Dominance*, vol. 5, Cambridge University Press, Cambridge 2010, p. 160; F. KAZEMZADEH, *Iranian Relations with Russia and the Soviet Union to 1921*, in *CHoIr*, vol. 7, pp. 338–339.

⁸³ N. R. KEDDIE, *Modern Iran*, cit., p. 43; specifically upon the role of ‘*ulamā*’ in this period, cfr. also H. ALGAR, *Religion and State in Iran*, cit., pp. 82–99.

⁸⁴ The definition of J. CALMARD, *Mardja‘-i Taklīd*, cit., p. 548, states that “*marġa‘ at-taqlīd*” is a «title and function of a hierarchal nature denoting a Twelver Imām Šhī‘ī jurisconsult (*muğtahid*, *faḳih*) who is to be considered during his lifetime, by virtue of his qualities and his wisdom, a model for reference, for “imitation” or “emulation” [...] by every observant Imāmī Šhī‘ī (with the exception of *muğtahids*) on all aspects of religious practice and law».

marġa ‘*at-taqlīd*’; but by the mid-19th century the main features of *marġa* ‘*iyya* had been already clearly defined⁸⁵.

The mid-19th century was a period of caesura also from a political point of view: after having conquered Herāt, in 1856 Persians were defeated by the British in Afghanistan, and the subsequent Treaty of Paris (1857) marked the end of military adventures for the Qāġār dynasty⁸⁶. Following the Anglo-Iranian War of 1856-57, foreign interference – mainly Russian and British – although maintaining a military feature, became more subtle and yet more penetrating, affecting above all the economic sphere. Now, Persian subjection to tsarist Russia and the United Kingdom took mainly the form of concessions – a new foreign policy that ‘*ulamā*’ started to oppose. Beginning in the early 1860s, the period of concessions was marked by the diplomatic inconstancy of Qāġār rulers, whose major purpose was to take advantage of Russian and British divergences by alternately granting them economic assets⁸⁷. All this, of course, to the detriment of Persian national interests: indeed, at the end of the 19th century foreign dominance in Qāġār Persia was, to some extents, much greater than the monarchy’s rule. The opposition to concessions and to the political and economic subordination towards Russia and Great Britain came in a context of open hostility between the Šāh and the clerical establishment – a hostility that had started when Moġammad Šāh († 1848) had ascended to the throne in 1834 and went further under Nāšer ad-Din Šāh’s reign (1848-96)⁸⁸. Hence, during the period of concessions «religious repeatedly blamed the Qajar dynasty for having granted foreign enterprises [...] the exploitation of the country’s wealth»⁸⁹. The main outcome of this opposition were the protests following Nāšer ad-Din Šāh’s concession to a British citizen for the exploitation of tobacco

⁸⁵ According to *ibid.*, pp. 552–554, «For numerous *muġjtahids* and ordinary worshippers in Iran and ‘Irāġ, the first to have secured this title and this function was Hādġdġī Shaykh Muġammad Ḥasan Naġġafī, d. 1266/1849-50. [...] The essential function of the *marġja* ‘*i taqlīd* – also called *muġallad* – is to guide the community of those who “imitate” his teaching and follow his precepts, in particular concerning the following: application of the rules of the *sharī’a* (*furū’-i dīn*); judicial solutions or legal qualifications (*aġkām*) in regard to the problems of contemporary life. [...] The *muġjtahids* established as *marġja* ‘ must pronounce judicial decisions (*fatwās*) and write one or more books to guide his *muġallids*»; A. AMANAT, *In Between the Madrasa and the Marketplace: The Designation of Clerical Leadership in Modern Shi’ism*, in S. A. ARJOMAND (ed.), *Authority and Political Culture in Shi’ism*, State University of New York Press, Albany 1988, p. 99, states: «the greatest of the nineteenth-century legal scholars, Shaykh Murtada Ansari (d. 1864), [...] is often regarded by posterity as the first *marġja* ‘*i taqlīd-i tamm*», that is to say the first sole living *marġja* ‘.

⁸⁶ Cfr. Y. RICHARD, *Iran a social and political history*, cit., pp. 40–41; R. GREAVES, *Iranian Relations with Great Britain and British India, 1798-1921*, in *CHoIr*, vol. 7, pp. 394–395; N. R. KEDDIE, *Modern Iran*, cit., pp. 50, 53.

⁸⁷ The most famous and, probably, greatest cession of economic rights was the so called Reuter concession: in 1872 Nāšer ad-Dīn Šāh (r. 1848-1896) granted the German-born British citizen Paul Julius Reuter (later known as Baron von Reuter) a huge concession concerning, among other things, the financing of a national bank, infrastructural projects, mining rights. The opposition – both national and Russian – to this concession was so strong that the Šāh had to withdraw it one year later. Upon the period of concessions, cfr. A. M. ANSARI, *Iran to 1919*, cit., pp. 169–172; N. R. KEDDIE, *Modern Iran*, cit., pp. 54–56; E. ABRAHAMIAN, *Iran Between Two Revolutions*, Princeton University Press, Princeton 1982, pp. 50–58.

⁸⁸ This path is clearly depicted by H. ALGAR, *Religion and State in Iran*, cit., pp. 103–136.

⁸⁹ F. SABAHI, *Storia dell’Iran. 1890-2009*, Bruno Mondadori, Milano 2009, p. 20. Similarly, according to N. R. KEDDIE, *Modern Iran*, cit., p. 59, «some ulama increasingly emerged as effective opponents of the alarming trend toward the sale of Iran’s resources to foreigners».

rights in Persia in 1891. Touching the interests of a huge industry involving farmers, manufacturers, sellers and consumers, the spread of the news concerning the – initially secret – tobacco concession caused many protests all over the country. The famous *fatwā* prohibiting the consumption of tobacco – which, besides the uncertainty upon its paternity, directly implicates the involvement in the protest of Mīrzā Šīrāzī's († 1895), who was the sole living Shī'i *marǧa'* at the time –, along with the strikes of *bāzārīs* (merchants), not only entailed the withdrawal of the concession in 1892, but it also inaugurated a praxis of political protest against the State that was to be successful in 1905-06. Not by chance, E. Abrahamian defines the tobacco protest as «a dress rehearsal for the forthcoming Constitutional Revolution»⁹⁰.

The adoption of a Constitution during «the first successful constitutional revolution in the Middle East»⁹¹ can be seen therefore as the peak of a centuries-old itinerary where Shī'i religious played different roles according to the different political and historical contexts. Western constitutionalism was indeed a new peculiar context in the transition between the 19th and the 20th centuries. The presence of a contemporary Iranian – republican – constitutional system has been made possible precisely because Iran had experienced a constitutional regime, although fragile and short-lasting, before the beginning of the Hobsbawmian short century. In a way, the 1906 Constitution is the archetypical place in which constitutionalism and Shī'ism first met and synthesised.

⁹⁰ E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., p. 73. On the tobacco protest, cfr. N. R. KEDDIE, *Modern Iran*, cit., pp. 62–63; A. M. ANSARI, *Iran to 1919*, cit., p. 173; E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., pp. 73–74; specifically on the role of 'ulamā', cfr. H. ALGAR, *Religion and State in Iran*, cit., pp. 205–221; R. BADRY, *Shīrāzī*, *EP*, IX, p. 479.

⁹¹ R. MOTTAHEDEH, *The Mantle of the Prophet. Religion and Politics in Iran*, Oneworld, London 2000, p. 52.

2. The 1906 Constitutional Revolution in Persia: Transcontinental Paths towards Islamic Constitutionalism

Talking about Islamic constitutionalism can be as hard as talking about constitutionalism *tout court*. As stated by Grote and Röder in a work edited by them precisely on the topic of constitutionalism in Muslim-majority countries,

the progress of Islamic constitutionalism has by no means been uniform. [...] Even in those countries which have embraced Islamic constitutionalism as a guiding principle of constitution-making, the modalities of its implementation have varied considerably. This reflects no doubt the hugely different circumstances in which the various political regimes try to consolidate their grip of power by using the reference to the Islamic state as a source of legitimacy. But it is also indicative of the fact that there is not one uniform concept of the Islamic state, but different versions of it¹.

This statement underlines the importance of history when analysing typologies or phenomena related to Islamic constitutionalism – and in this regard, the 1905-11 constitutional revolution in Persia makes no exception. On the one hand, this revolution was unique in that it witnessed the adoption of the first Constitution in a Shī‘i country; on the other, it constituted one chapter of the broader history of constitutionalism within, but not only, the Islamic world. The Persian constitutional revolution was deeply entangled with the political and constitutional events of two major neighbouring empires – the Ottoman and the Russian. If the 1876 Ottoman Constitution represented a formal model for Persian Constitution-makers, the 1905 Russian revolution – following the military victory of Japan, a constitutional country itself – set in motion a political movement against autocracy in Persia that would lead precisely to the creation of a constitutional government. In this sense, G. M. Sperelli talks about a «process of political and institutional osmosis» within the «path of the pre-World War I constitutionalism around Europe»², a process that modelled precisely the constitutional experiences of the mentioned countries. Nevertheless, one should not forget the specificities of the cultural, religious and political context of Persia: a country – as synthetically said in the previous chapter – whose identity was significantly shaped by Shī‘i Islām; subject to forms of para-colonial dominance; governed by an autocratic élite with scarce if not non-existent political legitimacy. The

¹ R. GROTE – T. J. RÖDER, *Introduction*, in IDD. (eds.), *Constitutionalism in Islamic Countries. Between Upheaval and Continuity*, Oxford University Press, Oxford-New York 2012, cit., pp. 11–12.

² F. BENEDETTI – G. M. SPERELLI, *Le rivoluzioni costituzionali in Giappone, Russia, Persia e Impero ottomano tra XIX e XX secolo. Un percorso circa-europeo*, «Giornale di Storia Costituzionale / Journal of Constitutional history» 44/II (2022), p. 205.

interaction between these factors would form the core of the Persian constitutional revolution, as it will be explained throughout the chapter.

The historical and political literature about the first constitutional period in Iran is quite ample³. Despite this, only a limited number of studies has engaged with this topic from a perspective of constitutional and institutional history – thus organically combining history, law and politics⁴. Such a vantage allows to appreciate the second main root of republican constitutionalism in Iran besides Shī‘i Islām, whereas the 1906 Constitution was the first legal document acknowledging Western-derived principles – the separation of powers, national sovereignty, parliamentary representation, safeguard of rights, etc. – later put in the 1979 Constitution. Given that historically, as just pointed out, the Persian constitutional revolution was not the first instance in which a constitutional document was adopted in a Muslim-majority country, the narration in this chapter begins precisely with a synoptic analysis on constitutionalism between the Ottoman Empire and Persia, in paragraph 1. The Ottoman Constitution was adopted thirty years before the Persian, and both countries faced – although in highly differentiated ways – reform processes and crises that led to the establishment of constitutional regimes. The second paragraph is specifically dedicated to the Persian Constitution of 1906, from both a historical and a legal point of view, considering what was the historical path that led to it, and how did it organise the constitutional and institutional framework of the country. Finally, paragraph 3 addresses the issue of the constitutional practice between 1907 and 1911, that is, from the adoption of the Supplementary Fundamental Laws to the Russian invasion of the country and the forced termination of the second Parliament.

³ With no presumption of exhaustiveness. Mangol Bayat has written two thorough monographs on the constitutional revolution in Persia: M. BAYAT, *Iran's First Revolution. Shi'ism and the Constitutional Revolution of 1905-1909*, Oxford University Press, New York 1991; ID., *Iran's Experiment with Parliamentary Governance. The Second Majles, 1909-1911*, Syracuse University Press, Syracuse (NY) 2020; another comprehensive monograph is that of J. AFARY, *The Iranian Constitutional Revolution, 1906-1911. Grassroots Democracy, Social Democracy, and the Origins of Feminism*, Columbia University Press, New York-Chichester 1996; an account on the origin of the revolution from the perspective of ‘ulamā’ is given by H. ALGAR, *Religion and State in Iran*, cit., pp. 240–256, in the chapter «The Ulama and the Early Constitutional Movement»; a comparative perspective with the Ottoman experience is presented by N. SOHRABI, *Revolution and Constitutionalism in the Ottoman Empire and Iran*, Cambridge University Press, Cambridge-New York 2011. Cfr. also the texts quoted in the notes below.

⁴ An exception might be represented by S. A. ARJOMAND, *Islam and Constitutionalism since the Nineteenth Century: the Significance and Peculiarities of Iran*, in ID. (ed.), *Constitutional Politics in the Middle East. With special reference to Turkey, Iraq, Iran and Afghanistan*, Hart, Oxford-Portland 2008.

2.1. *From Reforms to Revolution: the Entrance of Constitutionalism in Persia Between 19th and 20th Centuries*

It is well known that during the early ages of the Ottoman monarchy the glorious precepts of the Koran and the laws of the empire were ever held in honour. In consequence of this, the empire increased in strength and greatness, and all the population, without exception, acquired a high degree of welfare and prosperity.

For 150 years a succession of incidents and various causes has checked this obedience to the sacred code of the law, and to the regulations which emanate from it; and the previous internal strength and prosperity have been converted into weakness and poverty; for in truth an empire loses all its stability when it ceases to observe its laws⁵.

When Sultan ‘Abdül-Meğīd I († 1861) ascended to the Ottoman throne in 1839 – inheriting, among other things, a disastrous war against Egypt started by his father Maḥmūd II (r. 1808-39) that very year –, one of his first political acts was the promulgation of an imperial edict that Edward Shepherd Creasy, a British historian, compared to «our own Magna Charta and Bill of Rights [...] a Constitution, which the sovereign of Turkey binds himself to respect, and by the very terms of which his government has become that of a limited monarchy»⁶. It was the edict (*Ḥatt-ı Şerīf*, “Noble Rescript”) of Gülhāne (“Flowerhouse”) – whose incipit has been quoted right above –, thus called because it was read in the homonymous park of the Topkapı Palace, on the 3rd of November of 1839. To be fair, Creasy’s opinion hardly corresponded to the real reach of the 1839 rescript, which proclaimed the necessity of reforming some taxes, reorganising military recruitment, and enforcing security, property rights and due process for all Ottoman subjects. Despite its historical and political importance, the rescript was by no means a constitutional document in the proper sense – for instance, it did not recognise legal equality *per se*, but only with respect to the issues raised by it –, and it was closer to a religious understanding of the polity than to a constitutional interpretation of the State⁷.

⁵ E. S. CREASY, *History of The Ottoman Turks: from the Beginning of Their Empire to the Present Time*, vol. II, Richard Bentley, London 1856, p. 452.

⁶ *Ibid.*, pp. 451–452. The statement on the “Constitution” referred both to the edict of Gülhāne and the subsequent imperial edict of 1856.

⁷ Cfr. C. V. FINDLEY, *The Tanzimat*, in R. KASABA (ed.), *The Cambridge History of Turkey. Turkey in the Modern World*, vol. 4, Cambridge University Press, Cambridge-New York 2008, pp. 17–18, who affirms that «the Gülhane decree proved less of a westernizing measure than has commonly been assumed. [...] The decree reflects British Liberal thinking in its denunciation of tax-farming and monopolies and in several specific guarantees. Yet the repeated references to promulgating *kavanin-i şer’iye*, laws conformable to Islamic law (*şeriat*), to fulfil the decree’s promises also reflected the Ottoman tradition of aligning state law (*kanun*, plural *kavanin*) with the *şeriat*. Although commonly so interpreted, the decree did not say that Muslim and non-Muslim are equal, which they are not under the *şeriat*. The decree did declare that the privileges it granted applied without exception to all subjects of the sultanate, both ‘Muslims and members of other communities’ (‘ehl-i İslam ve milel-i saire’), as the state’s law (*kanun*) could do»; B. ABU-MANNEH, *The Islamic Roots of the Gülhane Rescript*, «Die Welt des Islams» 34/2 (1994), pp. 188–201, evidences the strong religious influences over the edict, whose content reflected classical themes of the Sunni political theology rather than of the Western constitutional tradition. An integral English translation of the edict of Gülhāne in E. S. CREASY, *History of The Ottoman Turks*, cit., pp. 452–455.

On the other hand, there is no doubt that it marked the beginning of a reform process in the Ottoman Empire that touched the essence of its institutions and led also to the progressive incorporation of Western-derived constitutional principles and institutions in one of the greatest Islamic empires of that time. The edict of Gülhâne is unanimously recognised as the first step of the so called *Tanzîmât* (lit. “orderings”, “reforms”), a wide set of reforms involving not only the Ottoman governance, but also the bureaucracy, the army, economic and tax systems, education, the whole legal order – with the codification of civil, penal and commercial laws following European models. It is with the edict of Gülhâne that the Ottoman Empire started that path of reforms that would lead to the Ottoman Constitution of 1876⁸. The second major step in this reform process was made in 1856, when Abdül-Meğîd adopted the Imperial Rescript (*Ḥaṭṭ-ı Hümāyûn*, also known as “Reform Decree”, “*İslâhat Fermânı*”), which confirmed the 1839 edict and stated that the members of religious minorities enjoyed the same rights and the same duties as Muslim subjects. In this sense, using the words of C. V. Findley, if «the Gülhane decree had not explicitly stated the equality of non-Muslims with Muslims, the Reform decree (*İslahat fermânı*) of 1856 did»⁹, representing so the first instance of a clear assimilation of a tenet of Western constitutionalism – equality of all before the law – in the Ottoman Empire¹⁰. The apex and final point of *Tanzîmât* was reached just in 1876, with the promulgation of the Ottoman Constitution under ‘Abdül-Ḥamîd II (r. 1876-1909). Though, the image here depicted does not fully catch the complexity of this period of reforms. As remarked elsewhere, there was indeed «an inextricable nexus between crises and reforms»¹¹ in the Ottoman Empire, whereas in the time span going from 1839 to 1876 the Sublime Porte lost the effective control over a considerable number of territories: Egypt, Lebanon, Romania and Serbia – all areas that remained under Ottoman rule just nominally. This circumstance has led P. Dumont to say that «la période des Tanzîmât ne se signale pas seulement comme une ère de renouveau. C’est aussi celle des grands déchirements»: not only political “rifts”, but also of territories¹². Moreover, the implementation of reforms was affected by international factors: much like the edict of Gülhâne was a political response to the crisis of the Egyptian-Ottoman War, the 1856 *Ḥaṭṭ-ı Hümāyûn* came following the end of the Crimean War and preceded by few days the Congress of Paris, while the Constitution itself was

⁸ Cfr. R. H. DAVISON, *Tanzîmât*, *EF*, X, pp. 202–204; P. DUMONT, *La période des Tanzimat (1839-1878)*, in R. MANTRAN (ed.), *Histoire de l’Empire Ottoman*, Fayard, Paris 1989, pp. 459–508.

⁹ C. V. FINDLEY, *The Tanzimat*, cit., p. 18. The text of the English translation of the *Ḥaṭṭ-ı Hümāyûn* in E. S. CREAMY, *History of The Ottoman Turks*, cit., pp. 456–460: the author deemed the document to be the «second of these two great fundamental statutes of the Constitutional Government of the Turkish empire» (pp. 455–456), after the edict of Gülhâne.

¹⁰ P. DUMONT, *La période des Tanzimat*, cit., p. 508, argues that «le rescrit de 1856 [...] jette les bases d’une pénétration accrue de l’influence occidentale dans l’empire».

¹¹ F. BENEDETTI – G. M. SPERELLI, *Le rivoluzioni costituzionali*, cit., p. 215.

¹² P. DUMONT, *La période des Tanzimat*, cit., p. 460.

proclaimed the very same day of the beginning of the Constantinople Conference (the 23rd of December) and four months before the beginning of the 1877-78 Russo-Turkish War. Internal crises and foreign interference were, thus, the main drives and the main constants of reforms in the Ottoman Empire.

It can be argued that these two constants – internal crises and foreign interference – shaped the path of reforms also in Persia. As reform process that brought about the first – although short-lived – constitutional experience in one of the greatest Islamic empires, the period of *Tanzīmāt* somehow impacted also on the bordering Qāğār Persia, representing a benchmark and a model the constitutional front would resort to at the beginning of the 20th century. One of the main Persian reformers of the mid-19th century, Amir Kabir (Mirzā Muḥammad Tağī Ḥān Farāhānī, † 1852), who served as Chief Minister in the early years of Nāṣer ad-Din’s reign, directly witnessed the struggle of *Tanzīmāt* in Ottoman Iraq – a model that he tried to apply in Persia as well¹³. Amir Kabir’s political parabola ended prematurely in 1852, when he was dismissed and executed, yet small reforms in the guise of “westernisation” were in any case carried on during the long rule of Nāṣer ad-Din and beyond, although untidily and discontinuously. In fact, this process was complex, developed throughout several phases, and had multi-faceted consequences: it was aimed first and foremost at strengthening the grip of the power élite over the country, leading to increased economic inequality; it did not have the scope of Ottoman reforms, and it contributed more than anything to the penetration of foreign – mainly Russian and British – economic interests within the country; it engendered a widespread anti-European sentiment among the population, but it propagated new ideas and ideologies among the educated classes as well¹⁴. The issue of the tobacco concession – recalled at the end of the previous chapter – was the first instance where all these aspects organically came to the fore: in the ensuing protest, the Šāh had to face not only the extensive discontent against his autocratic rule, but also a new nationalist feeling, the hostility towards foreign privileges, and, as already remarked above, the religious opposition¹⁵. Eventually, opposition to Nāṣer ad-Din Šāh took the most extremist form: in

¹³ Upon Amir Kabir, cfr. E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., pp. 53–54: «When he was appointed special envoy to the Ottoman Empire, he had taken a deep interest in the Tanzimat reforms, and on his return he gradually won the confidence of the heir apparent, the future Naser al-Din Shah. As soon as the young prince ascended the throne in 1848, Amir Kabir was named Amir-i Nizam (Lord of the Army) and Sadr A‘zam (Prime Minister), and was encouraged to implement extensive reforms»; N. R. KEDDIE, *Modern Iran*, cit., pp. 48–49: «An extremely able man of humble birth in the royal household, Amir Kabir was the first person after Abbas Mirza to attempt modernization from above. [...] Amir Kabir followed in part the example of the Ottoman Empire, to which he had traveled»; A. RAHNEMA, *The Political History of Modern Iran. Revolution, Reaction and Transformation, 1905 to the Present*, I.B. Tauris, London-New York-Dublin 2023, pp. 18–19.

¹⁴ N. R. KEDDIE – M. AMANAT, *Iran Under the Later Qājārs, 1848-1922*, in *CHoIr*, vol. 7, pp. 181–195; E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., pp. 50–74.

¹⁵ Cfr. N. R. KEDDIE, *Religion and Rebellion in Iran. The Tobacco Protest of 1891-1892*, Routledge, Abingdon-New York 2012, pp. 1–29: «The tobacco concession both increased and gave focus to a series of discontents which had been accumulating in the nineteenth century. [...] [T]here was an interconnection between Qajar misrule, popular discontent,

1896 he was killed by a follower of the pan-Islamist ideologue Ğamāl ad-Din Asadābādī. He was succeeded by his own son, Moẓaffar ad-Din (r. 1896-1907), the Šāh that would promulgate the Constitution in 1906. Although Moẓaffar ad-Din, just like his father, was not inclined to liberal reforms, some scholars underline his open stance with regard to public order, and indeed after he had ascended the throne he softened censorship and allowed the creation of societies and associations (“*anĝomans*”)¹⁶. Many of them, although operating in the shadow, would play a capital role in the constitutional revolution. Nonetheless, the management of the State did not improve under Moẓaffar ad-Din; in fact, concessions remained a constant of the Qāĝār economic policies, while the risk of insolvency compelled to search for foreign loans. Therefore, in 1901 the British entrepreneur William Knox D’Arcy was granted a concession to exploit oil in central and southern Persia, and several loans were contracted with both the British and Russians between 1902 and 1903; moreover, financial affairs were supervised by Belgian officials, the most prominent of whom was Joseph Naus, who became minister of Customs and in 1903 negotiated a custom treaty with Russia¹⁷.

These episodes enhanced the acrimony against the Government, to such a degree that in September 1903 the long-serving Chief Minister, Amin as-Soltān, was forced to resign. His successor, ‘Ayn ad-Dauleh, did not promote any form of conciliation with the large opposition, on the contrary his intervention in a bitter feud between two of the most prominent ‘*ulamā*’ of Tehrān – *āyatollāh* Seyyed ‘Abdollāh Behbahānī, and the capital’s *imām al-ĝum‘a*, Haĝĝī Mirzā Abolqāsem – in autumn 1903, far from favouring one of the two adversaries, was perceived once again as an undue interference of the State against clerical independence¹⁸. Religious sentiment continued to play indeed

and the activities of foreign governments in Iran. One can also speak of the Western impact in a more general sense as a motive force of discontent. [...] [T]he tobacco movement took place two decades later, when Iranian nationalism was beginning to be expressed by a small group of modernists and reformers [...]. In addition, religious feeling against the government was clearly on the increase through the nineteenth century. [...] Reformers and liberals inside and outside the Iranian government were also opposed to the policies of the Shah [...]. There existed a small group of men with some knowledge of European conditions who hoped to reform and strengthen the Iranian government against imperialist encroachments».

¹⁶ E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., pp. 75–80, for instance, affirms that «Muzaffar al-Din Shah abruptly relaxed police controls – so much so that some staunch conservatives began to suspect him of being a secret Shaykhi. He permitted the import of [...] liberal newspapers [...] and, most important of all, encouraged the formation of commercial, cultural, and educational associations»; similarly, M. AXWORTHY, *A History of Iran*, cit., pp. 199–200: «Censorship was lifted, and the shah permitted the formation of cultural and educational associations. [...] The lifting of censorship and the freedom to form associations made criticism of the government easier and more public. This gratified the inclinations of a new intelligentsia, a diverse mix of liberal, nationalist, socialist, and Islamic reformist elements, all of whom tended to be hostile to the monarchy for different or overlapping reasons».

¹⁷ Cfr. N. R. KEDDIE, *Modern Iran*, cit., pp. 64–65, 72; Y. RICHARD, *Iran a social and political history*, cit., pp. 68–71; A. M. ANSARI, *Modern Iran since 1797. Reform and Revolution*, Routledge, Abingdon-New York 2019³, pp. 93–97; E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., pp. 74–75; A. RAHNEMA, *The Political History of Modern Iran*, cit., p. 26.

¹⁸ According to H. ALGAR, *Religion and State in Iran*, cit., pp. 240–242, «despite the complexity of intrigue and personal rivalry» among ‘*ulamā*’ and, specifically, between Behbahānī and the *imām al-ĝum‘a*, «the issue resolved itself as a further confrontation between the power of the ulama and that of the state»; cfr. also M. BAYAT, *Iran’s First Revolution*, cit., pp. 106–107.

a capital role in the happenings before the revolution: this was markedly clear in spring 1905, when the disclosure of a photograph depicting Naus dressed as a Shī‘i cleric sparked a series of protests that mixed religious outrage towards the picture with the political discontent of *bāzārīs* stemming from the implementation of new tariffs with Russia. Consequently, protests burst, but they did not escalate, despite some other incidents across the country, most notably the Šayḥī-Bālāsarī dispute in Kermān¹⁹. In any case, opposition to ‘Ayn ad-Dauleh induced Behbahānī and Seyyed Moḥammad Ṭabāṭabā’ī, another prominent *āyatollāh* of Tehrān, to seal an alliance, in November 1905, that would constitute a part of the leadership of the incoming revolution. It did not take too long before the Government inflamed the opposition. The price of several basic goods has witnessed a rise due to the consequences of the Russo-Japanese war, and in mid-December, upon the order of ‘Ayn ad-Dauleh, a few *bāzārīs* of the capital were summoned by the governor of Tehrān, who blamed them for the high prices of sugar, and eventually had them whipped as a punishment. The reaction to this abuse of power is widely recognised as the beginning of the constitutional revolution²⁰. From a perspective of world history, the timing of the revolution was by no means casual, as it followed the end of a major event in the history of international relations of the early-20th century, recalled right above: the Russo-Japanese war. The victory of Japan over Russia not only represented the victory of a constitutional country over a monarchical autocracy, but it engendered in this very autocracy a constitutional revolution of its own. It was in this development that world history met with the local, or regional, history of Persia²¹.

As a consequence of the bastinado ordered by the governor of Tehrān, the merchants of the capital shut down the *bāzār*, and a crowd – composed mainly of *bāzārīs* and *tullāb*, *i.e.*, religious students, and led by ‘*ulamā*’ –, went to the Royal Mosque of the capital, but was soon dispersed. At that point,

¹⁹ Cfr. M. BAYAT, *Iran’s First Revolution*, cit., pp. 107–110; H. ALGAR, *Religion and State in Iran*, cit., pp. 242–244; A. K. LAHIDI, *Constitutionalism and Clerical Authority*, in S. A. ARJOMAND (ed.), *Authority and Political Culture in Shi’ism*, State University of New York Press, Albany 1988, pp. 134–135; specifically upon the Šayḥī-Bālāsarī war, cfr. also – besides the quoted references mentioned right here – D. MACEOIN, *Šayḥiyya*, *EP*, IX, p. 404.

²⁰ For instance, H. ALGAR, *Religion and State in Iran*, cit., p. 246, affirms that «The beating given to some of the merchants of Tehran on Shavvāl 14, 1323/December 12, 1905, started the chain of events that culminated in the issue of the decree granting the constitution»; similarly, for A. M. ANSARI, *Modern Iran since 1797*, cit., p. 99, «the spark which ignited the ‘revolution’ proved to be something characteristically trivial: the arrest and beating of a number of merchants who had been protesting what they considered to be the excessive exactions of the new customs regimen that had been imposed»; cfr. also E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., pp. 81–82; Y. RICHARD, *Iran a social and political history*, cit., p. 78; M. BAYAT, *Iran’s First Revolution*, cit., p. 110; N. R. KEDDIE, *Modern Iran*, cit., p. 67.

²¹ On this point, cfr. J. AFARY, *The Iranian Constitutional Revolution*, cit., pp. 37–38, who affirms that «The victory of Japan in the 1904-1905 Russo-Japanese War brought a wave of excitement to the colonized and semicolonized nations in Asia and Africa. [...] To many people of the East the victory of Japan meant the victory of a nonwhite nation, one that was armed with a constitution and Western technology, over white Europeans»; N. R. KEDDIE, *Modern Iran*, cit., pp. 66–67: «revolutionary sentiment was strengthened by the Russo-Japanese War of 1904-05 and the Russian Revolution of 1905. [...] The sight of the only Asian constitutional power defeating the only major European nonconstitutional power not only showed formerly weak Asians overcoming the seemingly omnipotent West, but aroused much new interest in a constitution as a “secret of strength”».

what is known as “lesser migration” occurred: the assembly followed Behbahānī and Ṭabāṭabā’ī as they sought refuge (“*bast*”) in the Šāh ‘Abdol‘aẓim shrine, located south of Tehrān. The shrine became the place where the opposition to ‘Ayn ad-Dauleh coalesced: his clerical adversaries, *bāzārīs*, but also courtiers and officials disputing the Chief Minister, and members of those *anğomans* that were operating to achieve the adoption of a Constitution. The leaders of the *bast* started to address directly the Šāh, presenting him several demands, among which the dismissal of Naus and of the governor of Tehrān, and – most importantly – the creation of a House of Justice (‘*adālat ḥāneh*). The genesis of this last request implicated, more than ‘*ulamā*’, the constitutional reformists, who added the House of Justice to the list of demands presented by the religious leaders to the monarch. What is interesting is that it was the first time that such a demand, involving the establishment of a kind of consultative body, was made from the opponents of the Qāğār autocracy²². After some negotiation, the Šāh acquiesced in the demand for the House of Justice, and towards mid-January 1906, the *bastīs* (*i.e.*, the people that were participating in the *bast*) came back to Tehrān amid popular jubilation. Though, in reality the compromise was far from settled: ‘Ayn ad-Dauleh was still Chief Minister, and the House of Justice was only a vague and poorly defined idea. While the issue was being dragged out, tension started to mount again, and the demand for the establishment of a House of Justice became clearer and turned into the demand – voiced by Ṭabāṭabā’ī – for the establishment of a *Mağles*²³. This lexical change is somehow meaningful, since far more than “‘*adālat ḥāneh*”, “*Mağles*” had been already used in the vocabulary of Islamic constitutionalism: not only within the 1876 Ottoman Constitution, which instituted the “*Meğlis-i ‘Umūmī*” (General Assembly), but also with the para-representative *Mağlis Šūrā an-Nuwwāb* (Consultative Assembly of Deputies) created in 1866

²² A. K. LAHIDJI, *Constitutionalism and Clerical Authority*, cit., p. 137, asserts that «the ‘*ulamā*’ wanted to secure their particularistic rights [...]. During the *bast*, which finally led to the Shah’s rescript, the reformist elements persuaded the ‘*ulamā*’ also to press the government for the establishment of a “governmental house of justice” (‘*adālat-khāna-yi dawlatī*)»; cfr. also M. BAYAT, *Iran’s First Revolution*, cit., pp. 113–115; H. ALGAR, *Religion and State in Iran*, cit., pp. 246–247; N. R. KEDDIE, *Modern Iran*, cit., p. 67. According to S. A. ARJOMAND, *Islam and Constitutionalism since the Nineteenth Century*, cit., p. 35, «The leading *ulema* not only tended to draw their notion of justice from the traditional theory of kingship rather than the Islamic law, but also famously (mis)conceived the parliament as a House of Justice (‘*adālat-khāna*)».

²³ Cfr. M. BAYAT, *Iran’s First Revolution*, cit., pp. 118–119: «In a top-secret meeting, Tabataba’ī allegedly told Ain al-Daula he would fight to the very end for the establishment of a *majles* and the promulgation of a constitution»; H. ALGAR, *Religion and State in Iran*, cit., p. 249: «open enmity between the ulama and ‘Ayn ud-Daula was resumed. He promised solemnly to Ṭabāṭabā’ī that he would, as soon as possible, establish the ‘*adālatkhāna*, but when Ṭabāṭabā’ī saw no sign of the promise being fulfilled, he began to demand openly the establishment of a *majlis*»; A. K. LAHIDJI, *Constitutionalism and Clerical Authority*, cit., pp. 137–138, who also remarks that «The idea of the establishment of a *majlis* did not come from the clerics any more that did that of “the house of justice”. [...] Public opinion was influenced by intellectual elements. The clerics as usual were either attracted or intimidated by their followers, without having knowledge of such progressive demands as the “national parliament”, “democracy”, “equality”, “constitution” and the like».

by the Egyptian Ḥidaywī (or Khedive) Ismā‘īl I²⁴. The use of the word “*Mağles*” therefore meant, in a way, that the requests the opposition front made to the Šāh were becoming less vague and were acquiring a precise content: the limitation to political arbitrariness had to take the shape of a representative parliamentary government.

The inertia of ‘Ayn ad-Dauleh on the issue sparked new protests and deadly incidents across the country: in Mašhad, for instance, the governor ordered the troops to fire on a crowd that had taken refuge in the Emām Ređā Shrine – the sanctuary where the eighth Imām, ‘Alī ar-Riđā, is buried – during a demonstration against the high price of bread. But it was in the capital that the trigger of the second and decisive migration of ‘*ulamā*’ occurred. In mid-July, while attempting to rescue a cleric who was being arrested, some of Behbahānī’s *tullāb* were shot at, and one of them died. The fact that the victim was a *sayyid*, that is to say, a descendant of the Prophet, made the murder a most heinous act, and indeed the response to the shooting was massive. The dead body was carried to the Royal Mosque, where ‘*ulamā*’ gathered reiterating their requests and asking also the discharge of ‘Ayn ad-Dauleh. When the Mosque was surrounded by troops, ‘*ulamā*’ prevented the protest to degenerate into a more violent confrontation; eventually they left and went to Qom. The *bāzārīs*, on their part, moved to the compound of the British Embassy, where several thousand people convened, supporting the demands of ‘*ulamā*’. From within the court, the Crown Prince, Mirzā Moḥammad ‘Alī – who would become Šāh five months later – decided to underpin the cause against ‘Ayn ad-Dauleh, who eventually resigned on the 29th of July and was replaced by Mošir ad-Dauleh²⁵. On the 9th of August, then, the monarch issued a decree for the establishment of the *Mağles*; the decree actually bore the date of the 5th of August, because that day the Šāh had promulgated another decree that nonetheless had been rejected by the leaders of *bastīs* in the British Embassy in that it foresaw a merely consultative, and not a fully decision-making, Parliament. A second decree, adopted on the 7th, was likewise discarded because it labelled the Parliament as “Islamic Consultative Assembly” (“*Mağles-e Šurā-ye Eslāmī*”): a wording that risked alienating and excluding religious minorities and laymen. Finally, thanks to the intervention of the British senior diplomat in Iran, Evelyn Grant Duff, the

²⁴ Cfr. J. M. LANDAU, *Madjlis, EI²*, V, pp. 1033–1036, 1060, who affirms that «The term *Madjlis* (Arabic), and *Medjlis* (Ottoman Turkish), *Meclis* (Modern Turkish) and *Madjlis* (Persian), meaning “Parliament”, appear in various word-combinations [...] In Arabic, the synonym *Barlamān* (borrowed from the French) has also been in frequent use, as has *Pārlāmentō* in Ottoman Turkish (from the Italian), *Parlāmento* in modern Turkish [...] or *Pārlemān* in modern Persian (from French). *Madjlis* [...] assumed this connotation in the 19th century, as the concept of parliamentarism became widespread, thanks to the impact of Western influence on the Middle East».

²⁵ Upon the incidents following the return to Tehrān and the migration to Qom, cfr. M. BAYAT, *Iran’s First Revolution*, cit., pp. 124–134; H. ALGAR, *Religion and State in Iran*, cit., pp. 286–251.

bāzārīs managed to have the word “*Eslāmī*” replaced with “*Mellī*”, that is, “National”²⁶. The final imperial decree thus stipulated – according to the translation reported by Browne – that

an Assembly of delegates elected by the Princes, the Doctors of Divinity (‘*ulamá*), the Qājār family, the nobles and notables, the landowners, the merchants and the guilds shall be formed and constituted, by election of the classes above mentioned, in the capital Tīhrán; which Assembly shall carry out the requisite deliberations and investigations on all necessary subjects connected with important affairs of the State and Empire and the public interests; and shall render the necessary help and assistance to our Cabinet of Ministers in such reforms as are designed to promote the happiness and well-being of Persia; and shall, with complete confidence and security, through the instrumentality of the first Lord of the State, submit (their proposals to Us), so that these, having been duly ratified by Us, may be carried into effect²⁷.

The foundations for the establishment of a constitutional government were thus laid even in Iran. Nevertheless, the revolution was by no means over. Indeed, the events described right above were hardly revolutionary: there was little widespread popular uprising, armed conflicts were circumscribed, and the constitutional movement was able to eventually cooperate with the Government. As stated by M. Bayat, Iran’s «first experiment with parliamentarism, from August 1906 to June 1908, marked not the climax but rather the beginning of the revolution»²⁸. It was Moḥammad ‘Alī’s Šāh determination to get rid of the Constitution and the *Mağles* that caused a kind of armed struggle that was to shape, along to and even more than the two *basts* of 1905 and 1906, the revolutionary dimension of the constitutional movement in Persia. But before analysing this, it is

²⁶ A particularly detailed account about the decree and the lexical *querelle* is given by M. BAYAT, *Iran’s First Revolution*, cit., pp. 134–139: «When, on August 3, Mirza Hosain Khan, the new chief minister’s son, announced at the embassy that the shah had signed a decree calling for the formation of a majles to enact laws subject to his approval, the [bastis’ central] committee rejected it. A new round of tough negotiations began. On August 5, the shah signed a revised decree granting the nation the right to establish a majles, a consultative assembly of elected representative of the nobility, the olama, the merchants, and the guilds. [...] The bastis, once more, balked. [...] They demanded, instead, full power of legislation for the majles, and they insisted on having the British envoy act as guarantor for the execution of the decree. On August 7, a delegation [...] arrived from Qom to partake in the negotiations. [...] The olama’s delegation then [...] presented the draft for a decree acceptable to them. The draft was identical to the merchants’. [...] In the evening [...] [i]t was also announced that the shah had ordered the sadr-e a’zam to set up a committee to draft the constitution for the majles-e shaura-ye islami (Islamic Consultative Assembly). [...] [T]he merchants and the intelligentisa, supported by the [British] chargé d’affaires, demanded the replacement of the term “Islami” with “melli”. [...] Reports spread that the chargé had received new instructions from London to back the bastis’ demands. These instructions were in response to the merchants’ cable sent two days earlier, explaining their preference for the replacement of majlis islami with melli, arguing that a deputy might be declared heretical and expelled from the majles for religious, and not political, reasons [...]. Moreover, Jews, Armenians, and Zoroastrians should have the right to send their representatives to the majles, and, as they pointed out, the term Islami thus would not be applicable. It was apparently then that the merchants and the chargé convinced the sadr-e a’zam to replace islami with melli. [...] The merchants, the intelligentzia [*sic*], and Grant Duff had obviously succeeded in having the three representatives from Qom side with them in demanding a national, rather than an Islamic, majles. Moreover, [...] Moshir al-Daula and his two sons were in complete agreement with the bastis’ demands. [...] On August 9, 1906, Moshir al-Molk (the sadr-e a’zam’s son) [...] announced to the bastis in the embassy that the shah had signed the revised decree, bearing the term melli. The new decree, written on August 9, bore the date of the original decree, August 5»; cfr. also A. K. LAHIDI, *Constitutionalism and Clerical Authority*, cit., pp. 138–139.

²⁷ E. G. BROWNE, *The Persian Revolution of 1905-1909*, Cambridge University Press, London 1910, p. 353.

²⁸ M. BAYAT, *Iran’s First Revolution*, cit., p. 143.

necessary to consider how the adoption of the Constitution took place and how the Constitution itself contributed to shape the political and institutional history of Iran.

2.2. *The 1906 Constitution and the 1907 Supplementary Fundamental Laws: Persian Monarchical Orléanism*

When the second *bast* ended, following Moẓaffar ad-Din's decree in early-August 1906, the drafting of the electoral law for the first *Mağles* started, representing another field where constitutionalists and reactionaries struggled to get the upper hand. Eventually, a balanced although somehow peculiar text was adopted on the 9th of September²⁹. Defined, indeed, by the Italian legal scholar Amedeo Giannini as «very strange in many respects»³⁰, the electoral law divided the electorate into six categories (art. 1): princes and members of the Qāğār tribe; '*ulamā*' and *tullāb*; aristocrats; merchants; landowners and peasants; tradesmen and members of guilds. The suffrage was regulated by artt. 2 and 3, which confined it to males aged at least 25, while specific limitations for some categories were dictated as well³¹. In general, women, foreigners, incompetent and interdicted people, fraudulent bankrupts, convicts, and servicemen were explicitly excluded from both active and passive electorate. As to passive electorate, art. 4 stipulated that only literate males aged at least 30 and no more than 70, outside government employment, and Persian subjects were eligible. Representation was heavily unbalanced towards the capital Tehrān, whence more than one-third of the total representatives of the country (60 upon 162)³² came from; every other province (*eyālat*) was entitled to be represented by either 6 or 12 representatives (art. 6). According to art. 8, the election – except for the constituency of Tehrān – was indirect. Each category referred to in art. 1 elected one delegate in each town, and then those delegates – gathered in the capital of their respective province – voted MPs. What is interesting is that the electoral law did not regulate exclusively the electoral process: it recognised, for instance, parliamentary immunities, prescribing that representatives were

²⁹ Cfr. M. BAYAT, *Iran's First Revolution*, cit., pp. 144–146. The translated text of the electoral law in E. G. BROWNE, *The Persian Revolution*, cit., pp. 355–361.

³⁰ A. GIANNINI, *La Costituzione Persiana*, «Oriente Moderno» 11/7 (1931), p. 318.

³¹ Pursuant to art. 2 of the electoral law, in order to enjoy the right to vote landowners and peasants had to own a property worth at least 1.000 *tumāns* (ca. € 20.000 as to 2023); merchants needed to «have a definite office and business»; tradesmen were obliged to «be in possession of a shop of which the rent corresponds with the average rents of the locality».

³² There is some error in the English translation of Browne, since the sum of representatives according to numbers in E. G. BROWNE, *The Persian Revolution*, cit., pp. 356–357, is 156, but art. 4 of the 1906 Constitution dictated that «The number of elected Members has been fixed, in accordance with the Electoral Law separately promulgated, at one hundred and sixty two». There are thus six missing seats, maybe because the part concerning representatives from Tehrān in Browne's translation enumerates five categories instead of six, leaving the aristocracy out. However, herein the explanation can be just conjectural.

free to express their opinion and could not «be arrested or detained on any pretext without the permission of the Assembly» (art. 23).

In a comparative perspective, two points can be highlighted. First, the division of electorate into several categories recalls other electoral systems of the time based on curial partitions. For instance, both the 1873 Austrian electoral law and the 1905 Russian one grouped voters into different *curiae* or classes – an intermediate alternative between the old representation by estates on one side, and the universal suffrage on the other. Secondly, the indirect election was similarly borrowed from the Austrian and Russian models, although not exclusively³³. The December 1876 Ottoman electoral law also shaped parliamentary representation around an indirect process, but it seems to have been a model for Persians in other respects too: the province as basic electoral constituency, and the specific criteria of enjoyment of active and passive electorate³⁴.

Through this electoral law, the 1906 elections shaped an Assembly «representing mostly the nobility, wealthy merchants and their agents, the bazaar retailers and guild members, the olama and their agents»³⁵. Within few months, the newly established *Mağles* drafted the Constitution, which was signed by Moẓaffar ad-Din, *in articulo mortis*, on the 30th of December of 1906 – a few days before passing away, in the first week of 1907. The Constitution (*Qānun-e Asāsī*, lit. “Fundamental Law”)³⁶ was a strange document – far stranger than the electoral law. It regulated almost exclusively the *Mağles*, which seemed to be the pivot of the institutional and constitutional system. Indeed, those few parts of the Constitution addressing other institutions – that is, the monarch and ministries – did so only with respect to their relationship with the *Mağles*. There was no mention of the Legislative-

³³ Cfr. D. CARAMANI, *Elections in Western Europe Since 1815. Electoral Results by Constituencies*, Palgrave Macmillan, London 2000, pp. 109–110; S. BELLER, *A Concise History of Austria*, Cambridge University Press, Cambridge-New York 2006, pp. 147–148: «Until 1873 [Austrian] Reichsrat deputies were elected indirectly, as delegates from the provincial diets. Each diet in turn had its own corporatist, curial franchise that allotted seats from various constituencies, some territorial but others institutional [...]. When the Reichsrat became directly elected in 1873, this curial structure was carried over into the new electoral system»; on Russia, cfr. I. D. THATCHER, *Elections in Russian and Early Soviet History*, in P. LENTINI (ed.), *Elections and Political Order in Russia*, Central European University Press, Budapest 1995, p. 18: «The Law of 11 December 1905 [...] established a complicated electoral process. The 524 deputies to the Duma were to be elected by electoral colleges at the provincial and city levels. The provincial electoral college was made up of persons elected by meetings of five curia, representing the town, landowners, peasants, Cossacks and workers. Elections to the curia were not direct, except in the case of the landowners' curia».

³⁴ Cfr. H. KAYALI, *Elections and the Electoral Process in the Ottoman Empire, 1876-1919*, «International Journal of Middle East Studies» 27/3 (1995), pp. 268–271: «The law stipulated the *sancak* (provincial subdivision) as the basic electoral unit [...]. All males above the age twenty-five who paid some direct taxes were entitled to vote, unless they were protégés of a foreign government, were bankrupt or under legal restriction to dispose of their property, or deprived of their civil rights [...]. Eligible voters elected secondary voters [...]. The two-stage indirect election process was the singular feature of Ottoman elections. In choosing electors who then voted for the actual deputies, the ordinary voters deferred to community leaders who would presumably better judge the interests of the constituency and select the right representatives for the chamber. In fact, the two-stage system preserved and reinforced patronage relationships».

³⁵ M. BAYAT, *Iran's First Revolution*, cit., p. 146. Cfr. also A. RAHNEMA, *The Political History of Modern Iran*, cit., p. 32: «The first Constituent Assembly [...] was composed of guild leaders, nobles, landowners, merchants and the clergy».

³⁶ The English translation of the 1906 Constitution in E. G. BROWNE, *The Persian Revolution*, cit., pp. 362–371.

Executive relationship; the principle of separation of powers was by no means proclaimed; there was no catalogue of political rights at all. The sole matters regulated were: «the Constitution of the Assembly» (artt. 1-14), «the Duties of the Assembly and its Limitations and Rights» (artt. 15-31), «the representation of affairs to the National Consultative Assembly» (artt. 32-38), the «proposal of measures on the part of the Assembly» (artt. 39-42), «the Conditions regulating the formation of the Senate» (artt. 43-50).

Coming to a more detailed analysis, according to art. 2 the Parliament represented the Persian people, being the mean of their participation to determine the economic and political direction of the country. The parliamentary mandate lasted two years, and representatives could be indefinitely re-elected (art. 5). After elections, the *Mağles* could convene with representatives from Tehrān alone (art. 6). Art. 7 established the quorum for deliberations: two-thirds of members at «the opening of the debates», and three-quarters «when the vote is taken», while decisions were taken by simple majority of those present. The *Mağles* enjoyed a complete autonomy as to the determination of its sessions (artt. 8 and 9), as it was autonomous in judging the legitimacy of prosecutions against its members; in case a member was caught *flagrante delicto*, the Assembly had to be informed about the punishment he was subject to (art. 12). Art. 13 established the principle of publicity of parliamentary sessions, conditioning the effectiveness of rulings and decisions upon it. The autonomy in the adoption of the Assembly's *interna corporis acta* was recognised by art. 14. Artt. from 15 to 31 regulated the duties and powers of the *Mağles*, which had an almost absolute competence in legislative matters, as it enjoyed «the right in all questions to propose any measure which it regards as conducive to the well-being of the Government and the People» (art. 15), to approve all measures concerning the Crown and the ministries (art. 16), and to «bring forward such measures as shall be necessary for the creation, modification, completion or abrogation of any Law» (art. 17). Despite those general principles, Constitution-makers felt it necessary to specify the politically sensitive domains that had to be subject to the *Mağles*' competence: budgetary, economic and financial affairs (artt. 18-20); the arrangement of ministries (art. 21); the alienation of resources or territories (art. 22); the granting of concessions and the conclusion of treaties (artt. 23 and 24); the contracting of loans (art. 25); the construction of railroads and streets (art. 26). Artt. from 27 to 29 stipulated that ministers had to answer to both the Assembly and the Šāh in case of misconduct *contra legem*. An analytical regulation of internal parliamentary procedures was in artt. from 32 to 42 – which are not discussed here due to their technicality. What is highly interesting is that the Persian Parliament, based on the Constitution, was bicameral. Indeed, besides the National Assembly, the Fundamental Law of 1906 provided for the creation of a Senate (*Senā*), to be composed of 60 «well-informed, discerning, pious

and respected persons of the Realm»: 30 members were to be nominated by the monarch and 30 members were to be elected by the people, in both cases half from Tehrān and half from the provinces (artt. 43-45). Bills had to be approved by both chambers, except for budgetary and financial issues, for which the Senate could make non-mandatory observations (art. 46). An obvious exception to this principle was provided for in art. 47, by virtue of which «So long as the Senate has not been convoked, proposals shall, after being approved by the National Consultative Assembly, receive the Royal assent, and shall then have the force of Law». Indeed, this situation was destined to last long: the first Senate convened in 1950, though under another dynasty, the Pahlavī.

All in all, the structure and the contents of the 1906 Constitution demonstrated – as already remarked – the «greenness of Iranian constitutionalism, which deemed the establishment of the Parliament the necessary mean to reach its own purposes – weakening both the Monarch and foreign control»³⁷. With the arrival of deputies from the provinces, the *Mağles* then started to draft a complement (*motammem*) to the Constitution in order to clarify inter-institutional relations at a constitutional level and integrate the text with other principles typical of constitutionalism: national sovereignty, equality of all before the law, the protection of rights³⁸. The context was made more complex by the fact that the newly installed Šāh, Moḥammad ‘Alī – who had succeeded his own father at the beginning of 1907 – was strongly determined to undermine if not to crush the *Mağles* and the constitutional provisions. He did not invite any deputy to his coronation, starting to attack the Parliament and constitutionalism as contrary to Islām – in this respect he was backed by the most prominent *muğtahid* of Tehrān besides Behbahānī, Faḍlollāh Nurī, who was a staunch royalist and reactionary. Nevertheless, a sudden outbreak of anti-governmental and secessionist protests in Tabriz compelled the constitutionalists in Tehrān to take a strong stand against Moḥammad ‘Alī, who was then forced to find a compromise with the *Mağles*: the former would bend to the Constitution, while the latter would acknowledge the authority of the Šāh³⁹. Though, despite political conflicts, the vagueness of the Constitution as to institutional powers and prerogatives soon manifested. In March 1907 the Šāh dismissed Mošir ad-Dauleh and nominated in his place Amin as-Solṭān – the Chief Minister who had been laid off in 1903. The inadequacy of the Constitution was patent precisely in that instance: the constitutional text did not impose any rule as to the nomination of the Cabinet and the parliamentary confidence, hence even Amin as-Solṭān’s appointment entirely befell under the

³⁷ F. BENEDETTI – G. M. SPERELLI, *Le rivoluzioni costituzionali*, cit., p. 217.

³⁸ S. A. ARJOMAND, *Islam and Constitutionalism since the Nineteenth Century*, cit., p. 38, affirms that «The Majles committee that had prepared the draft supplement to the Fundamental Law consisted of a handful of reformist bureaucrats and merchants; the *ulema* were not invited to join the committee, nor were they consulted».

³⁹ Cfr. M. BAYAT, *Iran’s First Revolution*, cit., pp. 153–160; S. A. ARJOMAND, *Islam and Constitutionalism since the Nineteenth Century*, cit., pp. 36–37.

scope of the praxis that had been used theretofore. The *Mağles*' deputies accepted the nomination of Amin as-Soltān, but they carried on the drafting of the supplement. During this process several, overlapping, antinomies emerged: not only the contrast between limited government (“*mašruṭeh*”) and autocracy – a contrast typical of the Šāh-*Mağles* relations –, but also that between limited government and Islamic-compliant (“*mašru‘a*”) government – a kind of contrast epitomised by Faḍlollāh Nurī’s open opposition to the Constitution. Indeed, the overall content of the supplement was being contested with virulent strength by Nurī on the grounds that it was contrary to Islām, since it recognised the equality of all Persians, religious liberty, freedom of thought, universal access to education, even for women, etc. At the turn of spring and summer of 1907, a negotiation started between Ṭabāṭabā’ī and Behbahānī on one side, and Nurī on the other in order to establish, within the framework of the supplement, a religious committee – labelled “*senā-ye ruḥānī*”, “clerical senate”, by its detractors – that would judge the conformity of legislation to Islamic law. The bargaining was difficult due to Nurī’s inflexibility and the unwillingness of the most liberal deputies to compromise on the supplement. Moreover, harsh protests burst in Tabriz once again, and when the Šāh tried to violently restore order, he was forced to back down. The issue over the religious committee was submitted also to the three most prominent ‘*ulamā*’ in Nağaf – the Iraqi Shī’i holy city –, Moḥammad Kāzem Ḥorāsānī, Mīrzā Ḥusayn Tehrānī, and ‘Abdollāh Māzandarānī. In mid-June, the *Mağles* finally voted to include the article establishing the religious committee – which is analysed right below – in the supplement. Nevertheless, Nurī was dissatisfied by the meagre outcome of his effort and was willing to fuel the opposition against the constitutional front. Thus, he sought *bast* in the Šāh ‘Abdol‘azīm shrine, whence he continued to attack the National Assembly, the Constitution, and the supplement – which at the time was still being debated – as contrary to Islām. The *Mağles* refused to negotiate with him, but the *bast* lasted just a few months: in August the *Mağles* approved the Supplementary Fundamental Laws (SFLs), but another significant event marked a hiatus. On the 31st of August, the Prime Minister Amin as-Soltān was shot dead. Although the blame was put on the radical constitutionalists, the murder had the effect of exacerbate the mistrust between the *Mağles* and the monarch. Moreover, as a consequence of Amin as-Soltān’s assassination, in September Nurī came to an agreement with Ṭabāṭabā’ī and Behbahānī and put an end to his *bast*. Finally, on the 7th of October the Šāh signed the SFLs, thus promulgating them⁴⁰.

⁴⁰ The events between February and October 1907 – the battle over the religious committee, Nurī’s opposition to the supplement and his *bast*, the approval of the SFLs, and Amin as-Soltān’s murder – are analytically recalled in M. BAYAT, *Iran’s First Revolution*, cit., pp. 161–210; cfr. also J. AFARY, *The Iranian Constitutional Revolution*, cit., pp. 92–115; A. RAHNEMA, *The Political History of Modern Iran*, cit., pp. 38–42.

More than the 1906 Constitution, the 1907 SFLs were a constitutional text in the proper sense. They contained 107 articles grouped in ten titles: «General Dispositions» (artt. 1-7), «Rights of the Persian Nation» (artt. 8-25), «Powers of the Realm» (artt. 26-29), «Rights of Members of the [Parliamentary] Assembly» (artt. 30-34), «Rights of the Persian Throne» (artt. 35-57), «the Ministers» (artt. 58-70), «Powers of the Tribunals of Justice» (artt. 71-89), «Provincial and Departmental Councils» (artt. 90-93), «Finances» (artt. 94-103), the «Army» (artt. 104-107). The religious dimension of Persian constitutionalism of that period can be appreciated reading the first two articles and art. 35 SFLs. First of all, Twelver Shī'i Ja'fari Islām was recognised as the official religion of the State, and the Šāh had to follow it (art. 1). Art. 2, then, established the above-mentioned religious committee requested by Nurī. This article is highly interesting for both its wording and its content: compared to other articles, it was indeed relatively long and verbosely solemn. The Šāh was labelled as the King of Kings («Shāhinshāh») of Islām, Prophet Muḥammad remembered as «His Holiness the Best of Mankind», and the National Consultative Assembly was qualified as «Sacred» (*Mağles-e Moqaddas-e Šurā-ye Mellī*). After saying that the laws approved by the *Mağles* could not be contrary to the tenets of Islām and the law established by the Prophet, the article foresaw the establishment of a Committee (*Hey'at*) entrusted with the control of the compliance of legislation to Islām. Only 'ulamā' could be elected members of this Committee: they were nominated by the *Mağles*, which had to choose at least five 'ulamā' from a list of twenty submitted by those *muğtahids* recognised as *marğa'*. This institution embodied, by far, the most peculiar trait of the first Persian constitutionalism in the 20th century, and indeed although the provisions of art. 2 SFLs were destined to remain on paper and never to be applied, they would develop their own *Wirkungsgeschichte*, representing the benchmark of the republican Council of Guardians, both in the draft Constitution and in the actual Constitution in 1979⁴¹. Another peculiar part in which the religious dimension of Persian constitutionalism was encapsulated was art. 35, the first of the section concerning the monarch. Art. 35 defined *salṭanat* (monarchy) as a deposit or trust «confided (as a Divine gift) by the people to the person of the King», and according to S. A. Arjomand the mention of the “Divine gift” (“*muhebat-e elahī*”, lit. “divine grace”) in brackets «was awkwardly added by the new Shah in his own handwriting before signing the document»⁴². Besides the singularity of those articles, the rest of the SFLs, much like the 1876 Ottoman Constitution, was modelled after a specific constitutional archetype of the time, namely the 1831 Belgian Constitution – an influence that has been vastly

⁴¹ Cfr. *infra*, ch. 4, §§ 2–3. As it is known, “*Wirkungsgeschichte*” is a key term of Hans-Georg Gadamer’s hermeneutics, meaning *grosso modo* “history of effects”. We dare to use such a word believing that the study of constitutional genealogies compels to take into consideration hermeneutic concepts as well.

⁴² S. A. ARJOMAND, *Islam and Constitutionalism since the Nineteenth Century*, cit., p. 37.

acknowledged in literature⁴³. The rights catalogue indeed incorporated classical political and civil rights: equality of all before the law (art. 8); personal freedom (art. 9); *habeas corpus* (art. 10); non-retroactivity of penal law (art. 12); inviolability of the homes (art. 13); enjoyment of private property (artt. 15-17); freedom of study (art. 18); right to education (art. 19); freedom of press save for «heretical books and matters hurtful to the perspicuous religion» (art. 20); freedom of assembly and association (art. 21); privacy of correspondence (artt. 22 and 23); right to citizenship (art. 24); etc.

The principle of national sovereignty, although not explicitly proclaimed as such (the phrase “*hākemiyyat-e mellat*”, which means precisely national sovereignty, is not present in the SFLs), was nonetheless substantially recognised by art. 26, by rule of which «The powers of the realm are all derived from the people» – whereas “people” is the translation of the word “*mellat*”, lit. “nation” –, much like art. 25 of the 1831 Belg. Const. stated that «Tous les pouvoirs émanent de la nation»⁴⁴. Artt. 27 and 28 then contained the formalisation of the separation of powers: the legislative was exercised by the *Mağles* and the Senate, which had the power to approve laws, and by the monarch, who sanctioned legislation; the judicial belonged to both civil and religious courts; and the executive was exerted by ministers in the name and on behalf of the monarch. The *Mağles*’ deputies and senators represented, according to art. 30, the entire nation, «and not only the particular classes, provinces, departments or districts which have elected them», following the homologous art. 32 of the 1831

⁴³ Cfr., for instance, M. BAYAT, *Iran’s First Revolution*, cit., p. 43, «The constitutionalists were to choose the Belgian constitution as the model to emulate»; E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., p. 89: «The deputies, working with a translation of the Belgian constitution, formulated a parliamentary system of government»; S. A. ARJOMAND, *Islam and Constitutionalism since the Nineteenth Century*, cit., p. 37, esp. note 12, «The bulk of the Supplementary Fundamental Law of October 1907 consists of *verbatim* or slightly modified translation of the articles of the Belgian Constitution of 1831»; A. M. ANSARI, *Modern Iran since 1797*, cit., p. 104: «The Constitution itself, modelled on that of the Belgian Constitution [...] was drawn up into two Fundamental Laws, the first of which was promulgated on 30 December 1906 and signed into law by the Shah on 1 January 1907»; the analogy with the Ottoman Constitution are highlighted by N. SOHRABI, *Revolution and Constitutionalism in the Ottoman Empire and Iran*, Cambridge University Press, Cambridge-New York 2011, pp. 386–387, esp. note 218, who states that «The Belgian constitution of 1831 was the main inspiration in Iran. The similarities with the Ottoman constitution were stronger as the Iranian constitution also drew upon the Bulgarian constitution of 1879. Its other influence was Russia of 1906». More generally, upon the 1831 Belgian Constitution as a model, cfr. J. A. HAWGOOD, *Liberalism and Constitutional Developments*, in J. P. T. BURY (ed.), *The New Cambridge Modern History. The Zenith of European Power 1830-70*, vol. X, Cambridge University Press, London-New York 1960, p. 191: «The Belgian constitution of 1831 rapidly replaced the Spanish constitution of 1812 [...] as the beacon-light for liberals and radicals who did not stand so far to the left [...] that they wanted to overthrow all monarchies and replace them by republics. Wherever a strictly limited constitutional monarchy was the ideal – there stood the Belgium of King Leopold as a shining example».

⁴⁴ According to S. A. ARJOMAND, *Islam and Constitutionalism since the Nineteenth Century*, cit., p. 37, «The SFL does not go so far as to state explicitly the principle of ‘national sovereignty’, which was to be translated explicitly as the *hākemiyyat-e mellat* in the 1979 Constitution [...]. The SFL does declare, however obliquely, that the three powers of government ‘derive from the nation (*mellat*)’». In any case, the Belgian example demonstrates that the incorporation of the principle of national sovereignty does not necessarily requires an explicit mention of it: in the words of P. POPELIER – K. LEMMENS, *The Constitution of Belgium. A Contextual Analysis*, Hart, Oxford-Portland 2015, «The decision to found the Belgian Constitution on the concept of national sovereignty was clearly influenced by the French Constitution of 1790. Article 33 (then 25) of the Belgian Constitution firmly states that all powers stem from ‘the Nation’», despite that national sovereignty is never mentioned.

Belg. Const⁴⁵. An analytical regulation of issues pertaining to the Parliament in the SFLs was not necessary since this had already been made in the 1906 Constitution – as seen right above. Formally speaking, the Iranian constitutional regime was deeply hinged upon the parliamentary institution, and the monarchy was limited accordingly. Therefore, in order to ascend the throne, prior to the coronation the Šāh had to take an oath before the Parliament pledging his loyalty to the Constitution, and vowing to protect the country and Shī‘i Islām (art. 39). Even the choice of the regent – should the Šāh be underage – was incumbent upon the Parliament (art. 38). The monarch enjoyed a regime of political irresponsibility, and the SFLs did not even mention a procedure for his dismissal in case of grave crimes – as it would happen to Moḥammad ‘Alī in 1911. The ministerial countersignature thus exempted the Šāh from being responsible for acts performed in the exercise of his duties (art. 44), but it was also requested in order for these acts to enter into force (art. 45). The powers and prerogatives of the monarch were typical of Heads of State, most importantly: the nomination and dismissal of ministers (art. 46); the appointment of the Attorney General (art. 83); the «granting of military rank, decorations and other honorary distinctions» (art. 47); the issue of executive decrees (art. 49); the command of armed forces (art. 50); the declaration of war and the conclusion of peace (art. 51). Art. 57 stipulated that the Šāh was not entitled to perform any other power than those recognised in the Constitution. Quite singularly, those powers did not include the dissolution of the National Assembly, which was regulated by art. 48 of 1906 Const., according to which the dissolution had to be approved by the Senate by a two-thirds majority and confirmed by the Cabinet, but under a very specific condition – namely, a prolonged stalemate upon a draft bill⁴⁶. That said, the main institutional *liaison* between monarch and Parliament was represented – as in the case of every dualist constitutional monarchy – by the Cabinet. As remarked above, ministers were appointed by the Šāh but had to enjoy the confidence of both the *Mağles* and the Senate, before of which they were responsible individually as well as collectively (artt. 60, 61 and 67). The Parliament had the right to impeach ministers for «delinquencies» punishable in accordance with the law, leaving to the Court of Cassation the passing

⁴⁵ «Les membres des deux Chambres représentent la nation, et non uniquement la province ou la subdivision de province qui les a nommés».

⁴⁶ Art. 48 stipulated that: «If any proposal, after undergoing criticism and revision in the Senate, be referred by a Minister to the National Consultative Assembly, and be not accepted, such disputed proposal shall, in case of its being of importance, be reconsidered by a third Assembly composed of Members of the Senate and Members of the National Consultative Assembly elected in equal moieties by Members of the two Assemblies. The decision of this (third) Assembly shall be read out in the National Council. If it be then accepted, well and good. If not, a full account of the matter shall be submitted to the Royal Presence, and should the Royal judgement support the view of the National Consultative Assembly, it shall become effective; but if not, orders will be issued for a fresh discussion and investigation. If again no agreement of opinion results, and the Senate, by a majority of two thirds, approves the dissolution of the National Consultative Assembly, this approval being separately affirmed by the Cabinet of Ministers, then the Imperial Command will be issued for the dissolution of the National Consultative Assembly, and at the same time orders shall be given for the holding of fresh elections».

of judgement (artt. 69 and 70). The Judiciary was also regulated at a constitutional level, with the formalisation of a double system of courts, secular and religious, under the authority of the ministry of justice and of *muğtahids* respectively (art. 71). Several judicial rights were formalised and recognised: for instance, the publicity of trials (art. 76), the principle of legality for judgements (art. 78), the irremovability of judges (art. 81), etc. The supreme judicial authority in the country was the Court of Cassation, but a system of constitutional judicial review was not established – not surprisingly, given the fact that in Belgium the Constitutional Courts was not instituted before the 1980s, and that the first organic doctrinal debate in Europe’s civil law systems as to judicial review occurred after the First World War in the context of the Constitution-making processes in the successor States to Austria-Hungary⁴⁷.

To sum up, the 1906 Constitution and the 1907 SFLs incorporated the most classical institutional framework of post-1830 – or post-French Charter – European dualistic constitutional monarchies, that is to say, a substantially Orléanistic framework. To use the words of, M. Duverger, «le terme “orléaniste” [...] désigne cette variété de régime parlementaire où le chef de l’État conserve un grand pouvoir réel, où le Cabinet doit avoir sa confiance en même temps que celle des Chambres, où les ministres assurent la liaison entre lui et le législatif»⁴⁸. This model entered into Persia too, precisely due to the adoption of the Belgian model by Iranian constitutionalists. As stated by C. H. Church, the 1831 Belgian Constitution – a product of a Constitution-making but also of a Nation-building process – «derived in the main from the [1815 Dutch] *Grondwet* and the [1830] French Charter»⁴⁹, the latter

⁴⁷ Upon the Constitutional Court in Belgium, cfr. P. POPELIER – K. LEMMENS, *The Constitution of Belgium*, cit., pp. 192–198: «When enacted in 1831, the Belgian Constitution [...] remained silent as to the reviewability of Acts of Parliament. There was never any doubt that Parliament had to respect the Constitution; the question was who would act as guardian of the Constitution [...] In the 1970s the evolution towards the federalisation of the Belgian State had commenced. [...] As a result, what would later be named the Constitutional Court was established as a ‘Court of Arbitration’ in the 1980s. In 1985 it delivered its first judgment. Initially the Court’s limited powers reflected the restricted role it was to play as a federal judge. [...] [T]he Court inspired sufficient confidence for the national Parliament to extend its powers in 1989, thereby launching a new phase in its operation. [...] The functioning of the Court as a genuine constitutional court is now well accepted». For an introduction to the issue of judicial review in Europe, cfr. L. PEGORARO – A. RINELLA, *Sistemi costituzionali comparati*, Giappichelli, Torino 2017, p. 555–556; K. LACHMAYER, *The Austrian Constitutional Court*, in A. JAKAB – A. DYEVE – G. ITZCOVICH (eds.), *Comparative Constitutional Reasoning*, Cambridge University Press, Cambridge-New York 2017, pp. 75–76; for a broader perspective on the Austrian Constitution-making process, cfr. M. STELZER, *The Constitution of the Republic of Austria. A Contextual Analysis*, Hart, Oxford-Portland 2022, pp. 6–11.

⁴⁸ M. DUVERGER, *Les Institutions de la Cinquième République*, «Revue française de science politique» 9/1 (1959), p. 103.

⁴⁹ C. H. CHURCH, *Europe in 1830. Revolution and Political Change*, Routledge, Abingdon-New York 1983, p. 92. In this regard cfr. also J. GILISSEN, *La Constitution belge de 1831 : ses sources, son influence*, «Res Publica» 10/2 (1968), pp. 115–120, who compares the norms concerning the monarch in the 1815 Dutch Fundamental Law and in the 1830 French Charter with those of the 1831 Belgian Constitution, asserting that «De l’analyse de la partie des procès-verbaux relative aux “Prérogatives du Chef de l’État”, on peut déduire que la Commission de Constitution a utilisé systématiquement deux textes de base : la Loi fondamentale du Royaume des Pays-Bas de 1815, et la Charte constitutionnelle de la France, de 1830. Parcourant le chapitre relatif à cette matière dans les deux textes constitutionnels, elle a complété l’un par l’autre» (p. 120).

representing the continental paradigm of dualistic parliamentarism⁵⁰. The archetype of the Orléanist monarchy was thus indirectly transposed, via Brussels, in the norms of the 1907 Persian SFLs regulating the Šāh.

2.3. *From Victory to Failure: the Premature End of the First Constitutional Experience in Iran*

With the passage of the SFLs in October 1907, a new phase in the political history of Iran began which witnessed another fiercer and bitterer struggle around the Constitution. In mid-December the anti-constitutionalist forces tried to get the upper hand by gathering an armed crowd – subsidised by the court and galvanised, among others, by Nurī – in Tophāneh Square in Tehrān in order to threaten the Parliament. Simultaneously, the Cabinet headed by Abul-Qāsem Nāṣer ol-Molk fell as the Prime Minister was arrested by the Šāh, while the monarch himself invoked the dissolution of the Parliament. A *coup de main* was nevertheless avoided due to the mobilisation of several *anğomans* both in the capital and in the provinces. Faced with a strong reaction, the Šāh then agreed to negotiate with the constitutionalists and pledged his allegiance to the Constitution once again, while the crowd in Tophāneh Square was forced to gradually disperse. But these events were not without consequences: not only did they anticipate the *putsch* Moḥammad ‘Alī would carry out in June 1908, but they also deepened the political cleavages among ‘*ulamā*’. Indeed, Ṭabāṭabā’ī and Behbahānī informed the major *muğtahids* in Nağaf – Ḥorāsānī, Tehrānī and Māzandarānī – about Nurī’s role in those events, inducing them to publicly condemn him⁵¹. Following the Tophāneh incidents, in February 1908 the Šāh escaped an assassination attempt, something which exacerbated the already tense political climate until the late spring. In early-June the Šāh moved with the Cossack Brigade to a field near the capital known as Bāğ-e Šāh (“King’s Garden”), whence he requested the abolition of the Constitution and the dissolution of the Parliament. In the ensuing days, several *Mağles* deputies were arrested, newspapers were closed, and the telegraph lines seized by the monarch; an attempt to resist by the constitutionalists and their *anğomans* was made, but in vain: on the 23rd of June, the

⁵⁰ Cfr. M. PRELOT – J. BOULOUIS, *Institutions politiques et droit constitutionnel*, Dalloz, Paris 1990¹¹, pp. 424–425, according to whom «Le parlementarisme de la seconde chartre [...] a été justement qualifié de “dualiste” [...], car le chef de l’État y jouit de prérogatives puissantes qui lui permettent d’intervenir efficacement dans la vie politique. Par le droit de révoquer le ministres, soit directement, soit indirectement, par le droit de dissoudre la Chambre basse e de nommer des pairs, il équilibre l’action des députés et leur pouvoir de renvoyer les ministres».

⁵¹ Concerning the Tophāneh incidents, cfr. M. BAYAT, *Iran’s First Revolution*, cit., pp. 210–214; A. RAHNEMA, *The Political History of Modern Iran*, cit., pp. 42–43; E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., pp. 94–95; S. A. ARJOMAND, *The Turban for the Crown. The Islamic Revolution in Iran*, Oxford University Press, Oxford-New York 1988, p. 53, who affirms that «Nuri’s part in the [Tophāneh] event and his association with the unsavory hirelings of the Shah earned him the *takfir* (excommunication) of Khorasani and his colleagues in Najaf and brought him into temporary disrepute».

Cossack Brigade commanded by the Russian colonel Vladimir Liakhov, upon the Šāh's orders, surrounded the building of the *Mağles* and bombarded it. Many deputies were arrested and brought to Bāğ-e Šāh, where several among them were executed – while some others managed to escape abroad. Behbahānī and Ṭabāṭabā'ī, on their part, were sent into exile. Thus commenced the period known as “lesser despotism”: the Parliament was dissolved, and the Constitution suspended but not formally abrogated – much like the Ottoman Constitution during the Ḥamidian despotism. But while the Ḥamidian despotism lasted thirty years, the lesser despotism in Persia was destined to last barely one⁵².

Although defeated and weakened, the constitutional front managed to reorganise its own forces. Many parliamentary leaders flew to Europe: to London, to Paris, to Switzerland, some to Istanbul. The exiles constituted a heterogeneous group precisely due to their ideological differences: radicals, monarchists, moderates⁵³. Foreign intervention conditioned the endeavour of constitutionalists much like it had conditioned the Persian history during the previous century. In London, the liberal MP Henry F. B. Lynch, along with Edward Browne, coordinated the establishment of the Parliamentary Persia Committee, with the aim of endorsing the Persian constitutional cause and put pressure on the British Government on the matter. Another foreign help came from the Ottoman Empire, where in July 1908 the Young Turks, gathered in the Committee of Union and Progress (CUP), restored the 1876 Constitution coercing the Sultan *manu militari*. The Young Turks were politically sympathetic toward the Persian constitutional movement, which represented a model for their “revolution”. Indeed, Istanbul gave asylum to several opponents of Moḥammad ‘Alī, and the new Ottoman Government itself favoured the establishment of structured contacts between Persian constitutionalists and the leading *muğtahids* in Nağaf – it might be useful to recall that Nağaf was located in the Ottoman *vilāyet* (“province”) of Baghdad at the time⁵⁴. By December 1908 some exiles, like Ḥassan Taqizādeh – a prominent radical deputy from Tabriz who had went to London, where he had been aided by Edward G. Browne –, were again in Persia, particularly in Tabriz, to coordinate *in*

⁵² The 1908 coup is recalled in detail by M. BAYAT, *Iran's First Revolution*, cit., pp. 215–231; J. AFARY, *The Iranian Constitutional Revolution*, cit., pp. 137–142; A. RAHNEMA, *The Political History of Modern Iran*, cit., pp. 43–45.

⁵³ Cfr. M. BAYAT, *Iran's Experiment with Parliamentary Governance*, cit., pp. 40 ff., who describes also the «Dissent among the Exiles»; cfr. ID., *Iran's First Revolution*, cit., pp. 243 ff., according to whom «The political exiles, sensing their helplessness and dependence on British good-will toward their cause, strove to achieve a semblance of ideological unity and cooperation. Judging from the private correspondence now available, this was no mean feat. Tension often arose between the moderate intelligentsia and the radicals» (p. 247).

⁵⁴ In the words of F. GEORGEON, *Le dernier sursaut (1878-1908)*, in R. MANTRAN (ed.), *Histoire de l'Empire Ottoman*, cit., p. 573, «l'établissement d'un régime constitutionnel en Iran apporte en quelque sorte une preuve supplémentaire que les jours des régimes despotiques sont désormais comptés et que les Jeunes-Turcs œuvrent bien dans le sens de l'Histoire». Cfr. also M. BAYAT, *Iran's First Revolution*, cit., pp. 253–256, according to whom «The leaders of the Turkish Party of Union and Progress reportedly encouraged the formation of a communication channel between Najaf and Istanbul».

loco the resistance against the Šāh, who was gradually losing control of the country. Not only did the *anğoman-e Tabriz*, the city's local secret society controlled by radical constitutionalists, act as an autonomous government of Persin Azerbaijan. In January 1909, Eşfahān fell to the Baḥtiārī tribe, while in Gilān an revolutionary government was set up in February. Meanwhile, the British and Russian Governments were putting pressure on the Persian monarch for the reintegration of the Constitution and the granting of a general amnesty. The unresponsiveness of Moḥammad 'Alī finally led Russia to invade the country from the north in late-April 1909, thus lifting the royalist siege on Tabriz. Soon after, in early-May the Gilāni revolutionaries conquered Qazvin, 150 km north-west of Tehrān. Constrained by both the constitutional front and foreign powers, in the wake of the fall of Qazvin the Šāh accepted to integrally restore the Constitution and nominated a new Cabinet. His figure, though, was fatefully impaired, despite widespread disagreement among constitutionalists about the convenience of a military conquest of the capital – with the moderates against and the radicals for it. Eventually, it was the Baḥtiārīs who took the initiative: after defeating the royalist troops, they entered Tehrān on the 13th of July. The Šāh sought asylum in the Russian Embassy, paving the way for his own deposition⁵⁵.

As soon as Moḥammad 'Alī handed over the reins of power, a provisional Government named “High Council” was set up that decreed the dismissal of the monarch and the accession to the throne of his eleven years-old son and crown prince, Aḥmad; the chief of the Qāğār tribe, 'Aḍod ol-Molk, was appointed regent. Even though there were no large-scale purges of royalists, some figures of the anti-constitutional front faced a trial and were even executed. This was the case for *āyatollāh* Nurī, who was brought before an improvised court in the last days of July, sentenced to death and eventually hanged in public – an unprecedented act in the history of Shī'i Islām. At the initiative of Taqizādeh the executive power was transferred to a twelve-members body called “Directorate”, whereof Taqizādeh himself became the most prominent figure. The Directorate took on the management of several critical issues: the search for foreign capitals and loans, the control of the militias that had conquered Tehrān, the organisation of the institutional and political system⁵⁶. As to the last point, in early-July a new and, to some extents, more representative electoral law had been adopted⁵⁷.

⁵⁵ Cfr. M. BAYAT, *Iran's First Revolution*, cit., pp. 248–251, 258–260; ID., *Iran's Experiment with Parliamentary Governance*, cit., pp. 58–96; J. AFARY, *The Iranian Constitutional Revolution*, cit., pp. 228–254; A. RAHNEMA, *The Political History of Modern Iran*, cit., pp. 47–50.

⁵⁶ On the High Council and the Directorate, and the trial of Faḍlollāh Nurī, cfr. M. BAYAT, *Iran's Experiment with Parliamentary Governance*, cit., pp. 105–125; J. AFARY, *The Iranian Constitutional Revolution*, cit., pp. 257–261; A. RAHNEMA, *The Political History of Modern Iran*, cit., pp. 51–53.

⁵⁷ The English translation of this law in E. G. BROWNE, *The Persian Revolution*, cit., pp. 385–400; the law bore the signature of Moḥammad 'Alī Šāh. M. BAYAT, *Iran's Experiment with Parliamentary Governance*, cit., p. 130, reports the names of the people involved in the drafting of the law – mainly constitutionalists and freemasons – saying that they wrote it «in consultation with the Anjoman-e Tabriz».

Although, with respect to the 1906 electoral law, the number of representatives was diminished from 162 to 120 (art. 1), their geographical distribution was more balanced: now, Tehrān was represented by 15 deputies, while Azerbaijan elected 19; the Šāhsevan, the Qašqāy and the Ilāt-e Ḥamseh tribes were recognised one representative each, just like the Armenian Christians, Chaldeans, Mazdeans, and Jews. If passive electorate (art. 7) had remained subject to almost the same requisites as in the 1906 law, the active electorate witnessed a considerable enlargement. Not only was the curial system eliminated, but the wealth required to exercise the right to vote was substantially lowered, and the voting age was put at 20, instead of 25⁵⁸. The election remained indirect, even for Tehrān: the people elected a fixed number of electors in a kind of electoral college on a municipal or provincial level, and then those electors voted for the deputies of the *Mağles* on a regional level (art. 15)⁵⁹.

The second *Mağles* first convened in mid-November 1909. Barely over half of the 120 parliamentary seats were filled at the time. The political life was destined to develop around the cleavage between two parties. The social-democratic Democrat Party (*Ḥezb-e*, or *Ferqeh-ye*, *Demokrāt*), represented by 26 or 27 deputies in the *Mağles*, embodied *grosso modo* the left of the political spectrum, although, as stated by J. Afary, it «was a coalition organization with an array of viewpoints from the center to the left rather than an organization with a unified ideology»⁶⁰. On the other side of the spectrum – the right –, the Social Moderates (*Eğtemā‘iyun-e E‘tedāliyyūn*) backed the upper classes’ conservative reformism⁶¹. If it is true that these two parties formally emerged around mid-1910, nevertheless the political division whereof they were the clearest expression had matured before their official creation – the Democrats themselves had secretly organised even prior

⁵⁸ Rather than 1.000 *tumāns*, art. 4 required electors to possess property worth at least 250 *tumāns* (ca. 8.500 € as to 2023), or to pay at least 10 *tumāns* (ca. 350 €) in taxes, or to have at least 50 *tumāns* (ca. 1700 €) as yearly income.

⁵⁹ The 1909 electoral law is analysed by M. BAYAT, *Iran’s Experiment with Parliamentary Governance*, cit., pp. 130–131; J. AFARY, *The Iranian Constitutional Revolution*, cit., pp. 263–264.

⁶⁰ J. AFARY, *The Iranian Constitutional Revolution*, cit., p. 264; on the Democrats, cfr. *ibid.*, pp. 264–271, who presents a table with the names of Democrat representatives to the second *Mağles* (p. 265) and features their program thus: «The party program [...] reflected their desire for a modern capitalist state that would provide a number of social reform programs for the workers, artisans, and peasants. [...] In calling for the secularization of politics and centralization of power, the Democrats issued a strong challenge to two formidable foes, the ‘ulama and the tribal khans. [...] This strong emphasis on the secularization of politics [...] resulted in much criticism of the Democrats, who were called “atheists” and “non-Muslims” by the opposition»; cfr. also M. BAYAT, *Iran’s Experiment with Parliamentary Governance*, cit., pp. 133–140.

⁶¹ Upon the Social Moderates, cfr. J. AFARY, *The Iranian Constitutional Revolution*, cit., pp. 271–273, according to whom «The Moderate Party was formed ostensibly in opposition to the Democrat Party and did not have a coherent program of its own. A variety of conflicting arguments were presented by the politicians in the party with the single aim of winning over the public support that had been directed to the Democrats in the early months of the Second Majlis. [...] One tactic of the Moderate Party was to call itself the Socia] Moderate Party (*Ijtima‘iyun l‘tidaliyyun*) to counteract the Democrats, who were identified in the public mind as Social Democrats (*Ijtima‘iyun ‘Amiyun*)»; M. BAYAT, *Iran’s Experiment with Parliamentary Governance*, cit., pp. 140–149, who highlights that «The choice of the name “Ejtema‘iyun-e E‘tedaliyyun” is both puzzling and revealing. On the one hand, the name distinguished the party members’ moderation from the Democrats’ radicalism; on the other hand, its basic program was no less progressive than the Democrats’ in its reformist outlook. [...] The Moderate program, embodying the core contradiction of its party name, seemed to want to craft a modern program while defending traditional Islamic cultural norms».

to the convening of the second *Mağles*⁶². In a context of perpetual political crisis due to financial straits and the ongoing Russian occupation of Northern Iran, in the months following the election of the *Mağles* political conflicts gradually escalated. On the 18th of May of 1910, the Democrats' newspaper *Irān-e Nou* ("New Iran") published an article that criticised the Islamic institution of *qiṣās* – that is, retaliation of specific crimes –, causing fierce criticism by Moderates and 'ulamā'; one week later the minister of Justice ordered the newspaper to be shut down⁶³. At the beginning of July, Taqizādeh was given a leave from the *Mağles* for three months: this was the consequence of an episode involving the trial of a cleric from Ḥorāsān. The cleric had been responsible for the murder of two local Ismā'īlis, and when informed on the matter Taqizādeh publicly called for his arrest, which was eventually carried out by the chief of the police of Tehrān, Yeprem Ḥān. The latter being an Armenian Christian, the arrest of the cleric and Taqizādeh's request for capital punishment against him aroused anger among the Moderates and 'ulamā', including Behbahānī. To avoid potential threats, Taqizādeh decided precisely to take the leave. The patent anti-clericalism of Democrats induced many Moderates to ask to the *āyatollāhs* of Nağaf a condemnation of Taqizādeh's political stances: on the 8th of July, Ḥorāsānī and Māzandarānī – Tehrānī had died in 1908 – responded to such request with a ruling that claimed that Taqizādeh was unfit to serve as MP since his political ideas were contrary to Islām⁶⁴. One week later, on the 16th of July, Behbahānī, who was among those who had addressed the two *muğtahids* of Nağaf, was assassinated in his house. The murderers were associated with Ḥaydar 'Amu-Uğlī, a well-known member of a leftist militia close to Taqizādeh. The violent death of the second most important cleric of Tehrān, after Nurī, sparked a general outrage: the blame immediately fell upon Taqizādeh himself and the Democrats; the merchants shut down the *bāzār*, while Taqizādeh, fearing for his life, fled to Tabriz and then to Istanbul. Behbahānī's murder provoked a series of political crimes in retaliation: between late-July and early-August two Democrats – among whom a relative of Taqizādeh's – were shot, just some days after the establishment of the new Cabinet headed by the independent Mostufī ol-Mamālek⁶⁵.

⁶² Among others, E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., pp. 100–106, describing the two parties, remarks that «The divisions in the Second National Assembly appeared as early as 1910. While twenty-seven reformers formed a Democrat party (Firqeh-i Demokrat), fifty-three conservatives coalesced into a Moderate party (Firqeh-i I'tedal)».

⁶³ On this episode, cfr. M. BAYAT, *Iran's Experiment with Parliamentary Governance*, cit., pp. 217–218; A. RAHNEMA, *The Political History of Modern Iran*, cit., p. 55. Upon *qiṣās*, cfr. J. SCHACHT, *Qiṣās*, *EP*, V, pp. 177–180.

⁶⁴ Cfr. M. BAYAT, *Iran's Experiment with Parliamentary Governance*, cit., pp. 222–225; J. AFARY, *The Iranian Constitutional Revolution*, cit., pp. 290–291; A. RAHNEMA, *The Political History of Modern Iran*, cit., pp. 55–56.

⁶⁵ Concerning Behbahānī's murder and its political consequences, cfr. M. BAYAT, *Iran's Experiment with Parliamentary Governance*, cit., pp. 225–230, 234–241; J. AFARY, *The Iranian Constitutional Revolution*, cit., pp. 292–298; A. RAHNEMA, *The Political History of Modern Iran*, cit., pp. 56–57.

In this context of perpetual crisis, a paramount political and institutional issue arose in September 1910: on the 22nd the regent ‘Aḏod ol-Molk died, thus giving rise to a dispute over the succession to him. Eventually, the Moderates chose former Prime Minister Nāṣer ol-Molk and, drawing on their clout in the *Mağles*, they managed to have him nominated to the regency. Nāṣer ol-Molk was an Oxford-educated conservative, appreciated by Great Britain and Russia due to his antipathy towards the Democrats and their rhetoric against foreign interference. At the time of ‘Aḏod ol-Molk’s death, Nāṣer ol-Molk was still in London, and he would return to Tehrān only in February 1911⁶⁶. The issue of his nomination to the regency crossed perhaps the most impactful political decision within the history of Iran at the beginning of the 20th century: the hiring of the US citizen Morgan Shuster as financial advisor of the Persian Government. Negotiations between the Cabinet of Mostufī ol-Mamālek and the US administration on the issue had started as early as late-September 1910. Despite one of the main architects of these negotiations, the Democrat Persian foreign minister Ḥosseyṅ-Qolī Navāb, resigned at the end of December of 1910, and notwithstanding the Russian and Nāṣer ol-Molk’s mistrust over the choice, in late-January 1911 the agreement between the US and the Persian Governments was settled: Morgan Shuster would be hired as treasurer general. This event marked a significant victory of the Democrats, but its consequences would prove to be catastrophic⁶⁷.

A few days after Nāṣer ol-Molk had come back to Iran at the beginning of February 1911, Mostufī ol-Mamālek resigned. The regent then nominated a new Cabinet – headed by Moḥammad-Valī Ḥān Tonekābonī, also known as the Sepahdār – on the very day he swore the oath before the *Mağles*, the 4th of March. Tonekābonī had already been Prime Minister since the ouster of Moḥammad ‘Alī, and was much appreciated by the British and Russian Governments⁶⁸. Two months later, in mid-May, Morgan Shuster arrived in Iran. It did not take too long before the new US guest could witness the virulence of political struggles in the country, epitomised by the attempted coup the deposed Šāh performed between May and September along with his two brothers, Salār ad-Dauleh and Šo‘ā‘ as-Salṭaneh. Secretly supported by St. Petersburg, Moḥammad ‘Alī landed in Golestān crossing the

⁶⁶ Cfr. M. BAYAT, *Iran’s Experiment with Parliamentary Governance*, cit., pp. 283–284, 288–289, who states that Nāṣer ol-Molk was «A cautious, Oxford-educated aristocrat [...] imbued with the spirit of the British system of constitutional monarchy he ideally wished to transplant to his country. [...] [British foreign minister] Grey favored Naser al-Molk’s appointment as the new regent; so did Grey’s Russian colleague, Izvolski. [...] Moderate by temperament and political disposition, Naser al-Molk did not adhere to Taqizadeh’s [...] firebrand of nationalism, nor was he inclined to promote an uncompromising, anti-Russian policy. His greatest problem, as attested by most foreign diplomats in Tehran, was his obsessive fear of the Democrats allegedly threatening his life, an obsession bordering on paranoia»; J. AFARY, *The Iranian Constitutional Revolution*, cit., pp. 309–310; A. RAHNEMA, *The Political History of Modern Iran*, cit., p. 57.

⁶⁷ The negotiations for the hiring of Shuster are analytically recalled by M. BAYAT, *Iran’s Experiment with Parliamentary Governance*, cit., pp. 311–315, 320, according to whom «Naser al-Molk’s and the Russians’ covert attempt to sabotage Shuster’s hiring».

⁶⁸ J. AFARY, *The Iranian Constitutional Revolution*, cit., p. 310, defines the Sepahdār as «staunchly anti-Democrat», and according to her «the Russian and British governments had little reason to fear the new regime»; cfr. also M. BAYAT, *Iran’s Experiment with Parliamentary Governance*, cit., pp. 300–303.

Caspian Sea from Baku in mid-July, while Salār ad-Dauleh was marching towards Tehrān with an army from the west. One of the immediate consequences of these events was the Parliament's decision to dismiss the Sepahdār, accused of having colluded with the coupists and the Russians. On the 25th of July, the *Mağles* then gave the confidence to a new Cabinet headed by the minister of war, Şamşam as-Saltāneh, who retained that ministry for him. In the following weeks, the governmental forces commanded by Yeprem Hān repeatedly defeated the armies of Moḥammad 'Alī, who was forced to retreat at the end of September⁶⁹.

The failure of this *putsch* deeply displeased the Russian Government, eager to crush all threats to its influence over Persia – among which there was precisely Morgan Shuster. The treasurer general, ideologically sympathetic towards the Democrats and nationalists – like former minister Navāb, who closely and extensively advised Shuster –, saw indeed the interference of Russia and the United Kingdom as a cause of the weakness of Persia – a condition that he wanted to limit by circumscribing their economic influence over the country. In order to carry on his plans of rationalisation of financial affairs and efficiency in the collection of taxes, Shuster decided to create a specific gendarmerie corps under the direct control of the Treasury. Not only was the gendarmerie involved in the defence against Moḥammad 'Alī's attempt to regain power, but when hostilities were over, in early October, Shuster used the corps to seize the estates of Šo'ā' as-Saltāneh, driving away the Russian Cossacks that were protecting them. Some weeks later, the Democrats in the *Mağles* managed to secure a unanimous vote that bound the Cabinet to seek Shuster's advice in all financial matters, even foreign concessions, leaving to the Parliament itself the last word upon them. As a result, the minister of finance resigned. November was a much dense month: the circulation of the Persian translation of a letter Shuster had sent to the *Times* in which he methodically recalled the Russian and British role in constraining Persian sovereignty led the Russians to threaten a military intervention. On the 12th, the *Mağles*, whose legislature was about to expire, approved the extension of its own mandate, causing the resignation of Şamşam as-Saltāneh. While more Russian troops were entering from the northern border, the Russian Government broke diplomatic relations with Persia; at the end of the month the *Mağles* renewed its confidence to Şamşam as-Saltāneh, just before receiving a definitive ultimatum from St. Petersburg. The core content of the ultimatum concerned the dismissal of Shuster and the commitment by Tehrān of seeking Russian and British consent for the hiring of foreign advisors. After a tragic debate, the *Mağles* decided not to respond, but eventually, upon the entrance of additional Russian troops from the north, the Cabinet capitulated, and on the 24th of December Şamşam as-Saltāneh

⁶⁹ The attempted coup is described in J. AFARY, *The Iranian Constitutional Revolution*, cit., pp. 321–324; M. BAYAT, *Iran's Experiment with Parliamentary Governance*, cit., pp. 333–337; A. RAHNEMA, *The Political History of Modern Iran*, cit., pp. 57–58.

dissolved the Parliament. The following day, Shuster was dismissed and forced to leave the country⁷⁰. A new *Mağles* would convene just three years later, always in a context of substantial foreign dominance: that of the Russo-British occupation of the country during the first World War.

Thus ended, to use M. Bayat's words, «Iran's first serious experiment with parliamentary governance»⁷¹. But it was not without consequences. Indeed, J. Afary states that the «concrete historical experiences of the twentieth century» in Iran cannot be understood without considering the «multicultural and radical democratic legacy of the Constitutional Revolution»⁷², while Bayat herself presents an articulate assessment of this first constitutional period in the *Conclusion* of her study on the second *Mağles*, arguing that

the Majles had enacted a legal basis for the construction of a modern nation-state. Despite the frequently divisive debates among deputies, whose confrontational posturing delayed the passage of many bills, the overall picture reveals a shared vision of the “new Iran”. [...] The establishment of modern social institutions proved to be the Majles's greatest accomplishment. [...] With the forceful closing of the second Majles, the deputies' assumed task to enact social reforms and build new modern institutions remained unfinished, but their quest for change remained alive. Their basic ideas and the institutional edifice that helped shape the identity of the “new Iran” survived on the intellectual outlook of a new generation of educated citizens, albeit small but growing. Their successors had to chart their own course in the shadow of the post-World War I international power structure that favored the rise of a modernizing new dynasty implementing reforms but discarding the democratic principles⁷³.

In a long term-perspective, there are few elements that can be highlighted. First of all, as argued below in the chapter on the 1979 Constitution, the 1906 Fundamental Law and its Supplement served as a blueprint in the shaping of the institutional framework the governmental draft Constitution provided for and, through it, of the Islamic Republic⁷⁴. More than anything, art. 2 SFLs, although remaining unenforced for the whole life of the 1906 Constitution, was not destined to succumb to the “gnawing criticism of the mice” at all. On the contrary it constituted the basis of the tenth Chapter of the 1979 draft Constitution, which envisaged the creation of a clerical Council of Guardians precisely entrusted with the religious and constitutional review of laws. In the 1979 Constitution-making process, the provisions of the draft Constitution concerning such Council were later changed to establish the current Council of Guardians – which, as extensively seen below, is a key institution supervising the protection of the Islamic feature of the Republic. The emergence of this karst river

⁷⁰ Cfr. M. BAYAT, *Iran's Experiment with Parliamentary Governance*, cit., pp. 340–382; J. AFARY, *The Iranian Constitutional Revolution*, cit., pp. 326–336; A. RAHNEMA, *The Political History of Modern Iran*, cit., pp. 59–61.

⁷¹ M. BAYAT, *Iran's Experiment with Parliamentary Governance*, cit., p. 383.

⁷² J. AFARY, *The Iranian Constitutional Revolution*, cit., p. 342.

⁷³ M. BAYAT, *Iran's Experiment with Parliamentary Governance*, cit., pp. 383–401.

⁷⁴ Cfr. *infra*, ch. 4.

brings into play the role of Faḍlollāh Nurī as “father” of art. 2 SFLs and, thus, as unaware “grandfather” of the republican Council of Guardians. Nurī represented indeed one of the main ideological polestars of *āyatollāh* Ḥomeynī, and around Nurī’s figure the clerical Islamist leadership of the Islamic Republic forged a strong rhetoric presenting him as a martyr⁷⁵. Besides his ideology, the grim fate Nurī had faced in 1909 reminded the clerical Islamists in 1979 of the prospective detriment a disunited clerical front could cause, much like it had happened between 1906 and 1911 – of course, assuming that, as Ḥomeynī and his followers did, the cause-and-effect relationship between clerical disunity and revolutionary failure was historically founded. In this sense, in his analysis of the 1979 Constitution-making process in Iran, Ghobadzadeh talks about the «Fear That the Nightmare of Constitutionalism Would Recur»⁷⁶, pointing out that in 1979 «the clergy consider[ed] themselves in particular, and religion more generally, as the principal victims of the aberration of the Constitutional Revolution. [...] [T]he almost unchallenged narrative of the clergy [was] that the liberal/intellectual forces betrayed the religious forces in the Constitutional Revolution and that this betrayal [had been] the main reason for the revolution’s failure»⁷⁷.

Hence, after having analysed the main dimensions of Islamic constitutionalism in Iran, it is possible now to consider precisely the 1979 revolution: what were the primary institutional, political and legal issues it engendered, and how the Constitution-making process combined constitutionalism and religion within the Islamic Republic.

⁷⁵ Cfr. E. ABRAHAMIAN, *Khomeinism. Essays on the Islamic Republic*, University of California Press, Berkeley 1993, pp. 88–97, who affirms that «Khomeini was [...] admiring of Shaykh Nuri. He claimed that “enemies of Islam” executed him by cleverly fooling the public as well as the other grand ayatollahs. Khomeini’s disciples have praised Shaykh Nuri as the “Islamic movement’s first martyr in contemporary Iran”. They have argued that Orientalists as well as Iranian secularists conspired to smear him as a “reactionary mulla” and have said that he was executed by Armenians, Freemasons, and others contaminated with the Western plague. [...] It is significant that postage stamps issued by the Islamic Republic have honored Shaykh Nuri but not Behbehani and Tabatabai».

⁷⁶ N. GHOBADZADEH, *Theocratic Secularism*, cit., pp. 221–225.

⁷⁷ *Ibid.*, pp. 221–222.

II. THE BIRTH OF THE ISLAMIC REPUBLIC: POLITICAL HISTORY, INSTITUTIONS, LAW

3. Constitutional and Revolutionary Transition: a Synoptic Political and Institutional History of the Iranian Constitution-Making Process

Periodising the beginning of the Iranian revolution seems a relatively simple task, given the general consensus of historians¹. In 1977 the economic growth Iran had experienced since the beginning of the decade stopped, leading both to a change in the economic policies of the country and a liberalisation of its deeply sclerotised and authoritarian political system. On the one hand, there is no doubt that the events of 1977 and 1978 constitute an integral part of the Iranian revolution. On the other, however, the revolution itself produced such an institutional discontinuity which did not touch at all the institutional system until late-1978 that it would be beyond our purposes persisting with a full analysis of its causes and the protests it led to in its early stage. The first appreciable and positive breach of this system was, institutionally speaking, the establishment of the Revolutionary Council during the last months of 1978 – as described in the first section. This is why it can be argued that the Constitution-making process and the institutional transition in Iran did not begin before late-1978. What just stated does not mean, however, that the actors implicated in this process arose along with its beginning. On the contrary, the history of many of them – recalled in the second section – was deeply rooted in monarchical Iran, and this circumstance influenced their respective positions within the revolution. It seems important to stress the significance of the link between institutions and political actors. Just like the collapse of imperial institutions in Iran was preceded by the dissolution

¹ With no claim of exhaustiveness: M. M. J. FISCHER, *Iran. From Religious Dispute to Revolution*, University of Wisconsin Press, Madison 1980, p. 181, talks about «The Revolutionary Movement of 1977-1979»; E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., p. 496, periodises the revolution starting from May 1977; S. BAKHASH, *The Reign of the Ayatollahs. Iran and the Islamic Revolution*, Basic Books, New York 1984, pp. 9–18, begins his history on the revolution using 1977 as starting point in a chapter titled «The Collapse of the Old Order»; similarly, the chapter «The Revolution of February 1979» in S. A. ARJOMAND, *The Turban for the Crown*, cit., pp. 103–119, takes into account the period from late 1977 to early 1979; G. R. G. HAMBLY, *The Pahlavi Autocracy: Muḥammad Riżā Shāh, 1941-1979*, in *CHoIr*, vol. 7, pp. 287–293, concludes his chapter with a paragraph titled «The Coming of the Revolution, 1977-8»; H. ALGAR, *Roots of the Islamic revolution in Iran*, Islamic Publications International, Oneota 2001, p. 119, identifies «the Revolution itself» with «the series of events that began in January 1978 [...] and terminated a little over a year later», although the author lingers over 1977 in a couple of pages (pp. 119–121); N. R. KEDDIE, *Modern Iran*, cit., pp. 214–239, introduces her chapter «The Revolution» discussing the «outbreak of opposition beginning in 1977»; C. KURZMAN, *The Unthinkable Revolution in Iran*, Harvard University Press, Cambridge-London 2004, pp. 12–32, dedicates the first part of his work to «The Emergence of Protest: Political Explanations 1977»; E. ABRAHAMIAN, *A History of Modern Iran*, Cambridge University Press, Cambridge-New York 2008, pp. 155–162, opens his chapter concerning the Islamic revolution with a paragraph going from 1977 to 1979; M. AXWORTHY, *Revolutionary Iran. A History of the Islamic Republic*, Oxford University Press, Oxford 2013, pp. 97–103, situates the «Slide to the Revolution» in 1977, when «The Economy Falts; Carter Arrives»; the chapter concerning «Revolution, war and 'Islamic Republic'» in A. M. ANSARI, *Modern Iran since 1797*, cit., pp. 299–315, also uses «the end of 1977» as starting point; A. RAHNEMA, *The Political History of Modern Iran*, cit., p. 327, indicates the timespan of «The Revolutionary Transition from Monarchy to Republic» as going from «March 1977» to «March 1979».

of the sole legal party, the Rastāhiz (lit. “Resurgence”), in late-1978², similarly the establishment of revolutionary institutions was preceded by the re-emergence of several actors – both parties and individuals – who had played a more or less hidden role theretofore and which filled the vacuum left by the end of the monarchy. Hence, before analysing the elements that certified the institutional discontinuity from monarchical to revolutionary, and then republican, Iran³ – a fundamental task addressed right below –, it may be useful to make a synthetic review of the political (mainly party) actors which participated in the 1978-79 events. If it is true that the ultimate actor of this story was *āyatollāh* Ruḥollāh Ḥomeynī – whose role is extensively discussed in this very part as well –, nevertheless the Constitution-making process witnessed the struggle of many others: just to list a few, Mehdī Bāzargān as Prime Minister and the liberals; the clerical Islamists gathered around the pro-Ḥomeynī Islamic Republican Party; the moderate Islamist like Banišadr and Maḥmud Ṭāleqānī. The political landscape of revolutionary Iran was thus complex, much like complex was the Constitution-making process, which developed throughout the establishment of the Islamic Republic in March, the writing of the draft Constitution, the election of the constituent Assembly of Experts, and the saction of the 1979 Constitution.

3.1. *The Iranian Party Background until the Eve of the Revolution*

28th of September of 1941: this was the day the first party involved also in the 1977-79 revolution was founded. It was to the so called Tudeh (*Hezb-e Tudeh-ye Irān*, lit. “Party of the Masses of Iran”). The birth of this pro-Soviet party in September 1941 was possible owing to the general amnesty proclaimed by the newly installed Šāh, Moḥammad Reḏā, who had succeeded his father immediately after the Anglo-Soviet troops had invaded Iran in late-August 1941⁴. The Tudeh was the sole

² «On 25 September 1978 the Rastakhiz Party was dissolved by a government seeking ways to stem the growing revolutionary wave on whose crest sat Ayatollah Khomeini» (Z. SHAKIBI, *Pahlavi Iran and the Politics of Occidentalism. The Shah and the Rastakhiz Party*, I.B. Tauris, London-New York 2020, p. 363).

³ We dissent from H. E. CHEHABI, *The provisional government and the transition from monarchy to Islamic republic in Iran*, in Y. SHAIN, J. J. LINZ (eds.), *Between states. Interim governments and democratic transitions*, Cambridge University Press, New York 1995, p. 128, according to whom «If “transition” be defined as the interval between “the launching of the process of dissolution of an authoritarian regime” and, in our case, “the emergence of a revolutionary alternative,” Iran’s transition from monarchy to Islamic republic started in 1977». Indeed, a policy change might be a significant element of historical analysis, though if the analysis concerning the transition should take into account also the «liberalization initiated by the regime» (*ibidem*) in 1977 – as the quoted author says – we would do nothing but evaluating the (un)effectiveness of this political effort in retrospect. In other words, we would notice *a posteriori* – i.e., after the old regime had collapsed – that a “transition” effectively took place, though using as epistemic trace a moment during which this outcome was not foregone. That is the reason why we want to begin with positive institutional data marking a real and substantial discontinuity from monarchy to Republic: in 1977 no revolutionary institution existed or was about to be created that could lead to think about the establishment of a differently institutionally featured State.

⁴ Cfr. G. R. G. HAMBLY, *The Pahlavī Autocracy: Rīzā Shāh, 1921-1941*, in P. AVERY – G. R. G. HAMBLY – C. MELVILLE (eds.), *CHoIr*, vol. 7, cit., pp. 242–243; ID., *The Pahlavī Autocracy: Muḥammad Rīzā*, cit., pp. 244–245; E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., pp. 281–286; N. R. KEDDIE, *Modern Iran*, cit., pp. 105–107.

structured party organisation that competed as such in the 1943-44 parliamentary elections, proving to be the first «secular radical organization [that] had found popular support» within the country⁵. The party enjoyed a rapid growth until 1946, when the Soviet-Iranian crisis caused by the Soviet refusal to withdraw its own troops from Iranian Azerbaijan and Kurdistan triggered a major blow for Persian Soviet-aligned politicians, above all those of the Tudeh⁶. The decline of the party reached a peak in 1949, when the Iranian government hastily blamed the Tudeh for the assassination attempt against the Šāh – a move that entailed not only the enactment of martial law but also the liquidation of the Tudeh cadres and headquarters and its ban⁷. The role the party played during Mošaddeq’s Prime Ministership plunged it into the authoritarian twist the Iranian regime experienced after the 1953 Anglo-American-backed coup: as stated by Abrahamian, «by the late 1950s the party was a mere shadow of its former self»⁸. Repression, arrests, splits, regime propaganda, defections and deaths of its historic figures all contributed to weaken the Tudeh, whose main international sponsor – the USSR – even came to ratify an international agreement with the Iranian State in 1962, in order to normalise relations with the Šāh. Nonetheless, the party did not disappear: on the contrary, it strengthened its own network in Europe and in the USSR, conceptualising also its own ideological Marxist-Leninist horizon more clearly than it had done before⁹. But it never fully recovered from the post-1953 setback, and after the uprising of June 1963 it lost the monopoly of the left just as the Second National Front lost the monopoly of the nationalist galaxy.

Indeed, after the demise of Mošaddeq, nationalists somehow recreated his political force through a loose alliance – the “Second National Front” – comprising the Iran Party (*Hezb-e Irān*), the Party of the Iranian Nation (*Hezb-e Mellat-e Irān*), the League of Iranian Socialists (*Ĝāme‘a-ye Susiālisthā-ye Irān*), and the Freedom Movement of Iran (*Nahzat-e Āzādī-ye Irān*, abbr. FMI, also called “Liberation Movement”) – the latter founded in May 1961 by an engineer, Mehdī Bāzargān, and a

⁵ E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., p. 292.

⁶ Upon this first international post-war crisis and its effects on the Tudeh, cfr. A. SAIKAL, *Iranian Foreign Policy, 1921-1979*, in P. AVERY – G. R. G. HAMBLY – C. MELVILLE (eds.), *CHoIr*, vol. 7, cit., pp. 437–439; G. R. G. HAMBLY, *The Pahlavī Autocracy: Muḥammad Riżā*, cit., pp. 245–251; N. R. KEDDIE, *Modern Iran*, cit., pp. 109–114; E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., pp. 299–310; S. ZABIH, *The Left in Contemporary Iran. Ideology, Organisation and the Soviet Connection*, Croom Helm, London-Sydeny 1986, pp. 4–6.

⁷ G. R. AFKAMI, *The Life and Times of the Shah*, University of California Press, Berkeley 2009, pp. 116–117; A. SAIKAL, *Iranian Foreign Policy*, cit., p. 439; N. R. KEDDIE, *Modern Iran*, cit., p. 122; E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., pp. 249–250, 317–318.

⁸ E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., p. 451. Upon the relationship between the Tudeh and Mošaddeq, cfr. *ibid.*, pp. 321–325; G. R. G. HAMBLY, *The Pahlavī Autocracy: Muḥammad Riżā*, cit., pp. 255–259, 262–264; N. R. KEDDIE, *Modern Iran*, cit., pp. 109–114; M. BEHROOZ, *Tudeh Factionalism and the 1953 Coup in Iran*, «International Journal of Middle East Studies», 33/3 (2001), pp. 370–373.

⁹ Cfr. E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., pp. 451–457; S. ZABIH, *The Left in Contemporary Iran*, cit., pp. 9–10.

Shī'ī *hoğgatoleslām*, Maḥmud Ṭāleqānī, both of whom had been close to Moṣaddeq¹⁰. What distinguished the FMI from the other Moṣaddeqist parties was its «relatively more radical positions and more vigorous anti-imperialistic and anti-monarchical stand»¹¹ and its religious views as well. In 1965 the coalition of the Second National Front broke up precisely due to the different strategic and tactical stances of the parties that formed it. In contrast to the leaders of the Iran Party, Bāzargān and Ṭāleqānī emphasised the necessity of an alliance with the clerical establishment in order to confront the monarchical regime, particularly after the 1963 events had demonstrated the capital role of Ḥomeynī in mobilising the masses. This clarifies the core ideological principles of the FMI: a mixture of democratic nationalism, opposition to the Šāh, and Islamic themes¹². Precisely because of its link with the clerical establishment and, since the early phases of the revolution, with Ḥomeynī himself, many members of the FMI would later play a major role in the revolutionary Provisional Government in 1979 – such as, for instance, Yadollāh Saḥābī, future minister for revolutionary affairs, Šādeq Ṭabātabāī, future Deputy Prime Minister, and Ebrāhim Yazdī, future deputy Prime Minister and then minister of foreign affairs. Nonetheless, the harsh confrontation against the regime was not enough for the political needs of the youngest and most maximalist FMI members. After the Government had crushed popular protests in 1963, some activists of the FMI started contesting the party leadership for having been unable to lay out an efficient fighting organisation. Between 1963 and 1965, then, a cleavage emerged within the FMI that led some young members to create a new organisation, which would later take the name of “*Moğāhedīn-e Ḥalq*” (*Sāzmān-e Moğāhedīn-e Ḥalq-e Irān*, lit. “Organisation of the People’s Fighters of Iran”, abbr. MeK)¹³. The MeK arose essentially as a leftist offshoot of FMI: according to E. Abrahamian, its «ideology can be described best as a combination

¹⁰ On the Second National Front and the FMI, cfr. E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., pp. 457–465; ID., *Radical Islam. The Iranian Mojahedin*, I.B. Tauris, London 1989, pp. 81–84; S. ZABIH, *The Left in Contemporary Iran*, cit., pp. 71–74; N. R. KEDDIE, *Modern Iran*, cit., pp. 195–200. As to Bāzargān, «During the process of nationalizing the oil industry he was appointed, in 1951, by Muṣaddīq to supervise its takeover» (F. JAHANBAKHSH, *Islam, Democracy and Religious Modernism in Iran (1953-2000). From Bāzargān to Soroush*, Brill, Leiden 2001, p. 82), while «Taleqani [...] was a close collaborator of Mohammad Mosaddeq and Hajj Sayyid Abolqasem Kashani in the course of the nationalization of Iranian oil. This episode [...] was particularly instrumental in demonstrating how a healthy coalition between the religious and (liberal) nationalist forces would be conducive to revolutionary mobilization» (H. DABASHI, *Theology of Discontent. The Ideological Foundations of the Islamic Revolution in Iran*, New York University Press, New York-London 1993, p. 224).

¹¹ S. ZABIH, *The Left in Contemporary Iran*, cit., p. 73.

¹² According to E. ABRAHAMIAN, *Radical Islam*, cit., p. 83, «In announcing its formation in May 1961, the Liberation Movement declared: ‘We are Muslims, Iranians, Constitutionalists, and Mosaddeqists’. [...] The Liberation Movement further explained that by Muslims they meant believers who viewed Islam not as a dead dogma but as a living creed standing for justice, equality and public welfare; by Iranians they meant not racial chauvinists but patriots who respected their national heritage; by Constitutionalists they meant sincere commitment to the democratic principles enshrined in the fundamental laws of the 1905-9 Constitution; and by Mosaddeqists they meant they favoured a form of government that would represent the true majority, bridge the wide gap between state and civil society, and free Iran of foreign domination».

¹³ Concerning the origins of the MeK, cfr. the thematic monograph of E. ABRAHAMIAN, *Radical Islam*, cit., pp. 83–92; but also S. ZABIH, *The Left in Contemporary Iran*, cit., pp. 74–78.

of Islam and Marxism»¹⁴. On a practical level, «It was the first Iranian organization to develop systematically a modern revolutionary interpretation of Islam»¹⁵, basing it on one pillar: armed struggle. Indeed, its praxis took mainly the form of terrorist-like actions targeting the SAVAK – the Šāh’s secret police –, U.S. military personnel, judges or military personnel responsible for arrests and convictions of MeK members¹⁶. For this reason, the MeK is categorised as a «guerrilla»¹⁷ organisation, something that it shared with another political group: the *Fedāiyān-e Ḥalq* (*Sāzmān-e Āserikhā-ye Fedāi-ye Ḥalq-e Irān*, lit. “Organisation of the People’s Self-sacrificers Guerrillas of Iran”, abbr. FeK). Said with superficial brevity, the MeK stands to the FMI as the FeK stands to the Tudeh: the FeK was essentially composed by different leftist Marxist groups – some of which deriving from the Tudeh – opposing the policies of the USSR and which came together between 1970 and 1971¹⁸. In February 1971, the FeK devised and carried out what is considered the first guerrilla activity in Iran, the Siāhkal incident or insurgency: a deliberate assault against a gendarmerie post in the city of Siāhkal. This was followed in August by the MeK plan to hit the incoming celebration for the 2.500th anniversary of the establishment of the Persian Empire – a scheme that nonetheless was uncovered before it could be performed¹⁹.

¹⁴ E. ABRAHAMIAN, *Radical Islam*, cit., p. 92. In the words of M. BEHROOZ, *The Iranian Revolution and the Legacy of the Guerrilla Movement*, in S. CRONIN (ed.), *Reformers and Revolutionaries in Modern Iran. New Perspectives on the Iranian Left*, RoutledgeCurzon, London-New York 2004, p. 191, «The MKO represented a genuine attempt by young Moslem revolutionaries to reinterpret traditional Shi’i Islam and infuse it with modern political thinking in order to turn it into a viable revolutionary ideology. In doing this, the leadership of the MKO spent the 1960s reinterpreting Shi’i Islam by freely borrowing from Marxism. The final result was a Shi’i Islam which viewed history as a process of class struggle, armed action as the only path to confront the regime, and the revolutionary, modern, educated Moslem intelligentsia (and not the ulama) as the natural leaders of the upcoming movement». “*Moğāhedīn*” is the Farsi equivalent of the Arabic plural of the word “*Muğāhid*” (pl. “*Muğāhidūn*”), which means “the one practising *ḡihād*”.

¹⁵ E. ABRAHAMIAN, *Radical Islam*, cit., p. 1.

¹⁶ Cfr. S. ZABIH, *The Left in Contemporary Iran*, cit., pp. 85–88; E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., p. 491.

¹⁷ N. R. KEDDIE, *Modern Iran*, cit., p. 168, talks about «urban guerrilla groups», naming «two important ones: the Marxist Fedā’iyan-e Khalq and the Islamic leftist Mojahedin-e Khalq»; S. ZABIH, *The Left in Contemporary Iran*, cit., pp. 85, 113, ascribes to both groups a praxis of «guerrilla warfare»; E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., p. 480, labels them as «guerrilla organisations». Cfr. also M. BEHROOZ, *The Iranian Revolution and the Legacy of the Guerrilla Movement*, cit., pp. 189–205.

¹⁸ «[W]hereas the Fedā’i developed mostly out of the Tudeh and the Marxist wing of the National Front, the Mujahedin evolved predominantly from the religious wing of the National Front, especially from the Liberation Movement» (E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., p. 489). Actually, the FeK was formed as merger of two different organisations: the Ġazanī-Zarifī group, composed by former Tudeh members engaged in underground political activity since the early ’60s, and the Aḥmadzādeh-Puyān group, whose founders had joined in the National Front before turning to Marxism: cfr. S. ZABIH, *The Left in Contemporary Iran*, cit., pp. 113–115. Just like the word *Moğāhedīn*, “*Fedāiyān*” is the Farsi equivalent of the Arabic plural of the word “*Fidā’iyy*” (pl. “*Fidā’iyyūn*”), which literally means “redeemed”, “sacrificed”, “devotee”.

¹⁹ These episodes are recalled by S. ZABIH, *The Left in Contemporary Iran*, cit., pp. 85–86, 117–118.

3.2. *The Transition from Monarchy to Republic: Institutions, Law and Religion*

All things considered, no party or political organisation was able to seriously challenge the Pahlavī regime until the late '70s. As many authors point out, the starting point of the revolution was the article slandering Ḥomeynī published in *Eṭṭelā'āt* the 7th of January of 1978, but this was the classic straw that broke the camel's back, and the causes of the fall of the monarchy – as said above – lay mainly in the economic crisis the country was experiencing in the late '70s combined with the heavy political sclerotisation of the regime²⁰. Institutionally, the revolutionary transition towards the Islamic Republic began at the end of 1978, during Ḥomeynī's French exile. It is in this period – going from October 1978 to February 1979 – that the first revolutionary institution was shaped: the Council of the Islamic Revolution (*Šūrā-ye Enqelāb-e Eslāmī*, also translated as “Revolutionary Council”, abbr. “CIR”). This was the first step of a broader path aiming at replacing the monarchical institutions with Islamic and revolutionary ones. There is, however, a major obstacle in travelling through again this path, represented by the legally non-technical nature of many of the provisions establishing revolutionary institutions in Iran. In this sense, for instance, it is hard to find, in Western literature, the legal norms regulating duties, functions and rules of the Revolutionary Council. Nevertheless, international historiography is almost unanimous when describing the main function of the CIR, namely acting as top legislative authority in the revolutionary transition in Iran²¹. Politically, the composition of the Council partially reflected the composite nature of the revolutionary movements engaged in the opposition to the Šāh, with some important absence: in the Council's original configuration, the pro-Ḥomeynī religious stances were mixed with the nationalist and liberal positions of the FMI and, to some extents, with some socialists²². However, the Tudeh, the MeK, even other

²⁰ As to the article in *Eṭṭelā'āt*, cfr. M. AYATOLLAHI TABAAR, *Religious Statecraft*, cit., pp. 61–62; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 104–108; S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 14 ff.

²¹ Cfr. H. E. CHEHABI, *The provisional government*, cit., p. 132: «the “Council of the Revolution” [...] was [...] a substitute for parliament»; S. BAKHASH, *The Reign of the Ayatollahs*, cit., p. 65: «The Revolutionary Council was at the same time designated as the supreme decision-making and legislative authority in the country»; S. ZABIH, *The Iranian Military in Revolution and War*, Routledge, Abingdon-New York 2011, p. 120: «The Revolution Council [...] acted as an interim legislature»; B. BAKTIARI, *Parliamentary Politics in Revolutionary Iran. The Institutionalisation of Factional Politics*, University Press of Florida, Gainesville 1996, p. 54: «the revolutionary council was designated as the supreme decision-making and legislative authority in the country». Also for S. RANDJBAR-DAEMI, *Building the Islamic State: The Draft Constitution of 1979 Reconsidered*, «Iranian Studies», 46, 4 (2013), p. 644, the Revolutionary Council was «a de facto legislative body». S. A. ARJOMAND, *The Turban for the Crown*, cit., pp. 134–135, without mentioning analytically the function of the Revolutionary Council, says: «On January 12, 1979, Khomeini set up a Council of Islamic Revolution with the task of establishing a transitional government. [...] The [Bāzargān] cabinet [...] remained subordinate to the clerically dominated Revolutionary Council». Some references to the Council are also made by M. AXWORTHY, *Revolutionary Iran*, cit., pp. 3, 144, though generically.

²² Originally the Revolutionary Council was composed by: Morteḏā Moṭahharī, Moḥammad Beheštī, Akbar Hāšemī Rafsangānī, Moḥammad-Reḏā Mahdavi Kanī, Moḥammad-Gavād Bāhonar (clerics close to Ḥomeynī); Mehdī Bāzargān, Ebrāhim Yazdī, Yadollāh Saḥābī, Aḥmad Šadr Ḥāḡḡ Seyyed Ġavādī (members of the FMI); Maḥmud Ṭāleqānī; ‘Ezatollāh Saḥābī (Yadollāh's son, a socialist); Moṣṭafā Katirāyī, ‘Abbās Šeybānī (laymen close to Bāzargān); ‘Alī-Ašḡar Mas‘udī,

moderates such as members of the Muslim People's Republic Party (MPRP) supported by *marḡa* Moḡammad-Kāzem Šari'atmadārī, were kept out from the Council.

The Council itself was involved in the drafting of the most important among the first institutional documents of the post-Pahlavī, or revolutionary, Iran, that is to say, the appointment decree of Mehdī Bāzargān as Prime Minister, signed and promulgated by Ḥomeynī on the 5th of February of 1979²³. The triptych here depicted – Revolutionary Council, Ḥomeynī, Bāzargān Provisional Government – can be considered in a way a mirrored antagonist of another institutional triptych – the Imperial Parliament, the Šāh, the Šāpur Baḡtiār Executive – which entirely collapsed between mid-January and early February 1979. Quite ironically, both the last imperial Prime Minister and the first revolutionary one came from the FMI, although when Baḡtiār accepted the proposal of the Šāh to nominate him as Prime Minister in early January 1979, Baḡtiār himself was expelled from the party. In any case, if it is true that «A revolution [...] constitutes a border-line case of regime transition»²⁴, the Iranian constitutional transition makes no exception. In order to understand the peculiarities of this regime change, it may be helpful to quote the entire text of the Bāzargān appointment decree – given also its relative briefness –, which was no doubt the pivotal moment in the institutional genesis of the Iranian Constitution-making process.

In the Name of God, the Compassionate, the Merciful [...]

Engineer Mahdi Bazargan:

Based on the recommendations of the Revolutionary Council, and the canonical and legal right arising from the approximately unanimous and decisive majority vote of the Iranian nation and the trust in the leadership of the movement as expressed in the huge assembly and numerous massive demonstrations of the people held all over Iran and by virtue of the trust (confidence) in the unwavering faith that you have in the sacred religion of Islam and the knowledge that we have of the history of your Islamic and national struggle irrespective of your party relationship and affiliation to a specific group, I hereby invest you with the power to form a provisional government that will be responsible for managing the country's administrative affairs, in particular, the holding of a referendum based upon the public vote of the nation regarding the change of the country's political system into an Islamic republic and the creation of a constitutional assembly made up of popularly chosen representatives who will draft the constitution of the new system and the election of the parliamentary representatives of the nation according to the laws of the new system.

Under the present circumstances, it is expedient that the cabinet members of the provisional government be named and introduced as soon as possible.

Valīollāh Ġaranī (lieutenants). Cfr. S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 51, 64; M. BOROJERDI – K. RAHIMKHANI, *Postrevolutionary Iran. A Political Handbook*, Syracuse University Press, Syracuse (NY) 2018, p. 40.

²³ According to S. BAKHASH, *The Reign of the Ayatollahs*, cit., p. 53, «[T]he decree of [Bāzargān's] appointment [was] drawn up (with his approval) by the Revolutionary Council and signed by Khomeini».

²⁴ H. E. CHEHABI, *The provisional government*, cit., p. 128.

The provisional government will have the full cooperation of the government employees, military personnel and the national citizenry, and the observance of discipline for the realization of the sacred goals of the revolution and the establishment of order in the country's affairs.

I implore the Almighty God to grant you and the provisional government success at this critical historical junction.

Ruhullah al-Musawi al-Khomeini²⁵

The promulgation, the content and the effects of this decree itself pose several questions as to the nature of the Iranian Constitution-making process. First of all, there is an issue of legal jurisdiction, that concerns more generally the way the revolutionary and constitutional transition was carried out. Up until the late 1979 – more precisely, December – Ḥomeynī was formally a private citizen: he did not hold any kind of institutional position, nor he had been acknowledged as an institution holder through a popular vote, or by a representative assembly. His authority in sanctioning rules with the force of a law did not stem from a legal position of his own within the Iranian institutional system²⁶. This is, however, only partially true. It is true indeed that Ḥomeynī was uninvolved in the exercise of power in the secular field. However, religiously speaking, not only was he part of the clerical Shī'i hierarchy, but since the death of *āyatollāh* Boruġerdī in 1961 he was one among the highest-ranked clerics – a *marġa' at-taqlīd*²⁷. Hence, he did have a legal authority: not as a statesman, rather as a leading *muġtahid*.

And yet, since a regular State functioning requires a clear acknowledgment as to who holds a certain institution entitled with specific powers, there seems to be a question whether the acts emanated by Ḥomeynī before his designation as Leader might be considered *ultra vires*, lacking a fundamental legal prerequisite: competence. From a formal and positivistic point of view, the decree was adopted with absolute lack of consideration for the principle of legality – *i.e.*, the respect of the legal stipulation contained in a higher-ranking norm according to which a rule can be adopted –, however surreptitious the principle itself may be during a revolutionary regime change²⁸. It can be

²⁵ The translated text of the decree in *Ṣaḥīfeh-ye Imam. An Anthology of Imam Khomeini's Speeches, Messages, Interviews, Decrees, Religious Permissions, and Letters. January 29-April 12, 1979*, The Institute for Compilation and Publication of Imam Khomeini's, Tehran 2008, vol 6, pp. 50–51. Another translation is available at the *Iran Data Portal* of the Syracuse (NY) University: see <https://irandataportal.syr.edu/appointment-of-mehdi-bazargan-as-prime-minister> (retrieved on 27 June 2022).

²⁶ Cfr. N. GHOBADZADEH, *Theocratic Secularism*, cit., pp. 273–275.

²⁷ The circumstances of Ḥomeynī's ascent to the *marġa' iyya* are described by F. AZIMI, *Khomeini and the "White Revolution"*, in A. ADIB-MOGHADDAM (ed.), *A Critical Introduction to Khomeini*, Cambridge University Press, New York 2014, pp. 24–38: after Ḥomeynī had been arrested by the Šāh's order in early June 1963, «fearing the possibility of Khomeini's ill treatment or execution, four senior Ayatollahs – including Shari'atmadari – issued a statement declaring him a *marġa'* so that he could enjoy greater immunity» (p. 37).

²⁸ «[W]ith the establishment of the principle of legality [...] all legal norms exist and are valid, in that they are "posited" by authorities invested with normative competence [...]: a norm exists and is valid [...] because it has been enacted by a body authorized by law» (L. FERRAJOLI, *The Past and the Future of the Rule of Law*, in P. COSTA – D. ZOLO (eds.), *The Rule of Law. History, Theory and Criticism*, Springer, Dordrecht 2007, p. 326).

said, then, that no worry for a clear legal transition was displayed in the creation of the new Government. To stress even more what can be considered a detachment from a legally formal way of managing the transition in the early stages of the 1979 Constitution-making process, it must be reminded that until the adoption of a new Constitution with the 2nd and 3rd December 1979 referendum, the 1906 Constitution was still considered to be into force, although partially, *i.e.*, without the monarchical form of State, which Ḥomeynī considered to be against Islām²⁹. Nonetheless, the lack of a head of State after the Šāh had left the country in mid-January 1979 was not a negligible fact. For instance, according to art. 46 of the 1907 SFL, ministers had to be nominated by the monarch. Of course, the last Prime Minister appointed by the Šāh, Šāpur Baḥtiār, opposed the birth of the Bāzargān Executive; and yet there seems to be no doctrinal dispute or doubt upon the legal legitimacy of Bāzargān’s Prime Ministership³⁰. Legally speaking, though, some questions may arise: after the Šāh’s departure from the country the 16th of January, who was the head of State in Iran, and on the basis of which provisions? Even so more between the 30th and 31st March referendum and the come into effect of the republican Constitution? By addressing – rather than answering to – these questions, the purpose is to show how revolutionary actors managed to overcome significant legal antinomies.

The adjective “revolutionary” is the keyword of the transition: it means the legal exceptionality of the context guiding the republican Constitution-making process. In legal terms, a revolution implies the predominance of substantial rather than formal law – a prominence, we may say, of the *de facto* over the *de iure*. The dichotomy between formal and substantial law is well known in legal doctrine: for instance, E. Bodenheimer, talking about the sources upon which a judge has to find his or her own decision, states that «where the formal sources entirely fail to provide a rule of decision for the case, reliance on the nonformal sources becomes, of course, mandatory»³¹. One may criticise

²⁹ Replying to some answers during the February 5 press conference, Ḥomeynī said that «Except from several articles that were incorporated into the constitution by coercion, the constitution holds until the time that the nation votes otherwise» (*Šahifeh-ye Imam*, 6, p. 55). Cfr. also J. M. MARICHAM, *Khomeini Appoints a Dissident to Lead Provisional Regime*, *The New York Times*, 6 February 1979.

³⁰ For instance, P. L. PETRILLO, *Iran*, cit., p. 37, makes no reference at all to the parallel presence of two Governments: Bāzargān’s and Baḥtiār’s. Rather, he says that Bāzargān «formed [...] a government composed exclusively by laymen [...]; this provisional government lived side by side with the Revolutionary council of Khomeini and Rafsanjani and with numerous revolutionary committees». Neither does H. E. CHEHABI, *The provisional government*, cit., pp. 130–131, point out any legal issue determined by the circumstance: «Khomeini [...] named Bazargan prime minister on February 5. After some fighting [...] on February 9, the armed forces declared their political neutrality two days later, and soon after Bakhtiari went into hiding and later to Paris, where he led an exile opposition group until he was assassinated [...] in 1991». N. R. KEDDIE, *Modern Iran*, cit., p. 238, noting that «Khomeini appointed Mehdi Bazargan as the “real” prime minister, creating a situation known in some other revolutions as “dual power”», does not mention any possible issue of power transition or invalidity of the Bāzargān Government. Similarly, S. A. ARJOMAND, *The Turban for the Crown*, cit., pp. 134–136, talks about a «dual power» characterising Iran from September 1978 to February 1979 and a «dispersion of power or “multiple sovereignty”» from February 1979 onwards which was to become a dual power as well due to the different goals of the Provisional Government and the Revolutionary Council.

³¹ E. BODENHEIMER, *Jurisprudence. The Philosophy and Method of the Law*, Harvard University Press, Cambridge-London 1981, p. 326. For F. SCHAUER, *Formalism: Legal, Constitutional, Judicial*, in K. E. WHITTINGTON – R. D.

this quote saying that it refers to a situation of normative regularity; however, the concept of “mandatory reliance on nonformal sources” is itself somehow *praeter legem* and in any case deeply axiological. Therefore, it is possible to justify its use when studying the most axiological among all political phenomena, that is to say, a revolution – ultimately, the moment *par excellence* during which a political community defines its own values. Since it is the revolutionary process that determines what is mandatory, resorting to non-formal sources of law is – at least in the early stages of a revolution – a natural political act. The general meaning of the quoted statement, moreover, may apply not only to judicial provisions, but also to legislative and executive ones. In this sense, Ḥomeynī based his own power of issuing decrees not on a superior secular legal source of law, but upon two other foundations: 1) his own religious jurisprudential authority, and 2) a roughly depicted will of the Iranian people.

As to point 1), the doctrinal question concerning Ḥomeynī’s entitlement to issue acts with the force of law might be settled or at least nuanced considering first of all the inherently institutional nature of the clerical hierarchy as complementary to, or even substitutional for, political institutions even in the early phase of the 1979 revolution. This interpretation would be consistent with the statements Ḥomeynī himself made during the press conference announcing the appointment of Bāzargān. He said: «if I have named him as the ruler, I did so based on the agency [*velāyatī*] granted to me by the sacred canonical laws. [...] Opposition to this government is opposition to the canon laws and is tantamount to rebellion against religion. [...] Rebellion against this government is rebellion against God and rebellion against God is atheism»³². If one reads the text of the decree, it can be seen that Ḥomeynī, on his part, had made a more complex reasoning, since he had justified its adoption basing it upon both “the recommendations of the Revolutionary Council” and “the canonical and legal right arising from the approximately unanimous and decisive majority vote of the Iranian nation”. The second phrase is particularly interesting. At a first glance, it may deceitfully lead to think

KELEMEN – G. A. CALDEIRA, *The Oxford Handbook of Law and Politics*, Oxford University Press, New York 2008, pp. 434–435, «formalism is [...] an example of a familiar form of decision theory, the design of decision-making institutions under conditions of uncertainty. [...] [F]ormalist interpretative norms are themselves a component of institutional design, and [...] institutional design has an unavoidable political component».

³² *Šahīfeh-ye Imam*, 6, p. 54. J. M. MARICHAM, *Khomeini Appoints a Dissident*, cit., reports this translation: «I am doing this [appointing Bāzargān] because I am religiously entitled to do this. I must warn everyone that they must obey this government. Opposition to this government will be considered opposition to Islamic laws and traditions». A similar translation in B. MOIN, *Khomeini. Life of the Ayatollah*, I.B. Tauris, London-New York 2009, p. 204: according to him, Ḥomeynī made an explicit reference to his doctrine of *velāyat-e faqih*. However, N. GHOBADZADEH, *Theocratic Secularism*, cit., pp. 239–250, shows that *velāyat-e faqih* was completely absent from all discourse of Ḥomeynī during the revolution. On this point, M. AYATOLLAHI TABAAR, *Religious Statecraft*, cit., p. 91, remarks that «Khomeini’s vague statement could have been a reference to either his *Velayat-e Faqih* doctrine or the general supervisory role of the jurists to which many Shi’a clerics ascribed, particularly in the absence of a legal custodian». If it is true that Ḥomeynī talked about “*velāyat*” (“agency”, “guardianship”, “custody”), nevertheless he did not mentioned “*velāyat-e faqih*” (“guardianship of the jurist”) at all.

about a sort of referendum, while actually Ḥomeynī's persuasion was that «The people, through their mass demonstrations and declarations, had already voted for an Islamic Republic»³³ even before the Šāh left the country. In this concept of political participation expressed by Ḥomeynī, revolutionary zeal and an amateurish understanding of representative government met giving birth to a form of plebiscitary will with religiously considerable consequences as well. The key point is that for Ḥomeynī such non-balloted but firmly demonstrated “vote” entailed “canonical and legal” rights, making so falling the issue of regime change in the scope of Shī'i Islamic law, and moving democratic representative institutions to the background. It seems important to emphasise the aforementioned concept of “substitution” of the Shī'i hierarchy to political institutions, whereas through it one can draw the attention to Ḥomeynī's prerogatives as *muğtahid*. From his position as religious authority, Ḥomeynī expanded his own legal competence in a completely new way, exploiting the void caused by the collapse of the monarchical rule and dominating the secular power through his undisputed charisma. Being it an authoritative norm founding and legitimising – also legally – the head of the executive branch, the decree nominating Bāzargān marked the passage of Shī'i 'ulamā' from being differentiated from the government to directly hold government, from being *before the State* to being *the State*. This was a major breakthrough in Shī'i history, since before then 'ulamā' had never claimed to act as rulers – although they had acted as rulers' legitimisers several times. There are no clearer words than H. Corbin's to emphasise, by way of contrast, Ḥomeynī's religious discontinuity: for the French scholar, «L'idée de la *ghaybat* rend impossible toute socialisation et toute matérialisation institutionnelle de la *res religiosa*»³⁴ – nonetheless such an “institutional materialisation” took place. And yet, as in the case of every novelty concerning Shī'i jurists-theologians all over the centuries, even this development bore also elements of continuity. From a general point of view, it is true that «The *fiqh* is [...] the interpretation of a religious ideal not by legislators but by scholars [...]. Islamic

³³ S. BAKHASH, *The Reign of the Ayatollahs*, cit., p. 48. Cfr. also S. A. ARJOMAND, *The Turban for the Crown*, cit., p. 134: «on December 11 [of 1978] [...] millions of demonstrators approved a 17-point revolutionary program that included recognition of Khomeini as Imam, abolition of the monarchy, and establishment of an Islamic government. This was taken by Khomeini and the opposition to constitute “the referendum against the Shah”». Indeed, talking about referendum, E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., p. 526, reminds that «On January 19 [of 1979], [...] Khomeini called for a street “referendum” to determine the fate of both the monarchy and the Bakhtiyyar administration». All these rallies immediately recall the difference between pre-modern acclamations and more sophisticated ballot systems.

³⁴ H. CORBIN, *En islam iranien. Le shī'isme duodécimain*, cit. p. 35. Corbin's stances are synthetically analysed by M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi'i Islam?*, cit., pp. 4–5, according to whom «When the Iranian Revolution erupted in 1979, barely eight years after the publication of Corbin's magnum opus, and only a few days after he died, it appeared to sound the death knell to this argument. [...] Corbin never held illusions about Shi'i clerics [...]. His intention was to explain the “philosophical and spiritual aspects” of Shi'ism. He was not interested in the theological and legal schools, which in his opinion misrepresented “the essence of Shi'ism”. The fact that the clamour of history may have obscured a few great philosophers and spiritual masters would scarcely have surprised him. [...] For Corbin, the living essence of spiritual Islam was a rare, hidden and living reality in the hearts of the faithful. Everything else was harmful and useless shadow play». More compliant to a descriptive institutional perspective, M. AYATOLLAHI TABAAR, *Religious Statecraft*, cit., p. 90, points out that «the “Islamic” Revolution did not have roots in the traditional clerical establishment but rather in modern urban institutions, universities, and secular intellectual circles».

law is a “jurists’ law”»³⁵. However, *Uṣūlī fiqh* had given Shī‘i *muḡtahids* also a role as lawmakers. More than twenty years before the Iranian revolution, in 1958 G. Scarzia clearly explained this point: when talking about the subjectivity of the *res iudicata* limiting the jurisdiction of the *muḡtahid*³⁶, he stated that

This authority limited to the case does not rise at the level of jurisdiction, but lays *also* at the level of legislation – actually, *above all* at the level of legislation. The *muḡtahid* [...] turns into a *judge who is also legislator* every time that, in front of [legal] lacunae, he bases his own *iḡtihād* upon ‘*aql*’ arguments; and he ends up being *only and always a legislator* once the doubt upon the *ẓāhir* [lit. “apparent”, i.e. the canonical texts considered in their purely formal nature] and the resulting examination of ‘*aql*’ both in front of the “lacuna” and in front of the text are admitted. [...] Ultimately, therefore, the *muḡtahid* is not a judge, although his provision lacks, in some respects, abstractness and generality, but he is rather a legislator, since he *creates* the formula of *iḡtihād*. [...] In a system in which the subject of law (*mukallaf*) cannot understand the *Codex*, a “spontaneous” adjustment to the law is impossible without the intervention of the *muḡtahid*’s conjecture, even for the most common of problems [...]. Therefore the *muḡtahid*’s intervention *does not imply a violation of law*, which is the normal case if not the sole involving the intervention of jurisprudential power³⁷.

Thus, even before 1979 Ḥomeynī was, in a certain sense, a lawmaker: a religious lawmaker. What he innovated in 1979 was the extent of the jurist’s legal authority: not just religious, but also civil, or secular. From his viewpoint, Islamic canonical law was an utterly necessary normative basis for the management of the State; and since the canonical law is handled by *muḡtahids*, then *muḡtahids* must govern. All this was clear already at the beginning of the Constitution-making process. At least, this is a conclusion one can draw from Ḥomeynī’s praxis and statements: he himself said that he had the power to appoint Bāzargān Prime Minister by virtue of the “agency granted” to him by the “sacred canonical laws”. This explanation would solve the legal antinomy of a State-issued power exercised without certain and acknowledged legal provisions. Ḥomeynī could emanate acts with the force of law even not *de iure condito* precisely because a *muḡtahid* normally operates *de iure condendo*. He took advantage from the inherently pluralistic nature of Muslim-majority countries legal systems³⁸

³⁵ J. SCHACHT, *Fiqh, EI²*, II, p. 891. This concept is repeated in J. SCHACHT, *An Introduction to Islamic Law*, cit., pp. 209–211, where the author says that «Islamic law represents an extreme case of a ‘jurists’ law’». Upon the primarily jurisprudential nature of *fiqh* and the role of *fuqahā’*, cfr. also the chapter «Jurists, legal education and politics» in W. B. HALLAQ, *An Introduction to Islamic Law*, Cambridge University Press, Cambridge 2009, pp. 38–56.

³⁶ Cfr. *supra*, ch. I, § 2.3, note 55.

³⁷ G. SCARCIA, *Intorno alle controversie tra Aḥbārī e Uṣūlī*, cit., p. 236–237. Or, with a more concise sentence, «conceptually, the *muḡtahid* arises as executor and becomes legislator» (*ibid.*, p. 243).

³⁸ The reference is to the legal theory known as “pluralism”, which has been eminently explained by S. ROMANO, *The Legal Order*, M. CROCE (trad.), Routledge, Abingdon-New York 2017, pp. 50–109. The work was originally published in Italy in 1918, and it can be considered the first organic legal study concerning pluralism. It may be helpful to quote some reflections about the relationship between State and Church: according to the author, «From a legal point of view, each order, that of the state and that of the Church, should be considered in itself and for itself; and when we consider the one, we have to take the other into account only if, and insofar as, the former implies it for its own purposes

and deliberately hegemonised the weak secular branch by establishing himself as the institutional core of the Iranian State in the transition from monarchy to Republic. These were, somehow, the religiously revolutionary consequences of Ḥomeynī's actions and words.

3.3. *The Institutional Foundations of the Revolutionary Republic*

Nonetheless, legal pluralism and the assumption of the role of Islamic law as a legal system parallel to that of the State do not offer a complete answer to Ḥomeynī's legitimacy as lawmaker. Coming to point 2), that is to say, the popular support for the revolution, Ḥomeynī was a single character of a broader stage involving several actors within the revolution itself – as seen above. His own legitimacy stemmed from the fact that the revolution as a choral process was firmly supported by the vast majority of the Iranian people. This is what can be called the substantial legal legitimacy of the Iranian Constitution-making process, besides its formal deficiencies. Prominence of the *de facto* over the *de iure* means precisely this: the decree nominating Bāzargān did not draw its legitimacy from a superior norm, but rather from the fact that it was considered authoritative by the people. Such a situation is often conceptualised *a contrario*, in so far as it is clear that a rule cannot perform its effects if it is ignored and if the authority that has issued it cannot impose it coercively³⁹. In this specific case, the role of the Iranian military – that is to say, the institution materially keeping what is called the “monopoly on the legal use of force” – was decisive in securing the revolutionary order. Up until February 1979, the army had been weakened by desertions and the lack of a coherent stance in front of the unfolding events⁴⁰. While some military personnel had pledged their allegiance

and in the sense in which it does so, which might vary significantly. Each order operates on its own, for its own purposes, within its scope and with a force that originates from its organization and from its intrinsic characteristics. The state, then, can claim sovereignty over the Church within the sphere in which this can be deployed, in such a way that the state might freely impose the limits it wishes on the Church's power. [...] On the other hand, the Church, by virtue of its autonomy – which does not derive from the state, but rests upon its own order – exercises its power on its members, on the entities that comprise it, and on those with which it is involved in a relation, including the state. Within the limits recognized by the state either as lawful or as otherwise relevant, the Church can also achieve ‘civil effects’. Otherwise, it can only count on its spiritual and internal sanctions, which I believe are genuine legal sanctions on account of their nature and their institutional character, whether or not they are backed by civil sanctions. In this way, the state can, for example, allow the clergy to marry, while the Church can legally prohibit it; the state can abolish the obligation to tithe, while the Church can continue to impose it, and so on. All these privileges, obligations, exemptions are valid for the order within which they are brought about and subsist independently of any conflicting dispositions of the other order. These are two legal worlds, where the one can materially affect the other, while legally they always remain, or are likely to remain, distinct and autonomous» (*ibid.*, pp. 57–58). Should the word “Church” be substituted with “Shi'i clergy”, there would be a fair picture of Iran before the 1979 revolution. More generally, on the topic of legal pluralism, cfr. B. Z. TAMANAHA, *Legal Pluralism Explained. History, Theory, Consequences*, Oxford University Press, New York 2021, *ad indicem*, part. pp. 1–18.

³⁹ H. L. A. HART, *The Concept of Law*, Oxford University Press, Oxford-New York 1994², pp. 20–25, 50–61.

⁴⁰ A detailed account about the Iranian military soon before the revolution is made by S. ZABIH, *The Iranian Military*, cit., pp. 21–55.

to Ḥomeynī, the 9th of February a clash broke out at the Dušān Tappeh Air Base in Tehrān between the aviation cadets and the stationed Imperial Guard. The fight escalated until the Baḥtīār Government, fearing that the anniversary of the Siāhkal insurgency might galvanise the revolutionaries, imposed a night curfew between the 10th and the 11th. However, the revolutionary forces, through Ḥomeynī's voice, rejected Baḥtīār's orders and ignored the curfew⁴¹. The 11th of February, the Chief of the General Staff of the Imperial Army – and former minister of the interior – , general 'Abbās Qarhabāgī, convened the Supreme Council of the Armed Forces, deciding on declaring the army's neutrality along with other twenty-six high officers⁴². According to M. Axworthy, when Qarhabāgī apprised Baḥtīār of this outcome, the Prime Minister replied: «Neutrality between who and who? Is it neutrality between law and anarchy? Is it neutrality between Iran and Iran's enemies?»⁴³. Despite Baḥtīār's dismay, this was the tombstone of imperial institutions. Even the last imperial Prime Minister had to give up and fled to Paris; he was murdered in 1991 under ambiguous circumstances.

The “neutrality” of the army – which was, all things considered, all but neutral, since it deprived Baḥtīār of the sole instrument a Government can survive with⁴⁴ – allowed the revolutionaries to overcome the then ruling law and solidify the new institutional system. At the top of this system was Ḥomeynī, not only because of his clear leadership of the revolution. From a legally substantial point of view, considering both his praxis and the general acceptance of his determinations by the people, he was the *de facto* head of State of Iran even before his constitutional designation as Leader of the

⁴¹ The 10th Ḥomeynī warned the nation saying that «Today's declaration of martial law is another stratagem and is against religious law and the people should defy it» (*Šaḥifeh-ye Imam*, 6, p. 109).

⁴² Upon this event, cfr. the clear reconstruction in S. ZABIH, *The Iranian Military*, cit., pp. 56–78; other reports in M. AXWORTHY, *Revolutionary Iran*, cit., pp. 5–9; E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., pp. 527–529. For H. ALGAR, *Religious Forces in Twentieth-Century Iran*, in P. AVERY – G. R. G. HAMBLBY – C. MELVILLE (eds.), *CHoIr*, vol. 7, cit., p. 762, «Most of the armed insurrectionaries who fought the Iranian army in the final stage of the revolution on 10-11 February 1979 were not, as is sometimes claimed, drawn from the guerilla [*sic.*] organizations of the left; they were men based on the mosques and revolutionary committees who, loyal to Imām Khumainī, went on to form the nucleus of the Revolutionary Guards». More generally, upon the role of the army in the early stage of the transition, cfr. S. A. ARJOMAND, *The Turban for the Crown*, cit., pp. 119–128.

⁴³ M. AXWORTHY, *Revolutionary Iran*, cit., pp. 9–10. Even before the 11th of February there had been much cause of disagreement between Qarhabāgī and Baḥtīār: the former did not want the Šāh to leave the country, while the latter had subordinated his own willingness to accede to the Prime ministership to the Šāh's departure; the former considered the Regency Council as the constitutional authority entrusted with the command of the armed forces, while the latter claimed this authority for himself; the former was against Ḥomeynī's return, while the latter openly and autonomously favoured it (cfr. S. ZABIH, *The Iranian Military*, cit., pp. 49–50, 65).

⁴⁴ In the words of S. ZABIH, *The Iranian Military*, cit., p. 77, during the meeting of the Supreme Council of the Armed Forces «it was obvious to everyone that withdrawing support from the Bakhtiār government was tantamount to supporting Khomeini».

Revolution⁴⁵ – and despite his claims of political non-involvement⁴⁶. These circumstances delineate the revolutionary dimension – in the strictest sense – of the Iranian Constitution-making process. Bakhsh, indeed, talks about the «revolutionary, rather than [...] constitutional, transfer of power to a successor regime»⁴⁷, something which is well explained by the political and institutional chaos that characterised the first months of revolutionary Iran and hindered the action of the Provisional Government quite severely. Many authors formulated extensive analysis concerning revolutionary committees, or *komitehs*, which tackled the political domains the Government was unable to manage – such as local security – acting at best independently of the Bāzargān Executive or, at worst, against it – according to their ideological affiliation. Some weeks after the creation of the Provisional Government, Ḥomeynī himself charged a cleric, Moḥammad Reḏā Mahdavī Kanī, with the management of these committees, in order to strengthen the clerical ones, and purge and disband the others⁴⁸.

Analogous dynamics shaped the field of justice. Its administration was in the hands of revolutionary courts whose jurisdiction was essentially self-established and whose praxis intentionally ignored due process. Every effort made by the Executive to reduce their arbitrary authority collided with Ḥomeynī's unwillingness to recognise the respect of human rights also judicially, which he deemed to be a concern coming from «west-intoxicated elements»⁴⁹ – a rather curious accusation, by the way, considering that the embodiment of Western influence in Iran, namely the Šāh, had not been a staunch defender of human rights in judicial matters. Facing the actions of revolutionary courts, the Provisional Government could do nothing but witnessing the conviction, the death sentence and the execution of hundreds of people in clearly sham trials, the most notable of which involved Amir ‘Abbās Hoveydā – Prime Minister of Iran from 1965 to 1977. The murder of Hoveydā – the 8th of April – came after a temporary suspension of revolutionary trials proclaimed by

⁴⁵ Cfr. B. BAKTIARI, *Parliamentary Politics in Revolutionary Iran*, cit., p. 54: «By the very act of appointing a titular head of government, Khomeini demonstrated that he himself remained the supreme authority». H. E. CHEHABI, *The provisional government*, cit., p. 132, simply states that «[T]he provisions [of the 1906 Constitution] on the monarchy [...] were transferred to Khomeini». But how this transfer legally took place remains a problematic point.

⁴⁶ «Whether sincerely or not, Khomeini made several publicly recorded statements that neither he nor ulama would hold direct power in a new government» (N. R. KEDDIE, *Modern Iran*, cit., p. 240). Cfr. also H. E. CHEHABI, *The provisional government*, cit., p. 135: «When [Karim] Sanjabi asked him [Ḥomeynī] in Paris about the future role of the clergy, he had answered that its role was to preach and teach, not to rule». N. GHOBADZADEH, *Theocratic Secularism*, cit., p. 269, mentions «The persistent insistence of Khomeini and the clerical Islamists that the clergy were not going to occupy government positions».

⁴⁷ S. BAKHASH, *The Reign of the Ayatollahs*, cit., p. 50.

⁴⁸ Upon revolutionary committees, cfr. S. A. ARJOMAND, *The Turban for the Crown*, cit., pp. 135–136; S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 55–59; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 144–146.

⁴⁹ *Šahifeh-ye Imam*, 6, p. 407; this quote comes from an address to the nation Ḥomeynī delivered the 1st of April of 1979, one day after the 30-31 March institutional referendum and six days before former Prime Minister Amīr ‘Abbās Hoveydā's execution. In his speech, Ḥomeynī talked about, among others, the issue of justice stating that «Human rights necessitate the killing of these people [*i.e.* the officers of the former regime] right on the very day (they were arrested) because they are criminals and it is obvious that they are condemned criminals» (*ibid.*).

Ḥomeynī the 16th of March at Bāzargān's behest – who had threatened to resign had the summary executions not ceased. The 5th of April new official, although feeble, regulations were issued that settled the jurisdiction of revolutionary courts: trials started over immediately, but ruthlessness remained the rule⁵⁰.

The complementary synergy of clerical-led *komitehs* and revolutionary courts – whereas the former provided the latter with prisoners to be tried – is the plastic embodiment of what S. A. Arjomand calls «dual power»⁵¹ and M. M. J. Fischer «dual sovereignty»⁵²: the formal power of the Provisional Government was counterbalanced by the effective power exercised by the many institutions comprising the revolutionary State – that is to say, Ḥomeynī's leadership, the CIR, the Islamic Republican Party, revolutionary committees and courts, the Revolutionary Guard (formally, “Islamic Revolutionary Guard Corps”, in Farsi “*Sepāh-e Pāsdārān-e Enqelāb-e*”, abbr. IRGC). The relationships among those institutions are somehow theoretically engrossing, as they feature many political categories in an original way. Although he acted as main inspirator in the creation of the Islamic Republican Party (*Hezb-e Ğomhurī-ye Eslāmī*, abbr. IRP) – which was established on the 18th of February of 1979 –, Ḥomeynī has never been part of it, being rather the charismatic polestar of its members: clerics such as Beheštī, Bāhonar, Rafsanġānī, Ḥāmene'ī – many of whom held a position in the CIR –, but also laymen like the future Prime Minister and later President Moḥammad-'Alī Raġā'ī, and Ḥassan Ḥabībī, the writer of the first draft Constitution⁵³. Ḥomeynī, then, occupied an odd position: he was a direct inspirator of a specific party, but not its leader – on the contrary, he had discouraged the creation of a clerical party⁵⁴. He was the legitimiser of the Provisional Government

⁵⁰ A report analysing the controversial role of revolutionary courts was made by Amnesty International, *Law and Human Rights in the Islamic Republic of Iran*, London 1980. Cfr. also S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 59–63; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 147–151; N. R. KEDDIE, *Modern Iran*, cit., pp. 245–246. International newspapers too are a precious source to understand the events: cfr. *Bazargan ha ottenuto da Khomeini la sospensione dei processi politici*, Corriere della Sera, 17 March 1979 [Bazargan Obtained by Khomeini the Suspension of Political Trials], according to which the Prime Minister did threaten to resign; J. KIFNER, *Iranian Official Explains Trials and Their Suspension*, The New York Times, 18 March 1979; *Fucilati in Iran l'ex Premier Hoveida e sei militari*, Corriere della Sera, 8 April 1979 [Former Prime Minister Hoveida and Six Military Personnel Shot in Iran]; Y. M. IBRAHIM, *Ex-Premier Hoveida is Executed in Iran After Closed Trial*, The New York Times, 8 April 1979; I. MAN, *Iran - L'ex premier Hoveyda giustiziato ieri con sei militari*, La Stampa, 8 April 1979 [Former Prime Minister Hoveyda Executed Yesterday Along With Six Military Personnel].

⁵¹ See the author's reference in note 30.

⁵² M. M. J. FISCHER, *Iran. From Religious Dispute to Revolution*, cit., pp. 216–217.

⁵³ Cfr. Y. HOVSEPIAN-BEARCE, *The Political Ideology of Ayatollah Khamenei. Out of the Mouth of the Supreme Leader of Iran*, Routledge, Abingdon-New York 2016, pp. 51–52; B. BAKTIARI, *Parliamentary Politics in Revolutionary Iran*, cit., p. 55.

⁵⁴ Cfr. M. AYATOLLAHI TABAAR, *Religious Statecraft*, cit., pp. 91–93, according to whom «Despite Khomeini's repeated opposition, his disciples [...] established the IRP. [...] While in exile, Khomeini had strongly disagreed with the notion of a political party founded by clerics, arguing that it would inexorably invite political and religious rivalry. He [...] was not swayed until he arrived in Tehran. There he witnessed the serious ideological threats that various groups [...] posed to his new regime. [...] So Khomeini eventually allowed his followers to form a political party, although he prevented his son, Ahmad, from joining». For Y. HOVSEPIAN-BEARCE, *The Political Ideology of Ayatollah Khamenei*, cit.,

run by the FMI, but certainly not the FMI's numen in the same way as he was for the IRP. The antinomy involving Ḥomeynī's role in the genesis of the IRP and his own estrangement from it would explode in 1987, when he himself would decree the demise of the party⁵⁵. One reason behind this situation of political and party oddity laid in that Iranian parties were structurally weak: as stated by P. Rivetti, in revolutionary Iran «although political parties were established, they have remained poorly structured and with limited inclusion of the general population in terms of membership and meaningful participation»⁵⁶. This does not mean that they were not pivotal elements in the revolution, on the contrary: party weakness emphasised the personal role of individual leading figures within them.

Indeed, it is precisely the personal role of single persons that linked the IRP to another institution born in the revolutionary State, the IRGC. Although the IRGC was officially established the 5th of May, it is difficult to situate the exact moment the Corps took shape; certainly, between February and March 1979 it was already active⁵⁷. The Corps, formed by several revolutionary groups – like the pro-Ḥomeynī *Moğāhedīn* of the Islamic Revolution, abbr. MIR, along with other revolutionary militias –, exhibited more radical stances than the IRP, and indeed K. Katzman underlines «the effort by the clerical political leadership to impose its authority on the Guard»⁵⁸. Institutionally, with its official establishment the IRGC was purposely put under the control of the CIR rather than under the Provisional Government – a circumstance that strengthened the Corps' affiliation to clerical Islamists. To be precise, the ideological composition of the IRGC, more than being opposed to the IRP, mirrored the factionalism that would surface after the dismissal of Banišadr in mid-1981 within the clerical Islamist camp⁵⁹. This close relationship – both institutional and ideological – between IRGC and IRP

p. 51, «Khomeini had reservations about the establishment of a formal political party. He was concerned that it might create a wedge between the leadership and the people».

⁵⁵ Cfr. *infra*, ch. 5, § 5.

⁵⁶ P. RIVETTI, *Party Politics in the Islamic Republic of Iran*, in F. CAVATORTA – L. STORM – V. RESTA (eds.), *Routledge Handbook on Political Parties in the Middle East and North Africa*, Routledge, Abingdon-New York 2021, p. 146.

⁵⁷ Cfr. A. OSTOVAR, *Vanguard of the Imam. Religion, Politics, and Iran's Revolutionary Guards*, Oxford University Press, New York 2016, pp. 43–48: «The first communiqué released by an organization calling itself the “Islamic Revolutionary Guards Corps [...] was on February 21, 1979 [...], but in truth the organization had not fully coalesced yet. [...] During a February 21 press interview [...] the government announced that the Revolutionary Guards “Corps” would be formed and that the rules and regulations of its formations had already been established. [...] On May 5, the IRGC boldly announced its legitimate standing»; K. KATZMAN, *The Warriors of Islam. Iran's Revolutionary Guard*, Routledge, Abingdon-New York 1993, pp. 30–34, according to whom «It is impossible to precisely fix the origins of the future Revolutionary Guard» (p. 31).

⁵⁸ K. KATZMAN, *The Warriors of Islam*, cit., p. 52. According to S. A. ARJOMAND, *The Turban for the Crown*, cit., p. 136, in the early months following the toppling of the monarchy «the armed revolutionary bands [...] were purged and reorganized into the carefully recruited, 6000-man Corps of the Guardians of the Islamic Revolution, set up to serve as the armed wing of the Islamic Republican Party. The corps was placed under the clerical supervision first of Ayatollah Lahuti and subsequently of two rising clerical stars: Hashemi-Rafsanjani and Khamene'i».

⁵⁹ Cfr. H. FOROZAN, *The Military in Post-Revolutionary Iran. The Evolution and Roles of the Revolutionary Guards*, Routledge, Abingdon-New York 2016, pp. 106–110: «a coalition made up of the twelve founders of the Sepah [...] and representatives of the merged militias asked Khomeini to approve the formation of the Sepah under the authority of the

may lead to think about the former in terms of militia of the clerical Islamists' party. The first historical experience of a militia party was that of the Italian National Fascist Party, wherewith the IRGC shared some characteristics⁶⁰. It is important to highlight that the purpose here is not to suggest a bold analogical juxtaposition between the experience of the Islamic Republic and Italian fascism – as if the experience of the former could be considered a form of Islamic fascism – at all, but rather to compare models. R. De Felice enumerates the «Essential features of the [fascist] Militia» thus:

1) the *founding objective*, namely the defence of the «fascist revolution» and the guarantee of public order, in collaboration with the corps already assigned to this task and in order to relieve the army [...]; 2) the *voluntary recruitment*, restricted, however, only to members of the fascist military formations (having the requisites of ability and morality), which underlined the nature of party militia; this nature was partly modified in practice [...]; 3) the *oath* «to Italy»; 4) the «blind, prompt, respectful and absolute» *discipline* to the hierarchical authority, *i.e.*, to Mussolini, since the Militia was placed under the orders of the head of the government [...]; 5) in *case of mobilisation* of the armed forces, finally, the Militia was to be absorbed by the army and the navy⁶¹.

Several of these features can be transposed, *mutatis mutandis*, to the IRGC as well: it was established to defend the Islamic revolution; it was composed by militants faithful to the revolution, the Islamic Republic and Ḥomeynī, the latter occupying in his turn – as personification of the revolution and the Republic themselves – the top of the hierarchical pyramid the IRGC members were subject to. Yet, the IRGC's relationship with the regular army was not one of integration – however potential it might be – but rather of contrast⁶². Besides, the fascist militia – but other examples too, like those of the Chinese Communist Party or the National Socialist German Workers' Party – developed in a context of a single-party regime, and this is not the case for republican Iran. Moreover, in such cases there are typically strong structural links between party and militia, to the extent that

Revolutionary Council. Khomeini [...] approved the request [...], and thereby announced the creation of the Sepah on 5 May 1979 under the Revolutionary Council»; *ibid.*, pp. 79–82: «factionalism remained a feature of the Sepah throughout the 1980s [...]. The factionalism within the Sepah corresponded with a broader domestic power struggle between the two regime factions within the victorious fundamentalist bloc: the Conservative faction and the Islamic left. [...] While the Conservatives wing dominated the command level of the Sepah, the Radical Left retained its influence in the body of the Corps».

⁶⁰ M. DUVERGER, *Political Parties. Their Organization and Activity in the Modern State*, B. NORTH – R. NORTH (trads.), Methuen-John Wiley & Sons, London-New York, 1959², p. 38 telegraphically says that «the militia is a Fascist creation».

⁶¹ R. DE FELICE, *Mussolini il fascista. La conquista del potere 1921-1925*, Giulio Einaudi, Torino 1966, pp. 431–432.

⁶² Cfr. H. FOROZAN, *The Military in Post-Revolutionary Iran*, *cit.*, *passim*: «The Sepah [...] was set up [...] as an auxiliary counterweight militia to the Shah's Artesh [regular army] [...]. Since the revolution, [...] the Sepah has become an important pillar of the regime because of its broad role in defending the revolution and its achievements» (pp. 36–37); «The Sepah's role is defined primarily as one that provides additional, but vital, support for the maintenance of the system of *Velayat-e Faqih*. [...] In this context, the Sepah functions under the auspices of the political-religious figure of the Supreme Leader» (p. 23).

the phrase “militia-party” is widely used to describe this kind of model of party organisation⁶³. In Iran, on the other hand, the IRP and the IRGC were highly differentiated, and indeed, affirming that «Unlike state forces in dictatorial regimes [...], the Sepah is not subject to political control by an organized party apparatus»⁶⁴, H. Forozan concludes that the IRGC can be better described, rather than as a militia, as an «auxiliary guardian», meaning by that that it has a «conventional role as the protector of the IRI’s [Islamic Republic of Iran’s] ideological foundation and the doctrine of clerical rule»⁶⁵.

To sum up, all these revolutionary institutions (CIR, IRP, *komitehs*, revolutionary courts, IRGC), along with many other that had a less political nature – like, just to mention two, the Friday prayer leaders nominated by Ḥomeynī, or the Foundation of the Oppressed and Veterans (*Bonyād-e Mostafa’fān ve Ğānbāzān*) – contributed to lay the foundations of the revolutionary Republic, engaging in a struggle for power whence the clerical Islamists would eventually emerge victorious. Nevertheless, in the early spring of 1979 this outcome was far from being inevitable, as the history of the draft Constitution may help to demonstrate.

3.4. *From the Establishment of the Islamic Republic to the Draft Constitution*

The events concerning revolutionary institutions are entangled in the main political developments of post-monarchical Iran: the 30th and 31st of March institutional referendum, resulting in the establishment of the Islamic Republic; the drafting of the Constitution; and the election of the Constituent Assembly. The struggle the Provisional Government had to endure against *komitehs*, revolutionary courts and, to some extents, the IRGC preceded and followed these major periodising political turning points. The holding both of the referendum and of the Constituent Assembly election represented indeed the main objective Ḥomeynī had entrusted the Provisional Government with in his February decree.

As to the referendum, the issue of the adjectivisation of the Republic was capital for Ḥomeynī. In a speech he held the 1st of March in Qom, he stated that «What the nation wants is an Islamic republic; not merely a republic; nor does it want a democratic republic or a democratic Islamic republic. It wants an Islamic republic»⁶⁶. There was a clear argumentative purpose in these words, since other components of the anti-Šāh front – the FMI, *Āyatollāh* Šari‘atmadārī, leftist groups such as the Tudeh,

⁶³ A model of the militia as party structure is presented in M. DUVERGER, *Political Parties*, cit., pp. 36–40.

⁶⁴ H. FOROZAN, *The Military in Post-Revolutionary Iran*, cit., p. 11.

⁶⁵ *Ibid.*, p. 22; for a broader explanation, see *ibid.*, pp. 11–30, where there is an insightful and highly precise theoretical framework on the nature of the IRGC.

⁶⁶ *Šahīfeh-ye Imam*, 6, p. 244.

etc. – explicitly called for different alternatives to be submitted to the people’s will: some advocated a “democratic” Republic, others an “Islamic democratic” Republic, still others just a Republic without any further attribute. But Ḥomeynī was irremovable: as seen above, he interpreted the December 1978 huge street demonstrations as a vote the Iranians had delivered in favour of the establishment of the Islamic Republic⁶⁷. In a certain way, for him the March ballot was only intended to corroborate this “virtual” vote. Even in this case the Provisional Government acquiesced in Ḥomeynī’s stance, although Bāzargān was in favour of the coexistence of both the “democratic” and the “Islamic” adjectives. The institutional referendum, therefore, presented this alternative: either the establishment of an Islamic Republic, or its rejection and subsequent retention of the monarchy. All political actors backed the referendum with different degrees of persuasion, except the newly founded secular Moṣaddeqist National Democratic Front (NDF), the FeK, and several Kurdish groups: they all boycotted the referendum. Nonetheless the referendum vote was almost unanimous. Although several authors point out the likelihood of electoral frauds, they also recognise that popular support for the Islamic Republic was extraordinarily prevailing⁶⁸. According to the figures of A. Rieck, more than 20 million voters out of almost 22 million registered voters cast their ballot, with a percentage of 99,3% in favour of the Islamic Republic⁶⁹.

Yet, what the locution “Islamic Republic” meant from an institutional point of view for Ḥomeynī – and the other figures of the revolution who stood for the referendum – remains an open question. Or better, the disappointing answer could be: it meant nothing specifically⁷⁰. The sole existing examples of Islamic Republics at the time were Pakistan and Mauritania, whose Constitutions had been adopted in 1956 and 1961 respectively. However, no explanation could come from a

⁶⁷ Cfr. *supra*, note 33. These demonstrations took place starting from the 10th of Muḥarram – that is to say, the day of ‘*Āšūrā*’ – which in 1978 fell on the 10th of December. Apostrophising directly the Iranian nation, the 12th of December Ḥomeynī said of himself to be «proud of the great goals you [Iranian nation] pursue, that is, the overthrow of the Shah’s regime, elimination of the monarchical system, and establishment of the Islamic republican system» (*Ṣaḥīfeh-ye Imam*, 5, p. 218); similarly, on New Year’s Eve, he gave an interview in which he said that through their mass gatherings «the Iranians almost unanimously condemned the Shah and his monarchical system and called for the establishment of an Islamic Republic» (*ibid.*, p. 297). On these street demonstrations, cfr. also C. KURZMAN, *The Unthinkable Revolution*, cit., pp. 117–124; N. GAGE, *Protesters March for 2nd Day in Iran; Violence Is Limited*, *The New York Times*, 12 December 1978.

⁶⁸ Upon the referendum, the quarrel on attributes, the positions of political groups, and the results of the vote, cfr. S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 72–73; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 153–154; M. AYATOLLAHI TABAAR, *Religious Statecraft*, cit., pp. 96–98; M. M. J. FISCHER, *Iran. From Religious Dispute to Revolution*, cit., p. 220.

⁶⁹ See R. KAUF – H. KHOSRAVI SHAROUFI – A. RIECK, *Iran*, in D. NOHLEN – F. GROTZ – C. HARTMANN (eds.), *Elections in Asia and the Pacific. A Data Handbook. The Middle East, Central Asia and South Asia*, Oxford University Press, New York 2001, vol. 1, pp. 69, 72.

⁷⁰ In the words of N. GHOBADZADEH, *Theocratic Secularism*, cit., pp. 254–260, the phrase “Islamic Republic” was «An empty signifier», in so far as «many people thought that a system called the “Islamic Republic” would grant the religion of Islam a very important place, and they had no issue with it. However, what was going to happen in practice was not clear at all» (p. 257).

comparative analysis of the two Charters: the 1956 Pakistani Constitution foresaw the compliance of legislation to Islamic rules, entrusting the Parliament with its control, while the Mauritanian Constitution simply proclaimed Islam as State religion – like many other Constitutions in Muslim-majority Republics that, nonetheless, did not formally call themselves “Islamic Republic”⁷¹. Hardly, therefore, it can be thought that some kind of legal borrowing from these institutional “paradigms” could deliberately take place in the Iranian Constitution-making process: as remarked by N. Ghobadzadeh, «The “Islamic Republic” as a name [...] was a very familiar concept and one of the most common and significant slogans of the height of the revolution. But despite its widespread use [...] no one knew exactly what kind of political system was going to be formed in its name»⁷². Sure enough, when Ḥomeynī was in France praising the “vote” of Iranians for the Islamic Republic, neither had he produced an adequate theoretical framework defining the institutional characteristics of its idea of Islamic Republic theretofore, nor he did so at a later time. Its major political work, *The Islamic Government*, presented a rather simplistic understanding of the duties of government – consisting of the defence of the borders, the collection of taxes, the administering of punishments. This instance may suffice:

From the time of the Lesser Occultation down to the present [...] is it proper that the laws of Islam be cast aside and remain unexecuted, so that everyone acts as he pleases and anarchy prevails? [...]. No one can say it is no longer necessary to defend the frontiers and the territorial integrity of the Islamic homeland; that taxes [...] should no longer be collected; that the penal code of Islam, with its provisions for the payment of blood money and the exacting of requital, should be suspended⁷³.

On the one hand, it is true that, in the words of H. Algar – who translated and edited *The Islamic Government* in English –, Ḥomeynī’s purpose was not to «offer [...] a detailed plan for the establishment and functioning of an Islamic state»⁷⁴ in his lectures. On the other, even so this purpose never arose. This does not mean that the opportunity for a theoretical explanation concerning what an “Islamic Republic” was from an institutional point of view never arose. When in Neauphle-le-Château, Ḥomeynī was interviewed by many international journalists among whom some addressed the topic of the Islamic Republic as well. But Ḥomeynī’s answers were always vague, although

⁷¹ On Pakistan, cfr. M. LAU, *Islam and the Constitutional Foundations of Pakistan*, in R. GROTE – T. J. RÖDER (eds.), *Constitutionalism in Islamic Countries*, cit., pp. 188–193; on Mauritania, L. A. VILLALÓN, *Islam and Politics in Sub-Saharan Africa*, in J. L. ESPOSITO – E. EL-DIN SHAHIN (eds.), *The Oxford Handbook of Islam and Politics*, Oxford University Press, New York 2013, p. 382, states that the State was «set up as an “Islamic Republic” by the French but intended only to reflect a cultural reality and not a political agenda».

⁷² N. GHOBADZADEH, *Theocratic Secularism*, cit., p. 182.

⁷³ R. KHOMEINI, H. ALGAR (ed.), *Islam and revolution*, cit., pp. 42–43.

⁷⁴ *Ibid.*, p. 25.

meaningful: for him “Republic” meant representative government, while its Islamic nature entailed the compliance of the State to Islamic law⁷⁵. No further explanation was given, precisely because Ḥomeynī’s interest was not in constitutional engineering: «the Parliament will be formed and then the Parliament will determine the kind of republic and its related details»⁷⁶, he said in December 1978. Put another way, other people would deal with the institutional organisation of the new State, as well as with the general transition. According to Randjbar-Daemi, even for Bāzargān «Khomeini had a “simplistic” vision of the transition towards the new state system and essentially devolved the issue to him due to his professed lack of knowledge of the domestic political environment»⁷⁷. This was precisely what happened in the drafting of the Constitution too.

The history of the draft Constitution is somehow intricate. A first project for a post-monarchical Charter was drawn up by Ḥassan Ḥabībī, a sociologist and lawyer by education who was part of Ḥomeynī’s French inner circle and would later join the IRP, already during the final months of 1978. This first draft was reworked in Iran by a panel of lawyers nominated by Ḥomeynī, but the project took a dead end. Nonetheless, it did have long-lasting consequences, mainly in shaping the form of government of the newly founded Republic. Indeed, another draft Constitution was arranged by a committee nominated by the Provisional Government and supervised by Yadollāh Saḥābī in February, and the borrowing – legally speaking – Ḥabībī had made from the model of the French 5th Republic in his own draft flew into it as well. Between late-February and early-March 1979 this “governmental” draft was submitted to Ḥomeynī, who personally made some remarks on certain specific articles, while some other amendments were proposed by the Revolutionary Council. The amended February draft was unofficially disclosed in late-April, when the daily newspaper *Kayhān* published it. It was in June, however, that the Provisional Government ended the work, hence another but final version of the draft Constitution was eventually published. Being the latter the basis upon which the Constituent Assembly of Experts for the Constitution shaped the 1979 Constitution, we will refer to the June draft as to *the* draft Constitution, leaving behind the previous projects⁷⁸.

⁷⁵ Examples include but are not limited to: «Our government is an Islamic republic, which is based on the Quranic verses, its laws are the law of Islam, and the political groups are free to express their ideas in it» (12 December 1978, in *Ṣaḥīfeh-ye Imam*, 5, p. 220); «The Islamic Republic means that the Islamic law would constitute the laws of the country, but the form of the government will be a republic, that is, it will be based on the people’s votes» (14 December 1978, *ibid.*, p. 245); «The form of the government will be a republican one, based on the people’s votes, law, and the Islamic principles» (16 January 1979, *ibid.*, p. 469). On this point, cfr. also N. GHOBADZADEH, *Theocratic Secularism*, cit., pp. 179–181.

⁷⁶ *Ṣaḥīfeh-ye Imam*, 5, p. 251.

⁷⁷ S. RANDJBAR-DAEMI, *Building the Islamic State*, cit., p. 644.

⁷⁸ On the draft Constitution, cfr. S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 74–80; A. SCHIRAZI, *The Constitution of Iran. Politics and the State in the Islamic Republic*, I.B. Tauris, New York 1997, pp. 22–24; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 157–158; M. AYATOLLAHI TABAAR, *Religious Statecraft*, cit., p. 98; A. RAHNEMA, *Ayatollah Khomeini’s Rule of the Guardian Jurist from Theory to Practice*, in A. ADIB-MOGHADDAM (ed.), *A Critical Introduction to Khomeini*, cit., pp. 97–100. A highly precise and rigorous account about the formation of the draft

As it will be seen further down, institutionally the draft Constitution envisaged a French-inspired dualistic and highly rationalised parliamentary system with a strong presidency – as modelled by Ḥabībī –, while the role of Shī‘i *muğtahids* was very similar to the provisions of art. 2 of the 1907 SFLs⁷⁹. The political theory Ḥomeynī had formulated in 1970 in Nağaf – known as *velāyat-e faqih* (*wilāya al-faqih* in Arabic), was not incorporated at all in any draft Constitution. It may be useful to spend a few words about this doctrine. “*Velāyat-e faqih*” is often translated as “Guardianship of the Jurist”⁸⁰, whereas the Arabic word “*wilāya*” is filled with polysemy, going from some Shī‘i-connoted meanings like “friendship” or “devotion” towards the Imāms (in this case the very same consonants composing the word have a slightly different vocalisation, that is to say, *walāya*), to the broader sense of “government” or “authority”⁸¹. The core content of *velāyat-e faqih* pertains the political role of Shī‘i ‘*ulamā*’. Criticising the quietist tradition, Ḥomeynī maintained that the most pious and knowledgeable jurists-theologians had to be directly entrusted with the government of the Shī‘i community, acting as “guardians” or “substitutes” of the hidden Imām in the political sphere⁸². As to the draft Constitution, it must be noted that when its various versions were submitted to Ḥomeynī, his «criticisms were [...] devoid of a call for the establishment of an institution which would directly implement the principle of *velāyat-e faqih* within the emerging state framework»⁸³. Put another way, initially *velāyat-e faqih* was not on the Constitution-making agenda.

Constitution is given by S. RANDJBAR-DAEMI, *Building the Islamic State*, cit., pp. 645–653; cfr. also Y. M. IBRAHIM, *Iran’s Clergy Given Big Role in Charter*, *The New York Times*, 29 April 1979; J. KANDELL, *Iran Prints Draft of a Constitution For Islamic State Under President*, *The New York Times*, 16 June 1979.

⁷⁹ Cfr. *supra*, ch. 2, § 2; *infra*, ch. 4, § 2.

⁸⁰ M. A. AMIR-MOEZZI – C. JAMBET, *What is Shi’i Islam?*, cit., pp. 105, 117, name it «leadership of the Islamic jurist», although in the original French text the exact phrase is «pouvoir politique charismatique du juriste-théologien».

⁸¹ Cfr. P. E. WALKER, *Wilāya*, *EP*², XI, p. 209, according to whom «*walāya* [is] a term [...] which bears, in Shī‘ī usage, the specific meaning of “devotion” and denotes the loyalty and support that is due the imām from his followers»; for H. CORBIN, *En islam iranien. Le shī‘isme duodécimain*, cit. p. 41, «Le mot *walāyat* signifie amitié [...]. Il se rapporte d’une part à la dilection, l’amour, que professent les adeptes à l’égard des Imāms, et d’autre part à la prédilection divine qui, dès la prééternité, les qualifie, les sacralise comme les “Amis de Dieu”, les Proches ou les Aimés de Dieu (*Awliyā’ Allāh*)». As to second – and more conventional – meaning, M. Y. IZZI DIEN, *Wilāya*, *EP*², XI, p. 208, states that «In the political and religious spheres, *wilāya* denotes “the exercise of authority”, whether temporal or spiritual, or a combination of both; hence by extension, it comes to mean the government or administration of a region or province under the supreme overlordship of a caliph, sultan or *amīr*, or the spiritual authority and charisma of a particularly spiritually-gifted person like a Šūfī saint or ascetic».

⁸² On *velāyat-e faqih* there is a large amount of literature. Cfr. among many others: A. G. E. SABET, *Wilayat al-Faqih and the Meaning of Islamic Government*, in A. ADIB-MOGHADDAM (ed.), *A Critical Introduction to Khomeini*, cit., pp. 69–87; A. RAHNEMA, *Ayatollah Khomeini’s Rule*, cit., pp. 88–95; H. DABASHI, *Theology of Discontent*, cit., pp. 424–428; E. ABRAHAMIAN, *Khomeinism*, cit., pp. 17–26; N. GHOBADZADEH, *Theocratic Secularism*, cit., pp. 149–169, esp. note 3 in pp. 209–210 for a detailed bibliographical review.

⁸³ S. RANDJBAR-DAEMI, *Building the Islamic State*, cit., p. 650. F. MORONI, *Le Costituzioni Della Repubblica Islamica dell’Iran*, «Oriente Moderno», 88/1 (2008), p. 113, remarks that «A positive judgement [upon the draft Constitution] [...] came also from the lay front, organisations or single individuals. Nor signals that could be interpreted as disagreement were read in Khomeini’s opinions». Similarly, in the words of N. GHOBADZADEH, *Theocratic Secularism*, cit., p. 188, «Khomeini had no plan to draft a constitution centred on *wilāyat-i faqih*».

However, in the days the draft Constitution was being finalised, Ḥomeynī started to shake the spectre of foreign interference should the Constitution-making debate involve what he deemed to be a plethoric assembly. Indeed, there was no unanimous consensus as to the way the draft Constitution had to be approved and sanctioned. Although in the February decree Ḥomeynī had made a clear reference to the election of a “Constitutional Assembly” (*Mağles-e Mo’assesān* in the original Farsi text), after the March referendum it was the liberals – among others, Bāzargān and Abolḥassan Baniṣadr – who insisted on the election of a representative body, composed by roughly 350 members – or better one representative every 100.000 inhabitants –, and entrusted with the amendment and the sanction of the draft Constitution⁸⁴. Ḥomeynī and the clerical-led Revolutionary Council, on the contrary, were in favour of a direct popular referendum – a stance they explicitly endorsed in a meeting with members of the Government in late-May⁸⁵. The opposition to the Constituent Assembly as conceived by the Provisional Government was justified by Ḥomeynī and the IRP asserting that it would entail a years-long debate, weakening so the Islamic Republic and favouring monarchical and anti-Islamic plots⁸⁶. Eventually, a compromise was found: neither a *Mağles-e Mo’assesān* nor a direct referendum, but rather an elective Assembly for the Final Revision of the Fundamental Law (*Mağles-e Barresī-ye Nahā’ī-ye Qānun-e Āsāsī*) – also known as Assembly of Experts (*Mağles-e Ḥobregān*) for the Constitution – composed by about one representative every 500.000 inhabitants, *i.e.*, 73 members, and then a popular referendum⁸⁷. The issue did not lie just in the name of the constituent organ: the “expertise” whom the representatives had to be bearers concerned, in Ḥomeynī’s view, mainly their religious knowledge, more than their strictly legal or political competence. In other

⁸⁴ For M. AXWORTHY, *Revolutionary Iran*, cit., p. 154, «Bazargan and Bani-Sadr objected to the idea of the constitution entering into effect with such minimal scope for democratic revision, and like them, a wide swathe of political opinion was unwilling to see that happen without it being debated and amended by an elected body – a constituent assembly of some kind».

⁸⁵ Cfr. S. RANDJBAR-DAEMI, *Building the Islamic State*, cit., pp. 659–660.

⁸⁶ For instance, the 15th of June Ḥomeynī made a speech in which he said in quite concerned tones that «Putting off the approval of the Constitution [...] will result on the plotters within our borders and abroad to link up and [...] trample upon the very essence of the Constitution and the principles of Islam. The well-intentioned people ought to realize that if according to what is being said about the Constituents’ Assembly and the way in which the Constitution should be presented in the Assembly [...] means that the arguments and wrangling be prolonged for two or three years and the plots to accumulate. [...] But if we want to postpone the matter of the Constitution because of the plan [...] for a Constituents’ Assembly of large numbers that would delay the approval of the Constitution by two or three years, we then have to sound the death-knell of Islam and the country. I am warning the nation today that the plan of the Constituents’ Assembly, in that it has been designed in the West and inspired by the devils, will give rise to delays and mischief» (*Ṣahīfeh-ye Imam*, 8, pp. 142–143).

⁸⁷ Cfr. S. RANDJBAR-DAEMI, *Building the Islamic State*, cit., pp. 660–661. Interestingly, as pointed out in *ibid.*, p. 663, «Khomeini had agreed to the creation of the Assembly of Experts prior to the completion of the PRG’s June text», that is to say, in the meeting of late-May – thus even before the speech quoted in note 86.

words, constituent Experts had to be above all Islamic experts⁸⁸. And the whole electoral campaign for the election of the Assembly was managed by clerical Islamists accordingly.

Besides Ḥomeynī's involvement, which remarkably did not implicate at all any reference to the doctrine of *velāyat-e faqih*⁸⁹, the issue of the constitutional and governmental role of '*ulamā*' became a major topic during the electoral campaign. From within the IRP, it was mainly, rather solely, *āyatollāh* Ḥosseyṅ-*'Alī* Montazerī who publicly endorsed *velāyat-e faqih*⁹⁰. This does not mean, nonetheless, that he was the only person who problematised the extent of the Islamic nature of the Charter, nor that people outside the IRP did not make public statements soliciting the inclusion of *velāyat-e faqih* within the Constitution – this was the case, for instance, of the Congress of Muslim Critics of the Constitution⁹¹. There was, as asserted by S. Bakhsh, an «assault on the draft constitution»⁹² the clerical Islamists carried out, alongside other political groups – the NDF, the *Moğāhedīn*, the *Fadāiyyān*, the Kurdish and Balochi minorities –, all basing their critique according to their ideology, of course⁹³. But it is mainly on the IRP that many authors focus when it comes to pointing out a non-secondary feature of the first competitive election in Republican Iran: fraud⁹⁴. The

⁸⁸ For instance, the 20th of June Ḥomeynī warned the seminary students of Mašhad: «concerning the individuals that are to be elected, it is essential that the people choose [...] the individuals, the persons, who are concerned about Islam and know what it is. [...] The *ulama* who are well informed of Islamic laws and current affairs should be appointed. And the *ulama*, on their part, should not refrain from going to the Majlis, as it is a Majlis in which the fate of Islam will be determined» (*Šahīfeh-ye Imam*, 8, pp. 195–196). E. ABRAHAMIAN, *Radical Islam*, cit., p. 54, notes that «The word *khobregan* implied 'religious expert'; and the figure, seventy-three, corresponded to the number who had fought in the historic battle of Karbala».

⁸⁹ «Between the publication of the draft constitution and its approval by the Assembly of Experts, Khomeini spoke nothing of *wilāyat-i faqih*» (N. GHOBADZADEH, *Theocratic Secularism*, cit., p. 204).

⁹⁰ U. VON SCHWERIN, *The Dissident Mullah. Ayatollah Montazeri and the Struggle for Reform in Revolutionary Iran*, I.B. Tauris, London-New York 2015, pp. 49–51; N. GHOBADZADEH, *Theocratic Secularism*, cit., pp. 204–206.

⁹¹ Cfr. the fine paragraph «The debate over *velāyat-e faqih* and the role of the clergy within the state system» in S. RANDJBAR-DAEMI, *Building the Islamic State*, cit., pp. 653–657; S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 78–79; N. GHOBADZADEH, *Theocratic Secularism*, cit., pp. 211–213. In the words of U. VON SCHWERIN, *The Dissident Mullah*, cit., p. 51, «While it is true that along with Montazeri several clerics began to publicly demand the inclusion of *velāyat-e faqih* in the constitution, it is doubtful that apart from Khomeini's close supporters many had read his *Velāyat-e faqih*».

⁹² S. BAKHASH, *The Reign of the Ayatollahs*, cit., p. 78.

⁹³ Cfr. *ibid.*, pp. 76–78.

⁹⁴ For M. AYATOLLAHI TABAAR, *Religious Statecraft*, cit., p. 101, «In the run-up to the Constitutional Assembly elections, the IRP initiated a nation-wide campaign to portray itself as Khomeini's party [...] and undermine rival candidates [...]. Its members reportedly committed far-reaching electoral fraud to open the Constitutional Assembly to a flood of fellow militant Islamist clergy and their sympathizers. Election rigging was condemned by a wide range of groups»; M. AXWORTHY, *Revolutionary Iran*, cit., p. 158, states that «In the run-up to the elections [...] there was also a good deal of intimidation by the IRP and its subordinate organizations, and many groups and parties hostile to them protested at irregularities in the election»; similarly, M. M. J. FISCHER, *Iran. From Religious Dispute to Revolution*, cit., p. 221: the «election was boycotted by Shariatmadari, the National Front, and the National Democratic Front on the grounds that the criteria for candidacy were restrictive [...], that there was not enough time to campaign, and that political meetings were harassed and disrupted by Khomeini followers»; also E. ABRAHAMIAN, *Radical Islam*, cit., p. 54, says that «In the election for the Assembly of Experts, the IRP clergy had all the advantages. [...] The mass media, especially the television network, provided them with extra time: a fact of great importance in a country where 70 per cent of the electorate were illiterate. The *chomaqdarān* [club-wielders related to the IRP] disrupted meetings organized by the opposition, prompting a number of secular parties, including the *Feda'iyan*, the National Front and the National Democratic Front, to boycott the election. Ballot boxes were placed in mosques; *pasdars* supervised the voting; and the

manipulation the IRP shared responsibilities for both during the electoral campaign and the election days – the 3rd and 4th of August – pushed the other parties to boycott the vote, which explains the relatively low turnout as well as the results. The estimated cast votes were half of the March referendum votes, that is to say, more or less 10 million. The boycott of course favoured the IRP, which secured 55 seats upon 73 – among whom the sole women within the Assembly, Monireh Gorǧī⁹⁵ –, while Bāzargān’s coalition managed to gain just six; four seats went to the MPRP sponsored by Šari‘atmadārī, and the sole representative of the Democratic Party of Iranian Kurdistan (DPIK), ‘Abdolraḥmān Qāssemlu, was denied entering the Assembly and threatened, while his election was judged void. Three seats were destined to religious minorities – the Assyrian and Chaldean Christians, Jews, and Mazdeans. The rest of representatives were *grosso modo* aligned with Islamists⁹⁶.

3.5. *The Assembly of Experts and the Constitutional Incorporation of Velāyat-e Faqih*

The 18th of August the Assembly of Experts first met. Montazerī was elected Speaker, and Moḥammad Beheštī, then chairman of the CIR, was chosen as Deputy; both were key figures of the IRP. Analysing the work of the Assembly of Experts is not our purpose, partially because other authors somehow did it, and because of the absence of a linguistically accessible analytical comprehensive monographic work addressing this topic⁹⁷. The issue of a constitutional incorporation of Ḥomeynī’s political doctrine – although almost not explicitly mentioned during the debates neither as “*velāyat-e faqih*” nor in other ways – turned up in September, hence during the first weeks it did not represent a matter of debate. Though, the creation of non-democratically elected institutions in charge of preserving the Islamic nature of the constitutional and institutional system became almost the ultimate matter: as remarked by M. Axworthy, «The debates in the Assembly over the *velayat-e*

neighbourhood mullas helped illiterates fill in their ballots»; in his biography on Montazerī, U. VON SCHWERIN, *The Dissident Mullah*, cit., p. 52, affirms that «secular opposition candidates retired in protest at the pressures and manipulations of the IRP»; according to N. R. KEDDIE, *Modern Iran*, cit., p. 247, «electoral procedures were rigged to favor the clerical party, who began to reveal their true colors»; S. RANDJBAR-DAEMI, *Building the Islamic State*, cit., p. 661, talks about «documented irregularities and substantial accusations of widespread fraud and voter intimidation».

⁹⁵ P. PAIDAR, *Women and the Political Process in Twentieth-Century Iran*, Cambridge University Press, Cambridge-New York 1995, 308–309.

⁹⁶ Cfr. R. KAUZ – H. KHOSRAVI SHAROUDI – A. RIECK, *Iran*, cit., pp. 69, 74. Upon the reasons beneath the Islamist triumph in the elections, cfr. N. GHOBADZADEH, *Theocratic Secularism*, cit., pp. 216–228.

⁹⁷ Some analysis on the work of the Assembly of Experts in B. BAKTIARI, *Parliamentary Politics in Revolutionary Iran*, cit., pp. 56–63; U. VON SCHWERIN, *The Dissident Mullah*, cit., pp. 52–60; S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 81–86; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 160–165; N. GHOBADZADEH, *Theocratic Secularism*, cit., pp. 228–244; M. AYATOLLAHI TABAAR, *Religious Statecraft*, cit., pp. 101–107.

faqih were the most heated»⁹⁸. This did not prevent the overwhelming Islamist majority from reshaping the institutional framework of the draft Constitution, creating a unique figure in the whole global constitutional panorama, that is to say, the Leader (*Rahbar*) – or Leader of the revolution (*Rahbar-e enqelāb*) – who, according to the Constitution, «will have charge of governing and all the responsibilities arising from it» (art. 107). This institution is directly linked to the twelfth Imām (art. 5), acting as his substitute or guardian, and before the 1989 amendment of the Constitution the Leader had to be a *marḡa‘ at-taqīd*. Obviously, the Leadership was conferred to Ḥomeynī for life, through the constitutional provision of art. 107. As it will be seen further down⁹⁹, the Leader enjoys many prerogatives typically attributed to heads of State; he embodied – in the original constitutional design – and still embodies, even after 1989, one of the key institutions entrusted with the preservation of the Islamic feature of the regime, along with the Judiciary – whose Chief is appointed by the Leader himself – and the Council of Guardians – of which 6 members out of 12 are nominated by the Leader. Through the shaping of this institutional triad – Leader, the Judiciary, Council of Guardians –, the principle of *velāyat-e faqih* was incorporated in the Constitution, although the very phrase was rarely uttered during the debates¹⁰⁰ and the sole reference to “*velāyat-e faqih-ye ‘ādel*” (lit. “guardianship of the just jurist”) in the constitutional text is represented by the title of a paragraph in the Preamble stating:

So as to assure the permanent security of the Constitution, the rights of clerical leadership is (sic) under all conditions to be the leadership recognized by the people. (The course of affairs is in the hands of those who know God and who are trustworthy in matters having to do with what He permits and forbids). The just jurist is equipped to insure [sic] that the various organizations do not deviate from their true Islamic duties.

To be precise, it is impossible to assert that the 1979 constitutional framework was the sole possible outcome of Ḥomeynī’s doctrine, precisely because of the technical legal vagueness of his statements. The tasks of the Leader can indeed be related to what Ḥomeynī had said in Naḡaf upon the political role of the *faqīh*¹⁰¹ but, as remarked above, the lectures gathered in *The Islamic*

⁹⁸ M. AXWORTHY, *Revolutionary Iran*, cit., p. 162. In the words of P. L. PETRILLO, *Iran*, cit., p. 56, «The introduction of the principle of *velāyat-e faqih* in the Constitution was not [...] unanimously wanted or expected. Indeed, in the days when the Assembly of Experts was gathering to draw up the constitutional text, between August and November 1979, the debate between religious figures and intellectuals [...] was very harsh».

⁹⁹ Cfr. *infra*, ch. 4, § 3.

¹⁰⁰ N. GHOBADZADEH, *Theocratic Secularism*, cit., p. 231, clearly points out that «Khomeini’s doctrine was not used as a blueprint for the drafting of a wilāyat-i faqīh-centred constitution and was also strangely absent from the Assembly of Experts’ deliberations. During the Assembly’s debates of relevance to wilāyat-i faqīh, the doctrine was mentioned only once, and in passing».

¹⁰¹ «The sole matters relevant to rule [...] are: (1) the knowledgeability of the ruler [...], i.e., his knowledge of the provisions and ordinances of Islam; and (2) his justice, i.e., his excellence in belief and morals» (R. KHOMEINI, H. ALGAR (ed.), *Islam and revolution*, cit., pp. 59–60).

Government were devoid of any reference to modern forms of State and forms of government. Yet, vagueness meant also flexibility, which allowed the Assembly of Experts to create a system where the Leader, personifying Ḥomeynī's paradigm of the governing just *faqīh*, exercises *wilāya* together with other – non democratically elected – institutions.

The phase of the Constitution-making process managed by the Assembly of Experts entailed the gravest deepening of political cleavages between the IRP-led Islamist coalition and the other parties theretofore. *āyatollāh* Ṭāleqānī made several statements against the way the new constitutional order was being shaped, but he could do nothing since he died the 9th of September apparently due to a heart attack¹⁰². Although deprived of his closest companion, in October Bāzargān addressed Ḥomeynī directly on behalf of the Provisional Government, soliciting the dissolution of the Assembly of Experts for having overstepped its own authority by having heavily altered the draft Constitution. On his part, *marǧa* 'Šari'atmadārī expressed public aversion towards the constitutionalisation of *velāyat-e faqih* – N. R. Keddie reports that he «issued a fatwa against the constitution»¹⁰³, but there seems to be no other author corroborating this statement¹⁰⁴ –, while ethnic minorities, especially Kurds, protested against the lack of recognition of their rights in the Charter¹⁰⁵. Nonetheless, by the beginning of November the text had been almost finished, and the future of the new-born Republic was traced through Ḥomeynī's involvement in the US Embassy hostage crisis.

Indeed, the Assembly of Experts approved the final text the 14th of November, and its final days crossed the major event conditioning the future of the Islamic Republic hitherto. Following both the Šāh's hospitalisation in New York in late-October and a disclosed meeting Bāzargān had had with Zbigniew Brzeziński – then US National Security Advisor – in Algiers the 1st of November, the 4th a fomented crowd of university students claiming to follow the Imām's line (*ḥaṭṭ-e Emām*) assaulted and stormed the US Embassy in Tehrān, taking the US personnel hostage. They were convinced that foreign superpowers were plotting against the Islamic Republic with the complicity of some governmental figures, and the assault was intended to uncover all this. It is an acknowledged fact that

¹⁰² In the words of M. AYATOLLAHI TABAAR, *Religious Statecraft*, cit., pp. 102–103, «Having warned against despotism with a religious façade, Taleqani was widely known to be unhappy with the assembly's proceedings and the militant clergy's quest for power»; H. DABASHI, *Theology of Discontent*, cit., pp. 270–272, recalls Ṭāleqānī's last hours and the sorrow his departure entailed; M. AXWORTHY, *Revolutionary Iran*, cit., p. 166, states that «Some have been suspicious about the circumstances of his death».

¹⁰³ N. R. KEDDIE, *Modern Iran*, cit., p. 249.

¹⁰⁴ On the contrary, D. HIRO, *Iran under the Ayatollahs*, Routledge, Abingdon-New York, 1987, pp. 139–140, affirms that «On the eve of the [December 1979] referendum Shariatmadari issued a two paragraph statement. The first said that the constitution was acceptable in Islamic terms. The second said that there was a contradiction between Principles Fifty-six and 110. Principle Fifty-six stated that no one could deprive man of 'his God-given right' of determining 'his social destiny'. But Principle 110 conferred this right on the Leader by authorising him to vet the popularly elected president».

¹⁰⁵ S. BAKHASH, *The Reign of the Ayatollahs*, cit., p. 86; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 164–166.

Ḥomeynī was unaware and uninvolved in the assault¹⁰⁶, despite his never placated anti-American rhetoric. Nonetheless, facing the diplomatic protest from the Carter administration, not only did Ḥomeynī reiterated his accusatory leitmotif against the US, but he explicitly endorsed the students in one of his best-known speeches – that of the Great Satan¹⁰⁷. The Provisional Government tried to de-escalate tension ordering the students to release the hostages and free the Embassy, but after nine months of continuous struggle Bāzargān, the FMI, and the Government itself were powerless: they were overruled by the maximalist stances of the IRP, the MeK and the FeK – the two latter being dissociated supporters, although as mere spectators, of the students' *blitz* against the embodiment of imperialism in Iran – and the 6th of November Bāzargān eventually resigned¹⁰⁸, while the duties of the Cabinet were then taken on by the CIR¹⁰⁹. Despite this huge development, the Constitution-making process was still in progress. The crisis temporarily erased some important political cleavages, mainly between clerical Islamists and leftists, and boosted the popular response in the constitutional referendum, held the 2nd and 3rd of December. More people participated than during the election of the Assembly of Experts, with 99,5% out of more than 15 million votes approving the Constitution. The Leadership was the first constitutional organ to enter into function due to the constitutional settlement of Ḥomeynī's role. The Constitution itself was starting its lifetime, but before considering the first two major events occurring under its auspices – namely, the presidential and parliamentary elections – and the fulfilment of its norms within a new constitutional, institutional and political praxis, it is necessary to analytically survey its content.

¹⁰⁶ In the words of R. REDAELLI, *L'Iran contemporaneo*, Carocci, Roma 2011², p. 52: «According the most recent reconstructions, it seems that Khomeini himself was not aware of the plans to attack the US Embassy»; cfr. also M. AXWORTHY, *Revolutionary Iran*, cit., pp. 168: «there is no direct evidence that Khomeini ordered the action or that any other group or organization beyond that of the students themselves was involved in the planning, such as it was».

¹⁰⁷ Cfr. L. A. REDA, *Khatt-e Imam. The Followers of Khomeini's Line*, in A. ADIB-MOGHADDAM (ed.), *A Critical Introduction to Khomeini*, cit., pp. 126–129; Ḥomeynī's speech in *Ṣaḥīfeh-ye Imam*, 10, pp. 344–346.

¹⁰⁸ As stated by S. ZABIH, *The Left in Contemporary Iran*, cit., p. 97, the *Moğāhedīn* «publicly declared their opposition to the new Constitution and their intention of boycotting the referendum to ratify it. But the hostage crisis created a formidable dilemma for them, and indeed for all other anti-government groups [...]. During the initial phase of the crisis when anti-American hysteria dominated the political scene, the Mojahedin were compelled to support the primary objective of seizing the US hostages, namely, forcing the late Shah to return to Iran. This extremely popular goal superceded [*sic*] all other considerations, including the new Constitution». Cfr. also B. MOIN, *Khomeini*, cit., pp. 226 – 227, according to whom Ḥomeynī «was able to defuse the guerilla movements temporarily by manipulating the hostage crisis».

¹⁰⁹ M. BOROUJERDI – K. RAHIMKHANI, *Postrevolutionary Iran*, cit., p. 106. Cfr. also Ḥomeynī's decree in which he accepted Bāzargān's resignation and entrusted the CIR «with supervision and managing the affairs of the country during transition» (*Ṣaḥīfeh-ye Imam*, 10, p. 350).

4. The Legal System of the Islamic Republic: an Evolutive Perspective from the Provisional Government Draft to the 1979 Constitution

Analysing in depth the legal systems of the draft Constitution and the 1979 Constitution is a useful task. Not only because it allows to compare the results of the drafting work of the Provisional Government with those of the Islamist-monopolised Constituent Assembly of Experts – evaluating their politically different cultures as well – but also because it shows the profound interrelations between the constitutional monarchical regime drawn up by the 1906 Constitution – along with the 1907 SFLs – and the republican system. However, before starting debating the main topic, a methodological and terminological premise is needed. It is widely known that the word “government” has an ample range of meanings, going from “executive branch” – like “the British Government” –, until comprising the many hyponyms falling under the sense of “way of governing” a society – hence, monarchy, or democracy, or autocracy as different governments. Given this broad polysemy, there is a risk when discussing forms of government, namely the risk of misunderstanding precisely the meaning of such a concept. In order to avoid this trouble, it seems important to explain the scope of the concept in this text. Italian – and, more generally, continental European – legal and political sciences usually make a distinction between “forms of State” and “forms of government” – a distinction which is entirely adopted here. Whereas the latter outlines the distribution of power among the institutions of a given country – covering a range whose opposite archetypical ends are parliamentary and presidential forms of government –, the former describes the kind of relationship linking the State to the people, the form of the authority emanating from the State: for instance, republican or monarchical¹. As to revolutionary Iran, its form of State was determined through the March referendum: a Republic, with an Islamic feature. The issue of its form of government is more complex. Without considering the constitutional exceptionality between the fall of the Baḥtīār

¹ For a distinction between forms of State and forms of government in Italian legal doctrine, cfr. M. VOLPI, *Libertà e autorità. La classificazione delle forme di Stato e delle forme di governo*, Giappichelli, Torino 2022⁸, *ad indicem*, part. pp. 7–9, according to whom «The *form of State* is the set of fundamental principles and rules characterising a State system and, therefore, regulating the relations between the State, considered not as legal system but rather as the apparatus holding the power to legitimately use coercion on one side, and the community of citizens, as individuals or groups, on the other. [...] The *form of government* is the set of legal rules, both written and customary, characterising the distribution of political power among constitutional organs occupying the apex of the State apparatus under equal sovereignty and mutual independence»; cfr also L. PEGORARO – A. RINELLA, *Sistemi costituzionali comparati*, cit., p. 50, who say that «The phrase “form of state” indicates the set of fundamental principles and rules that, within the state system, regulate the relations between the state-authority (that is to say, the apparatus of public organs and subjects to which the system assigns the legitimate use of the power of coercion) and the community of citizens, understood individually or in the various forms in which civil society expresses itself»; L. ELIA, *Costituzione, partiti, istituzioni*, il Mulino, Bologna 2009, p. 165: «when talking about form of government the target is an eminently relational situation, that is to say, the relationships established between two or more organs participating in the policy direction».

Government and the adoption of the Constitution (February-December 1979), it can be said that the draft Constitution, as seen right below, shaped a parliamentary form of government with a relatively strong Presidency, although less strong than the French model drafters borrowed many features from. The issue of the historical influences and constitutional genealogies of the draft Constitution is addressed in the first two paragraphs of this chapter, the first debating it in the light of the structure of the text, the second analysing its content. The third paragraph, on the other hand, examines the 1979 Constitution as designed by the Assembly of Experts and approved in the December referendum. A considerable space is given to the draft Constitution precisely because of its closeness to Western Constitutions – despite Fernando Vegas’ perplexity –, something which makes it easier to compare it to a specific model – as said, the French one. More than that, in this chapter the draft Constitution has been discussed through a longer explanation than the 1979 Constitution since many of the provisions it contained were sometimes *verbatim*, sometimes in spirit, put in the Constitution during the work of the Assembly of Experts. We would risk redundancy should the analysis of the 1979 Constitution be exactly like that of the draft Constitution, considering also that the importance of a given topic does not consist exclusively in the length of the pages that address it; moreover, while the draft Constitution is considered merely on a formal and textual level – the sole possible –, the 1979 Constitution is widely discussed also with regards to its practice in the following chapters. In any case, what is important is that the creation of the Leadership – an institution the draft Constitution did not envisage at all – has complicated the picture of the Iranian form of government, in so far as besides the relationship between the Executive (Presidency and Council of ministers headed by the Prime Minister) and the Legislative (*Mağles*), there is a new figure who does not hold any of the three classic powers but has strong prerogatives of political direction and overall control. Something that makes the issue of the form of government in Iran quite interesting.

4.1. *A Both Islamic and Democratic Republic: the Draft Constitution as Republican Avatar of the 1906 Constitution*

When the final version of the Iranian draft Constitution written by the Provisional Government was disclosed in mid-June 1979, the Italian scholar and journalist Ferdinando Vegas published an article in the Turinese daily newspaper *La Stampa* whose title was: «It Comes from Above in the Name of Allah». In Vegas’ words, the draft had «not [been] drawn up and discussed by a freely elected constituent assembly, but it comes from above, allowing the people just to express their own view

with a yes or no»² through a referendum – at the time, the election of the Assembly of Experts was not sure. As to its content, Vegas remarked that the draft was informed by «a theocratic understanding»³, and it was – in his overall judgement – «an archaic document after all, even for those believers who do not lack a modern [understanding of] Islam»⁴.

It would be utterly simple – as well as useless – to mock such an opinion pointing out its ironic contrast with the path history would take in the months following the release of the draft Constitution. If the draft Constitution came from theocratic stances, what about the final Charter? Surely, this is a question people could not address in June 1979, and yet Vegas’ point of view brings along two major issues when considering the draft Constitution from a legal and historical point of view: 1) as much as many other famous constitutional or para-constitutional documents – like the 1793 French Constitution or the 1952 Treaty establishing the European Political Community – the Iranian draft Constitution belongs to a type of legal rules whose analysis is necessarily conditioned by the fact that they never entered into force; moreover 2) we cannot ignore the fact that the juxtaposition of the draft Constitution and the 1979 Constitution inevitably creates a bias whereby a Western observer is led to consider the relatively more liberal and more democratic nature of the draft compared to the Constitution as an axiological and absolute feature – in this sense, Vegas’ article, although unflattering, is an interesting and helpful analytical record deprived of this bias.

The starting point of our discourse is the influence the 1958 French Constitution exercised on Iranian drafters – a feature many authors highlight and which was due, as seen above, to Ḥassan Ḥabībī’s closeness to the French cultural milieu⁵. Although this influence is clear and widely recognised, two things that usually escape discourses on the draft Constitution must be underlined. First of all, structurally the two texts – the Iranian draft Constitution and the 1958 French Constitution – are much more different than on a substantial level; secondly it is hard to find an author expounding the elements determining their similarity. As to the first point, it can be argued that the “architectural” difference can be read taking into account the diverse concern French and Iranian drafters had with

² F. VEGAS, *Scende dall’alto in nome di Allah*, La Stampa, 20 June 1979.

³ *Ibid.*

⁴ *Ibid.*

⁵ Cfr. *supra*, ch. II, § 1.3. In the literature of revolutionary Iran, cfr., for instance, S. RANDJBAR-DAEMI, *Building the Islamic State*, cit., pp. 645, 647, who states that Ḥabībī was «An enthusiastic supporter of the institutional configuration of the French Fifth Republic [...]. His document [...] assigned the bulk of political power to the presidency, which he shaped along the guidelines offered by the Constitution of the Gaullist French Fifth Republic», and that in the first draft drawn up by the Provisional Government «The post of the presidency [...] was closely linked to its French model»; H. E. CHEHABI, *The provisional government*, cit., p. 139; S. BAKHASH, *The Reign of the Ayatollahs*, cit., p. 74; M. AYATOLLAHI TABAAR, *Religious statecraft*, cit., p. 98; M. AXWORTHY, *Revolutionary Iran*, cit., p. 157: «Some elements were taken from the French constitution – the Gaullist constitution of the Fifth Republic, in use since 1958, which meant a strong presidency»; B. ACKERMAN, *Revolutionary Constitutions. Charismatic Leadership and the Rule of Law*, Harvard University Press, Cambridge (MA) 2019, p. 326: «Khomeini’s initial draft was not only written in Paris; it borrows very heavily from the Constitution of the Fifth Republic – in both its text and its institutional design».

regard to the definition of the parliamentary form of government in their respective Charters: reshaping the assembly system of the 4th Republic that had proved weak in front of the Algerian crisis in France; presumably, creating a Republican avatar of the 1906 Constitution in Iran⁶.

According to Hamid Algar's English translation⁷, the Iranian draft Constitution had 12 chapters, two of which were subdivided in sections. It did not have a Preamble, unlike the 1979 Constitution. Chapter one (artt. from 1 to 12) contained the general principles, meaning by that the ideological foundations of the Republic. The second Chapter (artt. 13-14) determined the official State religion and the status of religious minorities. In Chapter Three (artt. from 15 to 19) the principles of national sovereignty and separation of powers were formalised. The official flag, language and script formed the content of Chapter Four (artt. 20-21), while Chapter Five (artt. from 22 to 47) incorporated the political, social and economic rights catalogue. Constitutional organs were regulated in Chapter Six (artt. from 48 to 74, with two sections), which concerned the Parliament, and in Chapter Seven (artt. from 75 to 125, with four sections), which treated the Presidency, the Council of ministers and the army. The norms pertaining to the judicial branch were in Chapter Eight (artt. from 126 to 140), while a separate Chapter, the ninth (art. 141), established a system of administrative justice. Chapter Ten (artt. from 142 to 147) determined the composition and the duties of the sole institution comprising *muğtahids*, that is to say, the Council of Guardians. Miscellaneous topics such as the procedure of constitutional amendments and incompatibility and ineligibility clauses formed Chapter Eleven (artt. from 148 to 150). Finally, Chapter Twelve (art. 151) subjected mass media to State regulations.

As in the case of every Constitution, the structure of the text gives an idea of the drafters' constitutional culture and objectives. As said, if it is true that the 1958 French Constitution served as a model in the drafting of the Charter in Iran, this does not apply to the structure of the document at all. The Constitution of the 5th Republic certified indeed the passage from a parliamentary assembly and scarcely rationalised regime to a different parliamentary highly rationalised and essentially dualistic system. The strengthening of the French President's prerogatives was revealed in the structure of the Constitution itself. While the 1946 Constitution – after the Preamble and the first Title concerning sovereignty – regulated successively the Parliament (Title II), the President of the Republic (Title V) and the Council of ministers (Title VI), in the 1958 Constitution the Preamble and the first Title are followed by the Titles on the President (Title II), the Government (Title III) and

⁶ We say “presumably” because without resorting to any direct source coming from the people who were involved in the writing of the draft Constitution, the purpose in the definition of the parliamentary form of government within it can be only inferred by a textual analysis of the document.

⁷ *Draft Constitution of the Islamic Republic of Iran*, H. ALGAR (trad.), Muslim Youth Movement of Malaysia, Kuala Lumpur s.a.

finally the Parliament (Title IV)⁸. Talking about this formal change from the 1946 Constitution to the 1958, D. Marrani points out that «What is truly interesting in the [1958] Constitution is how *the extent of the changes has permeated the structure of the text itself* and how the layout of the constitutional document reveals that something has been altered»⁹. This instance helps explain how the formal dimension of a constitutional text allows understanding its substance as well. In the Iranian draft Constitution, the chapters regulating constitutional organs addressed successively the Parliament, the President, and the Council of ministers, just like the 1946 French Constitution – and not the 1958. So, if the Constitution of the 5th French Republic was not the formal or structural model for Iranian drafters in 1979, what model did they resort to? And what did the layout mean from a substantial point of view? The closest document sharing a similar – although not identical – layout with the draft Constitution was the 1906 Persian Constitution, more precisely the 1907 SFLs. The SFLs were divided as follows: 1) General dispositions (State religion; composition and functions of the «Ecclesial Committee» entrusted with judging the religious legitimacy of laws; inalienability of territories; official flag and capital; etc.); 2) Rights of the Persian Nation (classic rights catalogue); 3) Powers of the Realm, that is to say, the separation of powers; 4) the Legislative Power; 5) the Šāh; 6) the Council of ministers; 7) the Judiciary; 8) finances; 9) the army. The similarity of the order of topics regulated by the two documents is the strongest structural clue supporting the idea that the draft Constitution was, all things considered, the republican avatar of the Persian constitutional monarchical regime, whereas the Sovereign was replaced by the President of the Republic. However, one may ask: does not this statement contradict the idea that the model of the draft Constitution was the 1958 French Constitution? Not at all. Indeed, the developments characterising both French and Iranian constitutional and institutional histories have been shaped by analogous dynamics. As seen when discussing the 1906 Constitution, the Persian constitutional Šāh was designed bearing in mind the European constitutional monarchies of post-1830 revolutions, more specifically the Belgian one¹⁰. As remarked above, there is no doubt that the Persian constitutional monarchy – at least on a textual

⁸ «If the Fifth Republic established the institution of head of state, so did the Constitutions of the Second, Third and Fourth Republics. But the text of the Constitution of the Fifth Republic was the first to position the executive power before the legislative power. Articles concerning the President were positioned in the second section, *titre II*, just after the first that concerns sovereignty. Articles regarding the government followed in section III, while those concerning the parliament were relegated to the fourth section» (D. MARRANI, *Dynamics in the French Constitution. Decoding French Republican Ideas*, Routledge, Abingdon-New York 2013, pp. 16–17). Cfr. also L. FAVOREU – P. GAÏA – R. GHEVONTIAN – J.-L. MESTRE – O. PFERSMANN – A. ROUX – G. SCOFFONI, *Droit constitutionnel*, Dalloz, Paris 2012, p. 719: «Il est d'ailleurs très significatif, à cet égard, que la Constitution de 1958 traite du président de la République dans son titre II (le titre I étant consacré à la souveraineté), alors que la Constitution de 1946 le reléguait au titre IV, derrière le Parlement et le Gouvernement»; M. PRELOT – J. BOULOUIS, *Institutions politiques*, cit., p. 608: «On a surtout souligné, comme révélatrice d'un état d'esprit, la modification intervenue dans la succession des titres par rapport à la Constitution de 1946, le président de la République passant du titre V au titre II tandis que le Parlement passait du titre II au titre IV».

⁹ D. MARRANI, *Dynamics in the French Constitution*, cit., p. 16. Our emphasis.

¹⁰ Cfr. *supra*, ch. 2, § 2.

level, or better, on a level of formal Constitution – had been more or less consciously designed as an avatar of the Orléanist model. Nonetheless, the impact of the Orléanist monarchy on the constitutional design of the Head of the State went far beyond constitutional monarchies. An Italian work recently edited by F. Bonini, S. Guerrieri, S. Mori and M. Olivetti investigates precisely «The institutional profile of the republican head of the State, that is to say, the President of the Republic, [which] cannot but be defined from the profile of the monarch»¹¹. The aim of the authors is to study the experience of the presidential seven-year term in the many countries that foresee or foresaw it. F. Bonini signals the «Orléanist, or [...] orleano-democrarique, trace, which travels across France and Europe»¹² and upon which several constitutional presidential profiles were shaped. One of the last presidential figures to bear this “Orléanist trace” has been precisely that of the 5th French Republic¹³, and in this sense it is possible to say that the double influence on the Iranian draft Constitution – the French republican and the Persian monarchical – are not in contrast, but rather complement each other.

4.2. *The Content of the Draft Constitution: Iranian Republican Orléanism*

Having seen the structure of the draft Constitution, and the most important models it was based upon, we may turn to its contents, in order to corroborate our previous statements about the presence of an Orléanist trace within it as well. The first Chapter of the draft Constitution was dedicated to the ideological roots of the new regime. Art. 1 stated that «The form of government of Iran is that of an Islamic Republic». Art. 2 enunciated the principles of the Islamic Republic: first of all, *tawhīd*, that is to say, the belief in God’s oneness – a tenet of Islām which is contained in the first part of *shāhāda*, the profession of faith: “*lā ilāha illā Allāh*”, “there is no divinity besides God” –, and then «the authentic, creative and revolutionary culture of Islam, [...] the value and dignity of man, his responsibility toward himself, the fundamental role of *taqva* (piety) in his development, the negation of all forms of [...] discrimination and dominance». Popular sovereignty was first cited in art. 3, according to which «Public opinion is the basis of the government», as stated in the Qur’ān itself (III,159 and XLII,38); as a consequence, «the affairs of the country must be settled by the elected consultative bodies». The basic value of *tawhīd* was once again proclaimed in art. 4, which placed

¹¹ F. BONINI – S. GUERRIERI – S. MORI – M. OLIVETTI, *Introduzione*, in IDD. (eds.), *Il settennato presidenziale. Percorsi transnazionali e Italia repubblicana*, il Mulino, Bologna 2022, p. 7.

¹² F. BONINI, *L’invenzione del settennato*, in F. BONINI – S. GUERRIERI – S. MORI – M. OLIVETTI, *Il settennato presidenziale*, cit., p. 53.

¹³ Cfr. M. DUVERGER, *Les Institutions de la Cinquième République*, cit., pp. 103–115, who talks about «Une République Orléaniste», saying that «la Ve République a donc tous les traits de l’orléanisme. À certains égards, il s’agit même d’un orléanisme renforcé. [...]. La personnalité du général de Gaulle [...] est le fondement essentiel de l’orléanisme» (pp. 109–110); S. GUERRIERI, *Da Mac-Mahon a Chirac: la lunga vita del settennato francese*, in F. BONINI – S. GUERRIERI – S. MORI – M. OLIVETTI, *Il settennato presidenziale*, cit., pp. 55–56, 67–75.

«the spirituality and ethics of Islam as the fundament of political, social and economic relations». Equality before the law regardless of ethnicity was proclaimed in art. 5, on the basis of the Qur’ānic verse XLIX,13. Art. 6 protected both the independence of the country and the enjoyment of freedom rights, whereas art. 7 forbade «all forms of aggressive intervention in the internal affairs of other nations» while recognising the protection of «the just struggle of the oppressed and deprived in every corner of the globe». Economic matters were regulated by art. 8, according to which the State «promotes the national industry and agriculture [...] preserving the political and economic independence of the country», and by art. 9, which stated that «Effort, labor and the fruit thereof are the rights of everyone». If art. 10 recognised the right to education for all Iranians, and art. 11 deemed the family to be «the fundamental unit of the revolutionary society» based on «the stability of marriage», these two rights were both incorporated in art. 12, which protected motherhood as well as «the education of girls». All things considered, this chapter was the draft Constitution’s most original: it was inspired neither from the French Constitution nor from the 1907 Persian SFLs. On the contrary, it represented the formalisation of principles which could not come but from the experience of Iranian revolutionaries in 1979. Chapter Two proclaimed Shī’i Islām and the ḡa’farī *maḏhab* as official State religion, although other Sunni and Shī’i schools – the Ḥanafī, the Mālikī, the Šāfi’ī, the Ḥanbalī, and the Zaydī – were considered «valid», that is to say, they could have both local legal prominence in areas where they were prevailing and normative biding nature for their respective believers in «matters of personal status and religious education» in the whole country (art. 13). There were also three officially recognised religious minorities – Mazdeans, Jews and Christians, all belonging to the category of *ahl al-kitāb*¹⁴ – «free in performing their religious rites, and act according to their customs in matters of personal status and religious education» (art. 14). Chapter Three is by all means a combination of Title I of the 1958 French Constitution and the second part of the 1907 Persian SFLs (“Powers of the Realm”). After stating, just like art. 2 Fr. Const. 1958, that «national sovereignty belongs to the entire people» and that «No individual or group can arrogate to itself this God given and universal right, or exercise it for the sake of [...] particular purposes» (art. 15)¹⁵, the Chapter formalised the separation of powers – the legislative, the judicial and the executive, «which must always be independent of each other» (art. 16) – and analytically enunciated the organs entitled with their exercise: the National Consultative Assembly (art. 17), courts (art. 18), the President and the

¹⁴ G. VAJDA, *Ahl al-Kitāb, EF*, I, pp. 264–266.

¹⁵ Indeed, besides the reference to God there is a striking similarity with the first two clauses of art. 2 Fr. Const. 1958: «National sovereignty shall vest in the people, who shall exercise it through their representatives and by means of referendum. No section of the people nor any individual may arrogate to itself, or to himself, the exercise thereof».

Council of ministers (art. 19), mirroring so artt. 27-28 SFLs¹⁶. Articles in Chapter Four simply determined the flag of the country (art. 20), and proclaimed Farsi as official language and script, even though the educational and press use of unspecified «local languages» was allowed. An articulate rights catalogue formed Chapter Five. It was partially borrowed from the second part of the SFLs – titled “Rights of the Persian Nation” –, although just like many post-World War II Constitutions the 1979 draft enlarged the number of protected rights¹⁷.

Constitutional organs were regulated in Chapters Six (National Assembly), Seven (Presidency and Council of ministers) and Ten (Council of Guardians of the Constitution), whence it is possible to infer the form of government outlined by the draft Constitution. The *Mağles* embodied the principle of popular sovereignty, as it was composed of «the representatives of the people elected directly and by secret suffrage» (art. 48). Representatives were elected every four years (art. 49). They were 270, but the number could change every ten years based on population growth in the amount of one representative each 150.000 citizens for every district¹⁸. The National Assembly had a general legislative power, to be exercised «within the limits of its competence as laid down in the constitution» (art. 55). Neither representatives – who were «responsible to the entirety of the nation» – could delegate their individual role nor the Assembly could delegate its legislative power to anyone, except to its own internal commissions. The *Mağles* was the sole constitutional organ entitled with the authentic interpretation of laws, without prejudice for the judicial interpretations of courts (art. 57). Some critical issues had to be settled only by a law approved by the *Mağles*¹⁹. Laws had to be compliant with Islamic principles and the Constitution, as stated by art. 66: for the first time in Iranian

¹⁶ Art. 27 SFLs described the three powers and the organs that exercised them, and art. 28 said they were «distinct and separate from one another».

¹⁷ The draft Constitution recognised: equality before the law regardless of gender (art. 22); personal freedom (art. 23); inviolability of communications (art. 24); freedom of press and thought «except in matters that are contrary to public morality, insult religious belief, or slander and assault the honor and good repute of individuals, and in the diffusion of lies» (art. 25); freedom of association unless it harms «the principles of independence, freedom, sovereignty and national unity, or the basis of the Islamic Republic» (art. 26); freedom of assembly (art. 27); freedom to choose an occupation «if it is not opposed to Islam and the public interest»; right to welfare (art. 29); right to keep or acquire Iranian nationality (art. 30); right to access to justice (art. 31); presumption of innocence (art. 32); legality of judicial acts (art. 33); non-retroactivity of penal laws (art. 34); *habeas corpus* (art. 35); prohibition of torture (art. 36); protection of human dignity «of persons arrested, imprisoned or banished in accordance with the law» (art. 37); prohibition of banishment if not according to the law (art. 38); prohibition of abuse of rights (artt. 39 and 43); right to private property (art. 40); limitation of public dispossession to «the approval of the law and the payment of just compensation» (art. 41); right to the enjoyment of one's own work (art. 42); prohibition of leaving lands uncultivated (art. 44); prohibition of alienating cultivable lands for other purposes unless the law allows it (art. 45); public property of natural resources (art. 46); nationalisation of private industrial, agricultural or trade property if it «harms or distracts from the public interest» (art. 47).

¹⁸ As in the case of the election for the Constituent Assembly of Experts, religious minorities referred to in art. 14 were granted reserved seats in the *Mağles*: one for Mazdeans, one for Jews and two for Christians, which could increase as well in the amount of one representative each 150.000 citizens for every minority (art. 50).

¹⁹ This was the case for alienation of State property (art. 58); the granting of concessions and monopolies (art. 60); the ratification of international treaties and obligations (art. 61); the «employment of foreign experts and advisers by the government» (art. 62); the «taking and giving of loans or grants-in-aid by the government» (art. 63); boundary changes – which were to be sanctioned by a qualified majority of three quarters of all representatives (art. 59).

constitutional history, constitutional review was acknowledged alongside the religious judicial review the SFLs had foreseen in art. 2²⁰. The relationship between *Mağles* and Government was regulated by the parliamentary confidence the latter had to enjoy in order to perform its own duties, by the control function the National Assembly could exercise over the Executive, and by the presidential prerogative of parliamentary dissolution. As to parliamentary inquiries («questions» in the translated English text) and interpellations – two classic prerogatives belonging precisely to the control function of the Parliament over the Government – artt. 69 and 70 stated that ministers had to answer them within ten days. The difference between the two laid in that with interpellations a vote of confidence had to be carried out; should a motion of no confidence pass, the involved minister or Prime Minister was «dismissed» and could not be part of the following Cabinet. To be thorough, the draft Constitution established also a system of local representative councils, whose elections and powers had to be regulated by law in accordance with «the principles of national unity, territorial integrity and the primacy of the central government» (art. 74).

As said, the *Mağles* could be dismissed only by the President of the Republic, and at certain conditions. The President was labelled as «the highest authority in the country» and was «entrusted with the ordering of relations between the three powers and with heading the executive» (art. 75). The presidential function as a link of all powers is somehow intriguing from a point of view of constitutional doctrine and genealogy, and we dare to say that this is a legacy of the SFLs, whereas art. 27 SFLs established that the Šāh shared the legislative power with the *Mağles* and the Senate and exercised the executive power; as to the judicial, secular justice fell under the competence of both courts and the ministry of justice (art. 71 SFLs), and the Šāh himself was entrusted with the appointment of judges and of the attorney general (artt. 81 and 83 SFLs). Again, this is another clue suggesting the republican transposition of the Šāh within the 1979 draft Constitution. According to art. 76, only Muslim Iranian-born citizens could become President. Unlike the seven-years term of office of the French President, that of the Iranian President lasted four and was renewable just once (art. 77): a clause clearly borrowed from the US Constitution. Although it was stated that the presidential electoral procedures were to be determined by law (art. 78), the draft Constitution itself – evoking almost *verbatim* art. 7 Fr. Const. 1958 – imposed a two-round majoritarian electoral system: if no candidate attained an absolute majority of the votes cast in the first round, a run-off between the two most voted candidates would take place²¹. The President elect, before assuming office, had to

²⁰ Upon judicial review in Muslim-majority countries, a comparative perspective in S. WAHEEDI – K. STILT, *Judicial Review in the Context of Constitutional Islam*, in E. F. DELANEY – R. DIXON (eds.), *Comparative Judicial Review*, Edward Elgar, Cheltenham-Northampton (MA) 2018, pp. 117–141.

²¹ Art. 79 of the Iranian draft Constitution stated: «The president of the republic is elected by an absolute majority of votes of all participants (in the election). But if none of the candidates is able to win such a majority in the first round of

swear before the *Mağles* taking oath as reported in art. 82. The draft Constitution entrusted the President with both quantitatively and qualitatively considerable prerogatives (artt. 83-95). First of all, he²² sanctioned laws, but he had also the right to send a legislation back to the National Assembly should he consider it «contrary to the constitution, the indisputable principles (of Islam), and the ordinances of *shari'a*»; if the Parliament approved it once again, the President was forced to sign it, unless he decided to defer it to the Council of Guardians²³. The President nominated the Prime minister and, on his proposal, the ministers; once in a term, he could call for a popular referendum aimed at dissolving the *Mağles*; he had the right to commute sentences and proclaim amnesties, the latter to be approved by the *Mağles*; he conferred decorations and honours; he accredited and received ambassadors; he was the Commander-in-Chief and approved the appointment of the Chief of the General Staff recommended by the Council of ministers, and accordingly he declared war and armistices and concluded peace, after the vote of the *Mağles*; he signed international treaties, after the approval of the *Mağles*; he could send letters to the *Mağles* the Prime Minister was charged with reading; he issued the decrees nominating the president of the Supreme Court, the chiefs of judicial divisions, and the attorney general (art. 140). As to his role in the Government, the President had the right to attend sessions of the Council of ministers and preside them (art. 100); acts issued by the Government needed his approval, and he could send them back to the Council of ministers if he considered them contrary to the law. Almost nothing was said as to the responsibility of the President, besides the fact that he was «responsible to the people within the limits of his powers» (art. 88). This provision might suggest the existence of a clear political responsibility, although by not foreseeing any mean to sanction it – other than elections – the draft Constitution fell into pleonasm. A more general regime of presidential irresponsibility could be deduced by art. 102, by rule of which the President was to be impeached in case of «treachery or conspiracy against the security of the country». The prosecution had to be voted by the *Mağles*, while the Supreme Court was entrusted with rendering judgement. The Executive branch was completed by the Council of ministers. As a collegial body, it was responsible for the «administration of the affairs of the country», and «the executive responsibility for all civil and military organs belonging to» it (art. 103). It was chaired by the Prime Minister, who the draft Constitution labelled as «the head of the council of ministers» and who was

voting, voting will take place a second time on Friday of the following week. In the second round, only the two candidates that received the most votes in the first round will participate». By comparison, see the first clause of art. 7 Fr. Const. 1958 as modified in 1962: «The President of the Republic shall be elected by an absolute majority of votes cast. If such a majority is not obtained on the first ballot, a second ballot shall take place on the fourteenth day thereafter. Only the two candidates polling the greatest number of votes in the first ballot, after any withdrawal of better placed candidates, may stand in the second ballot».

²² Since the draft Constitution never entered into force, we refer to the President with the pronoun “he”, even though from a formal point of view women were ideally eligible to the Presidency. Cfr. *infra*, note 46.

²³ Cfr. artt. 10 and 61, clause 2, Fr. Const. 1958.

vested with the supervision and coordination of all ministers and the determination of governmental policies (art. 104). Besides its appointment by the President of the Republic, the Government had to enjoy the confidence of the National Assembly (artt. 105 and 107). Ministers were individually accountable to Parliament with respect to their own ministries and collectively for the decisions of the Council of ministers (art. 109). Almost surprisingly, the draft Constitution did not attribute any legislative function to the Government besides «the responsibility for drawing up regulations for the implementation of laws» (art. 110): the sole further normative power it could exercise pertained to «decrees, regulations and protocols» the Council of ministers could adopt «in order to fulfil its administrative duties, secure the implementation of laws, and organize administrative bodies» (art. 110). Art. 112 regulated governmental impeachment should the Prime Minister or a minister be accused of «treason or plotting against the national security of the country»; the procedure was analogous to that for presidential impeachment (cfr. art. 102). Quite singularly, the army was put in the chapter concerning the Executive.

A chapter of its own, the eight, dealt with the Judiciary. The double system of secular and religious courts the SFLs had created was abandoned in favour of a monistic one. Courts were established on the basis of the rule of law (art. 126), and the creation of special courts was forbidden «except in cases specified in the constitution» (art. 128). The judicial power was defined as «independent»; its independence was guaranteed by the President of the Republic in coordination with the Supreme Judicial Council (art. 127)²⁴. A Supreme Court was to be established entrusted with a regulatory competence, or better, a nomophylactic function (art. 129). Art. 130 protected the independence of judges by recognising their irremovability. Judges were obliged to interpret the law and, if necessary, other legal sources just for the case in issue, and they could not «deliver a general judgement or create rules» (art. 131). As to proper interpretation, the draft Constitution imposed judgements be based on positive laws and not on «silence, deficiency, brevity or contradiction in the law» (art. 135); should a case not be justiciable according to law, the judge had to resort to «the principles of the *shari'a*, common usage (*'urf*), established customs, and whatever be required by justice and the public interest» (art. 136). Procedurally, under penalty of nullity, sentences had to be based solely on law (art. 132). The draft Constitution admitted the judicial review of governmental regulations referred to in art. 110, to be performed by every judge who ascertained a conflict with the law or a lack of authority for the act at issue (art. 137). Military crimes pertained to the jurisdiction of military courts (art. 138). The charge of administering the judicial branch was entrusted to the Supreme Judicial

²⁴ This provision echoed the first two clauses of art. 64 Fr. Const. 1958: «The President of the Republic shall be the guarantor of the independence of the Judicial Authority. He shall be assisted by the High Council of the Judiciary».

Council, which arranged «the employment, appointment and dismissal of judges [*sic*], the changing of their place of service, the delineation of tasks and their promotion, and similar matters»; it was formed by 11 members: three to be chosen by the Supreme Court among its own judges; six judges with at least ten years of service to be elected in accordance with the law; the president of the Supreme Court – who presided the Supreme Judicial Council as well –; the attorney general (art. 139). As said above, the heads of the judiciary were appointed by the President of the Republic: a patent monarchical legacy which diluted the principle of separation of powers and the operability of possible institutional checks-and-balances.

The most peculiar institution created by the draft Constitution was, no doubt, the Council of Guardians of the Constitution (Chapter Ten). It operated as a sort of constitutional court with a double competence: scrutinising the profiles of both constitutional and religious legitimacy of legislation. In this sense, it incorporated the main features of Western-derived constitutional courts along with the prerogatives art. 2 SFLs had recognised to the religious Committee, which nonetheless had never entered into function. It was to be composed of five *muğtahids* elected by the *Mağles* from a list submitted by *marāğhi* ‘*at-taqlīd*, and six jurists – three University professors of law, and three judges from the Supreme Court – to be appointed still by the *Mağles* (art. 142). The office lasted ten years and was not renewable (art. 143). The right to appeal the Council of Guardian belonged to *marāğhi*’, the President of the Republic, the president of the Supreme Court, and the attorney general: they were entitled to raise a claim of constitutional or religious illegitimacy of a law within one month from its signature (art. 144). If the Council certified by a two thirds majority (art. 146) the unconstitutionality of a law, the National Assembly was compelled to re-examine it following the recommendations of the Council (art. 145). Finally, resounding artt. 58 and 60 Fr. Const. 1958, art. 147 stated that the Council was «also entrusted with the supervision of the election of the president of the republic and the holding of referendums»²⁵. Referendums could be requested by the President, or by the Parliament through a two thirds majority of its members, and the Council of Guardians was responsible for their enactment. Purposes and matters of referendums, though, were not specified in the draft Constitution – unlike art. 11 Fr. Const. 1958, which duly determines the conditions and the topics a referendum might be called for.

²⁵ «The Constitutional Council shall ensure the proper conduct of the election of the President of the Republic. It shall examine complaints and shall proclaim the results of the vote» (art. 58 Fr. Const. 1958); «The Constitutional Council shall ensure the proper conduct of referendum proceedings as provided for in articles 11 and 89 and in Title XV and shall proclaim the results of the referendum» (art. 60 Fr. Const. 1958).

Chapter Eleven regulated several issues. Art. 148 provided for the procedure of constitutional amendment²⁶, while the regime of public offices incompatibilities and ineligibility was regulated by artt. 149 and 150. The last article, forming Chapter Twelve, secured the «free diffusion of information in the mass media (radio and television), that belong to the government», and subjected all media to «the joint supervision of the three powers in a fashion to be determined by the law» (art. 151).

All things considered, the draft Constitution was not an equilibrate document. It borrowed constitutional elements from several different traditions without a proper synthesis. The kind of parliamentarism it envisaged was less rationalised than that of the 1958 French Constitution – we use the concept of “rationalisation” according to the meaning given by Mirkine-Guetzévitch, that is to say, as legal formalisation of political or procedural principles²⁷. This is clear when it comes to the relations between Parliament and Government and their respective duties. Rejecting its own long-lasting tradition of almost absolute parliamentary sovereignty, the constitutional system of the 5th French Republic has circumscribed the domains the Parliament can legislate for. Basically, art. 34 Fr. Const. 1958 analytically enumerates the topics whereof parliamentary “statutes” (Englis translation for the French word “*loi*”) are entitled to «determine the rules» and to «lay down the basic principles», limiting so the legislative competence of the Parliament. This restriction has been counterbalanced by a parallel enlargement of the regulatory power the 1958 Constitution confers to the Government compared to the 1946 Constitution, as art. 37 proclaims that «Matters other than those coming under the scope of statute law shall be matters for regulation»²⁸. Moreover, under the provision of art. 38 Fr. Const. 1958, the Parliament can delegate the legislative power to the Government so that the latter may adopt decrees – “ordinances”, *ordonnances* – in matters regulated by statutes²⁹. This digression

²⁶ A constitutional amendment «draft or bill» could be presented either by the *Mağles* or by the Council of ministers on a proposal from the *Mağles* itself – an absolute majority of its members was requested – or from the President «acting on the suggestion of the council of ministers». It was up to the Parliament to examine such a draft or bill; the majority threshold for it to be approved was three quarters of representatives, and then a popular referendum had to be carried out for its final ratification. Art. 1 could not be subject to constitutional amendment.

²⁷ See B. MIRKINE-GUETZEVITCH, *Les nouvelles tendances du Droit constitutionnel. Les problèmes de la rationalisation du pouvoir dans les constitutions de l'Europe d'après-guerre*, «Revue du droit public et de la science politique en France et à l'étranger» XLV/1 (1928), pp. 16–24. In the author's words, «la démocratie exprimée en langue juridique, c'est l'Etat de droit, c'est la rationalisation juridique de la vie» (p. 17); «l'aspect politique est remplacé par l'aspect juridique. [...] [D]ès [...] que la constitution ne vise pas à protéger des intérêts politiques ou nationaux, mais à introduire un élément *objectif* de défense juridique [...], la politique est remplacée par le droit» (p. 28).

²⁸ On parliamentary statute laws and regulations in France, considering also the development of the matter according to praxis and constitutional jurisprudence, cfr. L. FAVOREU *et. al.*, *Droit constitutionnel*, cit., pp. 855–867; J. D. HUBER, *Executive Decree Authority in France*, in J. M. CAREY – M. SOBERG SHUGART (eds.), *Executive Decree Authority*, Cambridge University Press, New York 1998, pp. 239–241; M. PRELOT – J. BOULOUIS, *Institutions politiques*, cit., pp. 615–619.

²⁹ Upon ordinances in France, cfr. L. FAVOREU *et. al.*, *Droit constitutionnel*, cit., pp. 911–920, who problematise their legal nature – legislative or regulatory – but in any case include the topic in the chapter concerning «Les normes réglementaires à statut particulier»; J. D. HUBER, *Executive Decree Authority in France*, cit., pp. 242–247; M. PRELOT – J. BOULOUIS, *Institutions politiques*, cit., pp. 860–863.

on French public law serves as a benchmark to evaluate the kind of parliamentarism Iranian drafters tried to shape, which was, as said, much less rationalised than the French. The Iranian draft Constitution granted the *Mağles* a theoretically complete legislative competence (art. 55), leaving just two unspecified regulatory powers to the Government, according to art. 110: 1) in «drawing up regulations for the implementation of laws» under delegation – but the text did not specify from whom –, and 2) to «establish decrees, regulations and protocols» subordinate to the law, mainly for administrative purposes. The Executive did not enjoy any full legislative power, not even delegated or for exceptional matters. This is one of the greatest features highlighting the scarce rationalisation of the parliamentary system drawn up by the draft Constitution – something which touched the figure of the President as well. The Iranian President of the draft Constitution was much less powerful than the French model drafters had resorted to. As to the presidential role within the Council of ministers, while the French Head of State was by all means its President (cfr. art. 9 Fr. Const. 1959), according to art. 100 of the draft Constitution the Iranian President could attend and chair the Council of minister at his own discretion: playing on words, the Iranian presidential presidency of the Council of minister was designed as sporadic and discretionary. Moreover, the scope of the presidential referendum in the draft Constitution was confined to the cases referred to in artt. 89 and 147. As to art. 89, the presidential referendum was aimed at seeking the popular assent for the dissolution of the *Mağles*, and this power could be used just once in a presidential term; as to art. 147, the referendum could be call for by both the President and a qualified majority of the *Mağles*, but the draft Constitution did not provide for any explanation as to the matters concerned. On the contrary, the French Constitution neatly describes the contents of presidential referendums: until 1995, a referendum could be called for by the President to approve a bill regulating «the organization of the public authorities» or authorising «to ratify a treaty which, although not contrary to the Constitution, would affect the functioning of the institutions» (art. 11 Fr. Const. 1958) – with a constitutional law another clause, concerning «reforms relating to the economic, social or environmental policy of the Nation, and to the public services contributing thereto», was included among the matters falling under the scope of referendums in 1995³⁰. By 1979 the 5th Republic had already witnessed five presidential referendums, and yet this circumstance did not persuade Iranian drafters to analytically regulate the issue of referendums. Upon the presidential power to dissolve the Parliament, another major difference between the two systems must be underlined. In France, this power has very few substantial limits: after the dissolution of the National Assembly, the President cannot dissolve it again within one year

³⁰ Upon referendums in France, cfr. L. FAVOREU *et. al.*, *Droit constitutionnel*, cit., pp. 730–732; M. PRELOT – J. BOULOUIS, *Institutions politiques*, cit., pp. 680–684, 715–716; M. DUVERGER, *Les Institutions de la Cinquième République*, cit., pp. 107–110.

from the parliamentary election; and the dissolution cannot be called when exceptional powers referred to in art. 16 Fr. Const. 1958 are exercised. The other constitutional limit, consisting in the consultation of the Prime Minister and the Speakers of the Houses, is merely formal³¹. As seen, Iranian drafters introduced other but stricter limitations, both temporal – one dissolution in a term – and procedural – necessity of a popular sanction via referendum. Finally, it is impossible to find in the Iranian draft Constitution a provision analogous to art. 16 Fr. Const. 1958, regulating the emergency powers the President can exercise should «the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments [be] under serious and immediate threat, and where the proper functioning of the constitutional public authorities is interrupted»³².

It is hard to understand the configuration of powers within the Iranian draft Constitution, bearing in mind also that the mandate of the Iranian President was intended to be far shorter than the original seven-year term of the French President – as it was in 1979 – and that in any case it could be renewed just once, while in France the presidential mandate was indefinitely renewable at the time. As remarked by S. Guerrieri when discussing the presidential term in the 5th French Republic,

The renewable seven-year term had been considered [...] by the General [de Gaulle] as the appropriate timeframe to guarantee the supremacy of a head of the State who would convey a more coherent political vision and with a broader horizon, in pursuing the national interest, than that of party programs. A kind of supremacy the introduction of the direct election, in 1962, was aimed at strengthening³³.

The common term of Presidency and Legislature – four years – in Iranian constitutionalism seems to be a borrowing – an unconscious one – from the US Constitution, but it is quite hard to formulate any hypothesis as to its function. The complementarity between Executive and Legislative in the US lies on a radical separation of the two whose main expression is the absence both of a relationship of confidence and of the power of dissolution of the Chambers – while the reduction of the seven-year term in France was meant to synchronise the presidential mandate with that of the Legislature, and their respective political affiliation. By creating an Executive that needs the confidence of the Parliament but whose Head – acting as Head of the State as well – has the same term of the Legislature

³¹ Cfr. M. PRELOT – J. BOULOUIS, *Institutions politiques*, cit., pp. 716–717, according to whom in this matter «l'appréciation présidentielle est souveraine et si le chef de l'État doit consulter le Premier ministre et les présidents des assemblées, il ne s'agit que d'une consultation, qui, juridiquement, ne limite pas au fond sa liberté de décision. Celle-ci n'est pas non plus conditionnée par le retrait par l'Assemblée de sa confiance au Gouvernement».

³² For presidential exceptional powers, cfr. L. FAVOREU *et. al.*, *Droit constitutionnel*, cit., pp. 734–735; J. D. HUBER, *Executive Decree Authority in France*, cit., pp. 234–239; M. PRELOT – J. BOULOUIS, *Institutions politiques*, cit., pp. 717–721.

³³ S. GUERRIERI, *Da Mac-Mahon a Chirac*, cit., pp. 67–68.

and can threaten the dissolution of the Parliament just once in a term and under popular assent, Iranian drafters created a weaker Executive compared to the French model. A weakness the 1979 Constitution, as modelled by the Assembly of Experts, would expand.

4.3. *The 1979 Constitution: a Democratically Limited Shī'i Republic*

The work of the Assembly of Experts deeply reshaped the form of Government and the inter-institutional relations the draft Constitution had provided for. The structure itself of the text underwent a profound rearrangement: a markedly verbose Preamble was put at the beginning of the text, proclaiming the success of the Islamic revolution, the charismatic role of *āyatollāh* Ḥomeynī and the political value of his doctrine of the Islamic government, and declining all this in many dimensions that are not analysed here because they are not that interesting but for a doctrinal evaluation³⁴. Chapter I contains the general principles; Chapter II determines official language, script, calendar and flag; Chapter III is dedicated to national rights, and Chapter IV to economic and financial matters, while Chapter V explains the modes of exercise of national sovereignty; the Legislative power is addressed in Chapter VI, and local councils in Chapter VII; a new institutional figure, the Leader, has been introduced through Chapter VIII, followed by the Executive power in Chapter IX; a chapter of its own, the tenth, concerns foreign policy; the Judiciary is regulated in Chapter XI; mass media closes the Constitution with Chapter XII.

As it is widely known, the Constitution has enhanced the Islamic feature of the regime compared to the draft Constitution. Not only does it keep art. 1, the one avowing the Islamic Republic as «Government» in Iran («*Hokumat-e Irān ġomhurī-ye eslāmī ast*», lit. “The government of Iran is the Islamic Republic”), but it links the Islamic Republic itself to the «ancient belief in the administration of truth and justice of the Koran» and to «the leadership of the high exalted religious authority, the Great Ayatollah Imam Khomeyni». Art. 2 has modified the list of principles the Islamic Republic is deemed to be founded upon: *tawḥīd*, but also «Divine inspiration» as a source to interpret law, «Resurrection [...] God’s justice [...] Religious leadership [...] Compassion and the high value of human beings, and freedom coupled with a sense of responsibility before God». A list of sixteen rather fanciful and heterogeneous «means and methods, in order to attain the goals mentioned» in art. 2, forms art. 3, but just like the Preamble an analytical reference to them would be useless for the purposes of an institutional and constitutional history³⁵. Art. 4, on the contrary, can be considered the

³⁴ A. SCHIRAZI, *The Constitution of Iran*, cit., pp. 8–9, presents a very synthetical analysis of the Preamble.

³⁵ Cfr. *ibid.*, pp. 9–10.

constitutional core of the Islamic Republic as imagined by Ḥomeynī: it proclaims that all laws, of all kinds, «should be based on Islamic rules and standards. This principle will absolutely or in general be dominant over all of the principles of the Constitution, and other laws and regulations as well». The task to examine the religious conformity of laws to Islamic principles is conferred upon the Council of Guardians. The provision contained in art. 4 is quite interesting, as it establishes *the supremacy of Islamic law over the Constitution itself* as well – altering so the traditional historical legal role given to Constitutions throughout history, that is to say, the Constitution as the peak of the hierarchy of norms. As seen in the following chapter, the constitutional history of republican Iran is punctuated with legal rulings that not only contradict the Constitution, but find their own legitimacy in other different sources: Ḥomeynī’s authority as *muḡtahid*, Islamic principles, public interests. Art. 5 introduces the institutional figure entrusted with the preservation and the control of the compliance of the constitutional, institutional and political system with Islām: a substitute of «the Glorious Lord of the Age» – an epithet for the twelfth Imām – who acts «as religious leader and imam of the people». This Leader must be «an honest, virtuous, well-informed, courageous, efficient administrator and religious jurist, enjoying the confidence of the majority of the people». We anticipate what is said about the Leader right below by remarking that art. 107, regulating the method of election of the Leader, declares Ḥomeynī Leader for life. The drafters of the constituent Assembly of Experts, nonetheless, included national sovereignty among general principles, whereas art. 6 recognises the basic value of «public opinion, expressed through elections, *i.e.* election of the president of the republic, deputies of the National Assembly, members of councils, and the like, or by plebiscite», while art. 7 formalises political representativeness. The fact that popular sovereignty is proclaimed in one article below those establishing the compliance of legislation to Islam (art. 4) and the rule of the supreme *faqīh* (art. 5) gives a formal, or structural, idea of the problematic balance, or unbalance, between religious and democratic principles in Iranian constitutionalism.

Religious rights and the official religion are the same as in the draft Constitution. Jewish, Christian, Mazdean and Sunni religious minorities are recognised, protected and granted freedom of worship. An interesting innovation, though, has been made in the chapter concerning language: for art. 16, indeed, Qur’ānic and Islamic studies must be in Arabic; more than that, it is said that «Arabic totally permeates Persian literature», hence Arabic is to be taught in all schools.

24 articles (artt. from 19 to 42) shape the rights catalogue, which is very similar to that of the draft Constitution. The main difference is that in the 1979 Constitution rights are almost always submitted to a clause of compliance with Islamic principles – a clause that heavily limits the enjoyment of these rights. As stated by P. L. Petrillo, although the rights catalogue is after all quite advanced, «By carefully reading the Iranian constitutional provisions on the subject of “people’s rights” [...] it is

clear that they are limited [...] every time that the exercise of a right contrasts with the overall ensemble of Islamic precepts»³⁶.

The chapter on national sovereignty has been put after the rights catalogue. In the 1979 Constitution popular sovereignty, although recognised in art. 6, becomes an expression of a divine trust, for «The absolute ruler of the world and humanity is God and He alone has determined the social destiny of human beings» (art. 56). The Iranian people, then, are entitled to exercise sovereignty as a «God-given right» in the manners the Constitution provides for. It may be possible to trace the origin of such a concept in the Constitution-making – and State-building – process of the first Islamic Republic in history, namely Pakistan. The first clause of the 1949 Objectives Resolution – the first constitutional document of independent Pakistan which would later form the Preamble of the 1956 Pakistani Constitution – presented national sovereignty precisely in terms of «divine trust»³⁷, although as stated by Grote and Röder «At the time of the adoption of the [Pakistani] constitution the declaration of God's sovereignty in the preamble was merely a symbolical act, devoid of any specific legal implications»³⁸. Art. 16 of the draft Constitution was copied *verbatim* becoming art. 57 – the English translations differ slightly, and it is possible to imagine a single identical source. Therefore, also in the 1979 Constitution the three traditional powers – legislative, executive and judicial – articulate sovereignty, and the Constitution defines them as «independent of each other», while «the link between them will be provided by the president», and not by the Leader. Nonetheless, the main innovations in this Chapter have affected precisely the Executive, whose duties and powers are strongly limited by the constitutional prerogatives of the Leader (art. 60).

As to the *Mağles*, the greatest change in the constitutional text with respect to the draft is represented by the inclusion of the provisions on the Council of Guardians next to those on the Parliament (Chapter VI); other than that, changes concerning the composition and the powers of the *Mağles* are not substantial. However, the Council of Guardians is quite different from the institution the draft designed in its own tenth chapter. Now, it is formed by twelve members: six *muğtahids* nominated by the Leader, and six jurists elected by the *Mağles* among those suggested by the High Council of the Judiciary (art. 91); their term has been reduced from ten to six years (art. 92). The constitutional and religious control over laws becomes automatic, and not subject to the request from specific institutions. Thus, all laws approved by the *Mağles* are sent to the Council of Guardians which, within ten days, must pronounce upon their legitimacy (art. 94); the ten-days term can be in

³⁶ P. L. PETRILLO, *Iran*, cit., p. 110.

³⁷ «[S]overeignty over the entire universe belongs to God Almighty alone and the authority which He has delegated to the state of Pakistan through its people for being exercised within the limits prescribed by him is a sacred trust» (H. KHAN, *Constitutional and Political History of Pakistan*, Oxford University Press, Karachi 2019, p. 71).

³⁸ R. GROTE – T. J. RÖDER, *Introduction*, cit., p. 8.

any case delayed (art. 95). The compliance to Islām is judged by the *muğtahids*, while it is the whole Council which exercises the constitutional review; all determinations are taken by majority (art. 96). This configuration of the powers the Council of Guardians exerts upon legislation is so peculiar that there is a doubt, in legal doctrine, as to whether the Council itself can be assimilated to a Constitutional Court or to a second Chamber, or even to both – given the fact that the interpretation of the Constitution is up to it (art. 98)³⁹. Its tasks, in any case, exceed the simple control over laws, since the Council is constitutionally «responsible for supervising the presidential election, the elections of the National Consultative Assembly and the referendum»: something which, as seen below, has considerable political consequences⁴⁰.

Beside the Council of Guardians, the Islamic feature of the regime is preserved by another institution, which was not established in the draft Constitution: the Leader of the revolution (*Rahbar-e enqelāb*, Chapter VIII). According to the *Weltanschauung* underlying the Constitution, this figure is a substitute of the Twelfth Imām, acting on his behalf as a legal guardian in the political direction of the community (art. 5). The “theocratic” derivation of the Leadership has induced scholars to ascribe it to a series of non-representative – *i.e.*, non-democratically elected – institutions, including the Council of Guardians and the Judiciary⁴¹. If on the one hand this explanation is fully consistent with the practical development of political institutions in republican Iran, on the other it must be underlined that the *constitutional “narrative”* ascribes the legitimacy of the Leader *also* to a popular – religious – recognition or support, in so far as according to art. 5 the Leader must be «an honest, virtuous, well-informed, courageous, efficient administrator and religious jurist, *enjoying the confidence of the majority of the people as a leader*» (our emphasis). The public recognition inherent to *marğa ‘iyya*, then, acquired also a dimension of political representation, as if it could be one among many forms of “democratic” – or, better, representative – expression: a revolutionary one, of course.

³⁹ «The Council, indeed, does not pass judgements, but mandatory and biding opinions. Also because of this, the doctrine tends to identify the Council with a second political Chamber, appealed to intervene in the law-making process non just to verify the formal correctness of laws, but also to modify their content. However, as noticed by Iranian scholars, the Council of guardians carries out a different function with respect to what contemporary constitutions traditionally recognise to second Chambers, since it performs a more relevant role, halfway between a legislator and a constitutional judge» (*ibid.*, p. 77).

⁴⁰ Upon the Council of Guardians, with special reference to its role as organ of judicial and religious review, cfr. M. A. ANSARIPOUR, *The Role of the Council of Guardians in the Islamicization of Iranian Law*, «Yearbook of Islamic and Middle Eastern Law» 16 (2010), pp. 127–146.

⁴¹ Cfr., for instance, R. REDAELLI, *Constitutional Complexity and Political Paradoxes of the Islamic Republic of Iran*, «Oriente Moderno», 87/2 (2007), p. 483, who underlines the «clear distinction in terms of real power between elected bodies and those whose representatives are not chose by the people. The main contrast is between the two main figures of state: the President of the Republic, elected [...], and the Leader of the Revolution»; A. SCHIRAZI, *The Constitution of Iran*, cit., p. 16, who mentions «the contradiction between the democratic and the Islamic legalistic components of the Islamic Republic’s constitution»; M. PARGOO – S. AKBARZADEH, *Presidential Elections in Iran. Islamic Idealism since the Revolution*, Cambridge University Press, Cambridge-New York 2021, p. 4: «The political system is divided into elected and non-elected institutions. The president and parliament (*Majles*) are elected by the people. The other, perhaps more powerful institutions, are non-elected».

On a practical level, this recognition entailed the constitutionalisation and political institutionalisation of the revolutionary leadership of Ḥomeynī alone, since when he died his successor was not a *marḡa* – a circumstance that affected the constitutional amendment process in 1989. Given the almost undisputed charismatic impact of Ḥomeynī in the revolution, it is not surprise that the constituent Assembly of Experts constitutionalised his personal role by nominating him first Leader – following a praxis of constitutional incorporation of the leading person more ascribable to Caesaristic models than to contemporary Western and European Constitutions⁴². Art. 107 indicates the requisites a person must enjoy to become Leader: he must be «one of the jurists who fulfills [*sic*] the conditions mentioned in Principle 5 of the law» and be «recognized by a decisive majority of the people for leadership and has been accepted». This provision was modified in 1989: indeed, according to the formulation of artt. 107 and 109, only a *marḡa* could become Leader – art. 109, in its original version, required *marḡa* *’iyya*, «authority» in Ramazani’s English translation, among the «qualifications and attributes of the leader». As mentioned right above, when Ḥomeynī’s successor to the Leadership, ‘Alī Ḥāmene’ī, was appointed Leader in June 1989 – although before the enactment of the constitutional amendments – he was not recognised as a *marḡa*, but in any case, through the revision of the Constitution, such a requisite has been eliminated⁴³. Art. 107 states that, should there be no unanimous or majority popular support towards a *marḡa*, the choice of the Leader is assigned to a popularly elected body, the Assembly of Experts (*Maḡles-e Ḥobregān*, not to be confused with the constituent Assembly), whose election, number of members, and internal regulations are set by a law arranged by the Council of Guardians and approved by the Leader himself (art. 108). The presence of the new institutional figure of the Leader has deeply weakened the President as designed by the draft Constitution. Now, capital prerogatives the draft ascribed to the latter belong to the former: the appointment of the heads of the Judiciary; the command of the armed forces and the appointment of Commanders-in-Chief; the declaration of war; the granting of pardon; even the sanction of the presidential election and the dismissal of the President – at certain conditions – are incumbent upon him (art. 110.5), as well as the organisation of the High Council of National Defence. Finally, the six religious members of the Council of Guardians are designated by the Leader. Several among these powers and prerogatives are typical of Heads of State: in particular, the power of granting pardon and the command of the armed forces are widely recognised as traditional rights of monarchs – or as

⁴² Renowned documents recognising the personal role of specific persons are the Instrument of Government of 1653, whose art. 33 stated «That Oliver Cromwell, Captain-General of the forces of England, Scotland and Ireland, shall be, and is hereby declared to be, Lord Protector of the Commonwealth of England, Scotland and Ireland, and the dominions thereto belonging, for his life»; and the French Constitution of the Year VIII (1799), according to which Napoleon Bonaparte was appointed as First Consul (art. 39).

⁴³ Cfr. *infra*, ch. 6, § 3.

monarchical legacies in republican systems – in legal sciences⁴⁴. From a constitutional comparative point of view, therefore, the Leader is by far, more than the President, akin to a Head of State. He embodies the highest authority in the country, having more in common with constitutional monarchs – besides considerable powers, also a lifetime mandate – than with republican Heads of the State. All this, in a context in which the issue of the relationship between religious *élite* and political power is temporarily managed through a partial coincidence of the former with the latter⁴⁵.

Besides the powers conferred to the Leader, the President (part 1 of Chapter IX), who is labelled as «the holder of the highest official power next to the office of leader» (art. 113), has lost also the rights referred to in artt. 84 and 85 of the draft Constitution, hence he cannot reject a law and ask the *Mağles* to re-examine it. Likewise, the presidential power of dissolution of the Parliament via referendum is missing: indeed, a power of parliamentary dissolution is totally missing – creating so a patent disproportion in the arrangement of powers to the detriment of the President and to the benefit of the Parliament. Therefore, in the institutional system of the 1979 Constitution, the sole link between Legislative and Executive is represented by the parliamentary confidence the Government must enjoy. Another change of the provisions of the draft Constitution concerns the characteristics of the President: according to art. 115 of the 1979 Constitution, he «must be elected from among men of political and religious distinction»⁴⁶ – a requisite the draft did not envisage. The President is left with few, although important, duties: appointing the Prime Minister and the Ministers (artt. 124 and 133); signing laws and international treaties (art. 123 and 125); accrediting and nominating ambassadors

⁴⁴ Upon powers and prerogatives of Heads of State, cfr., from a general point of view, L. PEGORARO – A. RINELLA, *Sistemi costituzionali comparati*, cit., p. 479, according to whom «The list of powers constitutions around the world recognise to the head of State, whether monarchical or republican, is usually very extensive. Among the most common [...] there are: [...] being the commander-in-chief of armed forces [...]; granting pardons and commuting sentences». The institution of pardon is quite interesting for its monarchical derivation: on the topic, cfr. A. CENTONZE, *Il potere di grazia, la funzione sociale della pena e la rilettura costituzionale delle misure di clemenza individuale*, «Rassegna penitenziaria e criminologica» 2 (2009), pp. 5–7, who states that «The power of granting pardons to convicts was established, since the time of absolute monarchies, as a royal prerogative [...], the power of granting pardons remains alien to the transition of legislative powers from the authority of the monarch to Parliament, ending up being ascribed to an autonomous category of acts – defined with a formula that has been widely used over the centuries, namely “acts of royal prerogative” – that comprise a constitutional legacy of the powers of the absolute monarch in the 16th and 17th centuries, with respect to which the monarch itself is recognised as having full and exclusive entitlement. Among these acts of royal prerogative, an utterly central position is taken by pardon, which represents the most clemency-based institution that best reflects the vision of the State beneath absolute monarchy, being its most exemplary expression»; cfr., also, the paragraph «Clemency Is Typically Exercised by the Head of State» in D. PASCOE – A. NOVAK, *Executive Clemency. A Ubiquitous Part of the Constitutional Scheme*, in IDD. (eds.), *Executive Clemency. Comparative and Empirical Perspectives*, Routledge, Abingdon-New York 2021, pp. 15–16.

⁴⁵ Cfr. S. A. ARJOMAND, *The Turban for the Crown*, cit., pp. 180–183, according to whom «Khomeini’s attempt to subordinate juristic pluralism in the form of the voluntary submission of the Shi‘ite believers to the Grand Ayatollahs as *maraji‘-e taqlid* has been at the expense of the latter».

⁴⁶ Art. 115 of the Constitution talks about «*reğāl*» (lit. “distinguished men”, “dignitaries”), whose etymology derives from the Arabic word “*riğāl*”, which is the plural of “*rağul*”, (lit. “man” in the sense of “adult male person”). Even though legal scholars do not exclude that women can run for the Presidency, practically in the history of the Islamic Republic, women have always been denied to present themselves as presidential candidates, that is to say, the Council of Guardians has always rejected candidatures of women to the Presidency.

(art. 128); bestowing medals (art. 129). Nonetheless, he is not considered anymore the embodiment of national unity, as art. 75 of the draft Constitution led to think when recognising his function of political – and somehow symbolic – representation of the country. More than that, the 1979 Constitution does not explicit at all who is entrusted with such a function. Therefore, it is legitimate to ask: is it the Leader, or still the President? Anyhow, the section on the Government is almost identical to the draft Constitution: something which highlights the scarce importance of its institutional configuration, since it is the Presidency – more than the Council of ministers – and its relationship with the Parliament which mainly define the nature of the Executive. This was markedly clear with the Raġā'ī Prime Ministership, as seen in the next chapter.

Just like in the draft Constitution, armed forces are regulated in a section of the Chapter on the Executive, although now they fall under the political competence of the Leader. Many articles of the draft have remained untouched, but there are two main novelties. First, a new article has been introduced stating that «The Islamic Republican Army must be an Islamic army. It must be a popular and religiously educated army and it must accept worthy people who will be faithful to the goals of the Islamic Revolution and will be self-sacrificing in the attainment of those goals» (art. 144). Second, the military role of the IRGC is constitutionalised through art. 150: according to the text, the corps «will remain active in order to continue its role as the guardian of the revolution and its offshoots».

The norms regulating the Judiciary (Chapter XI) underwent profound changes as well. The composition of the High Council of the Judiciary has been modified, so that it comprises the President of the Supreme Court and the Attorney General – both appointed by the Leader pursuant to art. 162 –, and three *muġtahids* elected by judges (art. 158). Since for article 162 the two former has to be *muġtahids* as well, then the High Council of the Judiciary is essentially monopolised by Shi'ī religious. Notwithstanding its judicial competence, and besides the functions the Constitution vests it with following in the main the draft Constitution, it also has a power to initiate legislation (art. 157.2). The system of administrative justice has been maintained (art. 173), and a supervising organ called General National Investigative Organization, under the control of the High Council, has been established in order to oversee and preside the «proper conduct of affairs and correct legal procedure in the administrative systems» (art. 174). Finally, just like the draft, the 1979 Constitution is closed by a Chapter with a single article regulating the media: the right to and freedom of information are protected «according to Islamic principles», while mass media must be «supervised by a joint judicial (the Higher Judicial Council), legislative and executive body» (art. 175).

There is almost no need to say that the 1979 Constitution has created a very different system that that envisaged by the draft, and it is interesting to analyse in which terms and to what extents the form of government of the draft and that of the 1979 Constitution differ. If Iranian governmental drafters

had had little concern about the rationalisation of the form of government in Republican Iran, this is even more true for the constituent Assembly of Experts. Yet, given the presence of a Leader whose powers are so pervasive, one may wonder whether the category of “rationalisation” may be useful in this case, since the centre of the political life is not shared anymore between Parliament and Government, but is rather managed by the Leader himself through his own influence over the Judiciary and the Council of Guardians, and through his overall power of political direction. From a formal point of view, the form of government remains a parliamentary one – and indeed according to O. Roy even substantially the system created by the 1979 Constitution «s’inscrit par ailleurs dans la tradition des régimes d’assemblée»⁴⁷: the Government still needs the confidence of the *Majles*, but if possible it is an even less rationalised parliamentarism than that of the draft Constitution – due to decreased presidential powers discussed right above, and the complete absence of a power of parliamentary dissolution. The Constitution somehow keeps a form of dualism, in that the Government enjoys a “double” confidence, just like under the draft Constitution: the presidential through the appointment, and of course the parliamentary. But everything fades in front of the Leadership and, as already remarked, its almost monarchical powers. Nonetheless, if it is intriguing to compare the institutional architecture of the Islamic Republic to constitutional monarchies, this is also a risky endeavour that compels to engage in a careful analysis of the Iranian constitutional practice. Indeed, as stressed at the beginning of this chapter, one thing is the constitutional theory one can infer from a text, another thing is the constitutional praxis a whole institutional and political system develops throughout history. Hence, the very essence of the constitutional and political system in Iran can be understood only when considering its developments from the moment the Constitution was adopted onwards: that is to say, once the first President and the first Parliament were elected.

⁴⁷ O. ROY, *Une théocratie constitutionnelle : les institutions de la République islamique d’Iran*, «Politique étrangère» II/52 (1987), p. 327.

III. THE ISLAMIC REPUBLIC IN PRACTICE:
AN INSTITUTIONALLY SUSTAINABLE SYSTEM?

5. The 1979 Constitution in Practice: Inter-Institutional Relations and Constitutional Behaviour from 1980 to 1988

It is almost pleonastic saying that all political institutions develop through a series of relationships involving each one with the others. This chapter addresses precisely the topic of inter-institutional relations from 1980 to 1988 – from the first presidential election to the year preceding the death of Ḥomeynī –, using political history as main tool to understand the constitutional consolidation of the Islamic Republic that had been designed by the Constitution the Iranian people sanctioned in December 1979.

As remarked at the end of the previous chapter, a simple textual analysis of a Constitution, although useful, does not provide a full image of the constitutional and institutional system under scrutiny. Constitutions need to be applied; they live through a practice set by institutional and political actors – and Iran makes no exception. If on the one hand it is true that a determined formal Constitution conditions the political history of a country, on the other the very political events mould on a practical level the formal Constitution and institutions as well. How this double movement worked in Iran until the amendment of the Constitution in 1989 is precisely the subject of this chapter.

Before engaging in such analysis, however, it may be useful to make a short premise about what is “constitutional practice”. Under this broad concept, we group three phenomena, namely customs, conventions and praxis. Although sometimes “custom” and “convention” are used as synonyms¹, here they are differentiated in that “custom” is intended, in its technical legal sense, as a behaviour with binding nature owing to both an objective element, *diuturnitas* (its repetition over time), and a subjective element, *opinio iuris* (the general acknowledgement that it involves a legal obligation)². A

¹ In legal literature, a capital text such as G. MARSHALL, *Constitutional Conventions. The Rules and Forms of Political Accountability*, Oxford University Press, Oxford-New York 1984, p. 3, reports that «Constitutional conventions play a central part in the theory of British Government. A variety of names has been given to these non-legal rules of constitutional behaviour. ‘Maxims’, ‘practices’, ‘customs’, ‘usages’, ‘precepts’ and ‘conventions’ are some of them». According to M. CAVINO, *Convenzioni e consuetudini costituzionali*, in *Digesto delle Discipline Pubblicistiche. Aggiornamento*, UTET, Torino 2010, p. 49, «The successful elaboration made by the concept of Conventions of the Constitution in the British context persuaded the Italian doctrine (and more generally the continental European doctrine) to use the word conventions to define spontaneous processes of normative production regulating the relations among constitutional organs. The two concepts though cannot be overlapped».

² Customary law is one of the basic sources of international obligations, along with conventional law, that is, treaties. Customs are utterly important in the field of constitutional law as well, as they define and fill a normative space which has been more or less intentionally left empty, or blank, in the Constitution; cfr. M. CAVINO, *Convenzioni e consuetudini costituzionali*, in *Digesto delle Discipline Pubblicistiche. Aggiornamento*, UTET, Torino 2010, p. 49; G. CAVAGGION, *La formazione del Governo. Aspetti e problemi tra quadro costituzionale e nuove prassi*, Giappichelli, Torino 2020, p. 9: «Constitutional customs are generally defined as those unwritten sources arising from the prolonged repetition over time of practices not expressly provided for in the letter of the Constitution (material element) and from the widespread assumption among institutional and political actors that such practices would correspond to a binding legal norm (subjective element)»; for a broader theoretical framework, cfr. D. J. BEDERMAN, *Custom as a Source of Law*, Cambridge University Press, Cambridge-New York 2010, pp. 101–113.

“convention”, on the contrary, is a political and constitutional behaviour which enjoys a degree of cogency and persuasiveness – even shared among institution-holders or political actors – but nonetheless can be overcome in as much as it does not have a proper legally binding force³. Finally, here praxis means any kind of practice coming from political and institutional actors which does not have any legal content at all: just a simple behaviour.

As seen throughout the chapter, and besides the doctrinal rigidity this distinction inevitably entails – as in the case of every conceptualisation –, it is hard to define what is customary, what conventional and what mere praxis when studying constitutional practice in Iran. Sure enough, the bitterness of factional struggle among the political and institutional actors of the Islamic Republic made it difficult to create a common ground in which a consensual *opinio iuris* on constitutional matters – like, for instance, the formation of the Cabinet, the powers of the Prime Minister *vis-à-vis* the President, or the relations between Parliament and Council of Guardians – could fruitfully take shape. But this is not true for the Leader, at least during Ḥomeynī’s Leadership: his authority was so widely and deeply recognised that he himself was considered a living source of law – a feature deepened by *marḡa ‘iyya*. Nevertheless, as it will be seen, he did not try to set precedents or binding customs: rather, his efforts were always aimed at placating the bitter factional struggles all political actors of the Islamic Republic engaged in.

Bearing in mind these premises, the chapter is divided as follows. The first paragraph addresses the issue of the authority of the Leadership with respect to the Presidency. By arguing that the figure of the Leader can be related, to some extents, to that of the constitutional monarchs of 19th century Europe, the purpose is to define the Iranian form of State and form of government as products of a precise genealogy – the Orléanistic dualism that had entered in Persia via the 1906 Constitution rearranged by *velāyat-e faqih*. The second paragraph analyses the Banišadr Presidency from the election of the first *Maḡles* to the military invasion of the country by Iraq (September 1980), in order to define the kind of parliamentarism that was shaped by the 1979 Constitution. The issue of the causes and the happening of Banišadr’s impeachment forms paragraph 3, where some genetic and developmental dysfunctionalities of the Iranian institutional system are explained in terms of constitutional immaturity. Paragraph 4 synthetically discusses the main institutional and political landmarks of the first Ḥāmene’ī Presidency. Finally, in paragraph 5 are narrated the main institutional and political events from the election of the second *Maḡles* until the beginning of 1988, when

³ Constitutional conventions are, according to G. CAVAGGION, *La formazione del Governo*, cit., p. 10, «rules that institutional and constitutional actors give themselves, respecting them regularly throughout time on a completely voluntary basis, without this producing positive legal effects (in the form of obligations or rights related to the compliance to them) or negative legal effects (in the form of the existence of offence should they be violated)».

Ḥomeynī established the supremacy of the political rule, intended as “absolute guardianship”, over Islamic laws, paving the way for the restructuration of the Islamic Republic after his death. What results is a historical narration alternating typological analyses, through an integration of historiographic works, translated documents and speeches, and political and legal studies.

5.1. *Leadership and Presidency: a “Guardian Sovereign” Acting Like Constitutional Monarchs with Their Cabinet*

From January 1980 to June 1989, Iran saw three different Presidencies – an average of one President every three years –, while four Presidencies covered the period from 1989 to 2021 – an average of one President every eight years. This is one among other kinds of evidence highlighting the overall difference in the constitutional, institutional and political system in Iran before and after 1989: a difference that has led P. L. Petrillo even to talk about the existence of «two Islamic Republics: the first, which started with Khomeini and ended with his death [...]; the second, born in 1989, under the new Leader, Ali Khamenei»⁴. As to the history of the Presidency, the 25th of January of 1980, Abolḥassan Baniṣadr was elected first President of Iran, but he had to resign just one year and a half later, after a struggle with the *Mağles* and the Judiciary both dominated by the IRP. His successor, Moḥammad-‘Alī Rağā’ī, who served as Baniṣadr’s own Prime Minister – imposed by the IRP –, stayed in office one month, winning the election on the 24th of July 1981, swearing the 2nd of August, and being killed in a terrorist attack the 30th of August. The last President during Ḥomeynī’s Leadership was ‘Alī Ḥāmene’ī, whose term ended precisely because he was designated as Ḥomeynī’s successor by the Assembly of Experts after Ḥomeynī’s death in June 1989.

As a layman close to Ḥomeynī trained in law, sociology, and theology, who had studied economics at the Sorbonne too and had acquired popularity during the revolution, the figure of Baniṣadr well represents the composite nature of the revolutionary front and the presence of other potentially strong political cultures besides clerical Islamism within it⁵. His unfortunate political parabola conditioned the constitutional development of the Presidency far beyond his abridged term in office. Politically and institutionally, both the election and the Baniṣadr Presidency were clue moments in the genetic definition of the new-born regime – not only with respect to the relationship

⁴ P. L. PETRILLO, *Iran*, cit., p. 43. Besides the physical presence of Ḥomeynī, the “first” Islamic Republic is different from the “second” one due to other factors: the post-revolutionary adjustment of the regime, proved by, among other things, the *tourbillon* of Presidents in 1981; the war with Iraq (1980-1988); and the 1989 constitutional amendments.

⁵ The personal figure of Baniṣadr is described in, among others, H. DABASHI, *Theology of Discontent*, cit., pp. 367–408, who makes mainly a doctrinal analysis; S. BAKHASHI, *The Reign of the Ayatollahs*, pp. 92–97; N. R. KEDDIE, *Modern Iran*, cit., pp. 208–212. Cfr. also references in note 6.

between Presidency and Leadership. Soon after the constitutional referendum of early December 1979, Ḥomeynī forbade clerics to present themselves as presidential candidates: a heavy prohibition that mainly hit the IRP, which eventually had to nominate an almost unknown Ḥassan Ḥabībī as its own candidate. Although deprived of a structured party backing him, the charismatic figure of Banišadr – son of a cleric and faithfully devoted to Ḥomeynī, seen as Ḥomeynī’s own presidential candidate – was undisputable, as the results of the election showed: Banišadr was elected in the first round with 73% of the cast vote. His main competitor, Admiral Aḥmad Madanī, also ran as independent, reaching 15,9% of votes; Ḥabībī, on his part, reached just 4,8% – a harsh blow for the IRP. The 4th of February, Banišadr swore in the hands of Ḥomeynī, thus beginning his presidential term⁶. In a discourse that addresses the topic of the interaction between President and Leader, a helpful starting point might be the appointment decrees Ḥomeynī issued the very day of each presidential oath. With regard to the constitutional arrangement of the powers ascribable to the different constitutional organs, it is interesting to notice that, just like in the case of the Provisional Government, Ḥomeynī derived the legitimacy of the Presidency from two sources: the popular will on the one hand, and the assent of the Supreme *faqīh* on the other. Therefore, in 1980 Ḥomeynī’s statement was the following:

On the basis of the absolute majority of the noble nation that has voted for Dr. Sayyid Abul-Hasan Bani-Sadr to the office of the presidency of the Islamic Republic of Iran, and on the basis its legitimacy to it should be accorded by a jurispudent, qualified with all the needed conditions. Hence, *I accordingly put the voted opinion of the nation into force by this ordinance*. I appoint the above named gentleman to this office. His appointment by me and by the opinion of the Muslim nation of Iran depends upon his obedience to the sacred commandments of Islam and the Islamic constitution of Iran⁷.

As seen further down – when discussing the relationship between Presidency and Parliament and analysing the causes of Banišadr’s impeachment –, Banišadr’s own term prematurely ended the 22nd of June of 1981. After his dismissal, a new presidential election was immediately arranged, although in a grave climate: the 28th of June a terrorist attack hit the IRP headquarters, where many members of the party were gathered. Some 74 people were killed, including Moḥammad Beheštī – then Head

⁶ Upon the first presidential election, cfr. M. PARGOO – S. AKBARZADEH, *Presidential Elections in Iran*, cit., pp. 44–51; S. BAKHASH, *The Reign of the Ayatollahs*, pp. 88–91; S. RANDJBAR-DAEMI, *The Quest for Authority in Iran. A History of the Presidency from Revolution to Rouhani*, I.B. Tauris, London-New York 2018, pp. 20–22; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 173–174; M. AYATOLLAHI TABAAR, *Religious Statecraft*, cit., pp. 149–150. Figures of the vote in R. KAUZ – H. KHOSRAVI SHAROUDI – A. RIECK, *Iran*, p. 75; those in M. BOROUJERDI – K. RAHIMKHANI, *Postrevolutionary Iran*, cit., pp. 84–85, are slightly different because these authors have considered invalid votes in the overall percentage.

⁷ The text in *Šahīfeh-ye Imam*, 12, pp. 118–119. Our emphasis.

of the Supreme Court and Secretary general of the IRP –, governmental figures, and several *Mağles* representatives⁸. Despite this huge blow, the presidential vote was carried out, and the 24th of July Rağā'ī managed to secure almost 13 million votes, that is to say 91% out of more than 14 million and a half⁹. As to the appointment decree, after having recalled the troubled background of Rağā'ī's election to the Presidency, Ḥomeynī specified that

Since the legitimacy of his presidency should be confirmed by *wali-ye faqih*, I hereby confirm the noble nations vote and declare him President of the Islamic Republic of Iran. This appointment and confirmation will remain in force as long as he moves in line with the dear Islam, follows its sacred rules, obeys Irans [*sic*] Constitution, works diligently to secure the interests of the country and the noble nation within his legal jurisdiction, and does not violate divine orders and the Constitution. If God-forbid, he acts on the contrary, I will strip him of this legitimacy¹⁰.

Yet, the most sorrowful and gravely written decree would be that confirming Ḥāmene'ī's election, issued the 9th of October of 1981. Indeed, in late August, the newly elected lay President and his Prime Minister, Moḥammad-Javād Bāhonar, were the target of another bombing that hit the latter's offices, in the second gravest attack to the leadership of the Islamic Republic within one month: both Rağā'ī and Bāhonar died. Constitutionally, in appointing Ḥāmene'ī – who himself had survived a failed assassination attempt on the 27th of June –, Ḥomeynī used almost the same formula as for the previous confirmations:

Following the noble Iranian nation and in view of the status of the respectable thinker and scholar Hujjat al-Islam wal-Muslimin Aqa Sayyid Ali Khamenei – may God Almighty assist him – I confirm the nations [*sic*] vote and appoint him as the president of the Islamic Republic of Iran. The vote of the Muslim nation and its confirmation will be in effect as long as he is committed to serve Islam, the oppressed people and adhere to the rule of the Quran, “*They are hard on unbelievers and merciful among themselves*” as he has been so far, and does not deviate from the straight path of humanity and Islam. At this critical juncture [...] it is necessary that the president runs the affairs in a harmonious and Islamic way with the help of everyone in the Islamic Republic and with the endeavor of others so that they can leave no room for ill-wishers¹¹.

The last decree emanated by Ḥomeynī in this regard was that of Ḥāmene'ī's re-election in August 1985. Although the political panorama had witnessed a deep transformation across the first full

⁸ S. BAKHASH, *The Reign of the Ayatollahs*, cit., p. 219, says that «The bomb killed the secretary general, Mohammad Beheshti, four cabinet ministers, six ministerial undersecretaries, twenty-seven parliamentary deputies, and several other party and government officials»; cfr. also M. AXWORTHY, *Revolutionary Iran*, cit., p. 214; B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 77–79.

⁹ R. KAUZ – H. KHOSRAVI SHAROUDI – A. RIECK, *Iran*, cit., p. 75. Cfr. *infra*, note 58.

¹⁰ *Ṣaḥīfeh-ye Imam*, 15, p. 60.

¹¹ *Ibid.*, p. 241.

presidential mandate, the core of the confirmation decree was almost identical to the previous ones: the people's vote and the confirmation of the Leader were both required.

Now in pursuance of respected votes of the honorable people and acquaintance with a committed and serving authority, Hujjat al-Islam Sayyid Ali Khamenei, [...] I confirm the votes of people after the termination of the present term and appoint him as president of Iran [...]. Of course, people's vote and my confirmation persists [*sic*] as long as he remains committed to the straight path he has taken up and to Islam and its brilliant laws, siding with the oppressed and deprived people and combating the oppressors, tyrants and arrogant powers, never compromising with arrogant oppressors, as he will not¹².

Despite the difference among the contexts of these four moments, an institutional point remains unchanged: that is, the Leader's appointment operates, according to the Leadership itself, as complementary to the popular vote. The latter is uncomplete without the former, and the former cannot be bestowed without the latter. As said above, *mutatis mutandis*, this dualism may recall that typical of 19th century constitutional monarchies which foresaw the double confidence – both monarchical and parliamentary – to legitimise the Cabinet¹³. Indeed, more than the classic dualism concerning the Government, another dualism comes into play in Republican Iran, namely the double “confidence” the President is subject to: from the people and from the Leader. Using a simplistic formula, the Presidency in Iran is to Cabinets in constitutional monarchies like the Leader is to constitutional monarchs; while the Iranian electorate is to Parliaments in constitutional monarchies like the President in Iran is to Governments in constitutional monarchies. The comparison with constitutional monarchies – in particular, with post-1848 constitutional monarchies – can be upheld recalling, by way of example, the famous phrase of Italian royal laws, according to which the kingship was legitimised “By the Grace of God and the will of the Nation”: how can the Iranian institutional system be defined, as to its legitimation, if not by the grace of God – coming from the Leader – and the will of the Nation – expressed through parliamentary and presidential votes? Therefore, more than underlying the strangeness of the Iranian institutional and constitutional framework as – in the words of H. E. Chehabi – «a very odd mixture of democratic, authoritarian, and totalitarian elements»¹⁴, or

¹² *Şahifeh-ye Imam*, 19, p. 335.

¹³ M. VOLPI, *Libertà e autorità*, cit., p. 107: «The most persuasive criterion for distinguishing between monism and dualism refers to the *legitimation of the organs* that are at the apex of the executive and legislative power. [...] In *dualistic* forms of government the two top executive and legislative organs have a different legitimation».

¹⁴ H. E. CHEHABI, *Provisional government in Iran*, cit., p. 143. Cfr. also P. ABDOLMOHAMMADI – G. CAMA, *Contemporary Domestic and Foreign Policies of Iran*, Palgrave Macmillan, s.l. 2020, pp. 53–67, who feature the Islamic Republic as a «peculiar hybrid regime», in so far as «despite the *prevailing authoritarian context*, [it] allows *some limited and particular room for political competition*. This is especially clear during presidential and parliamentary elections. [...] In fact, there are some significant differences between the manner in which Iranian electoral competition is managed

better, using this strangeness as an analytical point of departure rather than of arrival, we dare to say that the Iranian form of government can be better understood, although with a high degree of caution, by comparing it with European constitutional monarchies of the 19th century¹⁵. In republican Iran, the President is legitimised both by the people and by the Leader, the former by choosing the President through the vote, the latter by acting as guarantor of the Islamic order on account of *marḡa ‘iyya* and by carrying out a religious control over presidential acts – just like the legislation is legitimised both by parliamentary representation and by the judicial and religious review of the Council of Guardians. There is an inherent duality in the Iranian constitutional framework, and the Leader can be seen, then, as a sort of «guardian sovereign», borrowing the synthetic definition wherewith L. Mannori describes the evolution of the State apparatus in the Grand Duchy of Tuscany (“*sovrano tutore*” in Italian) throughout the modern era¹⁶. Despite the fact that Mannori addresses mainly the administrative dimension of the guardianship role of the Tuscan central State, hypostatised in the figure of the Grand Duke¹⁷, the key concept of “guardian sovereign” can be retained and modified for the present discourse in as much as the Iranian Leadership essentially carries out a task of political and institutional guardianship – and not by chance one of the translations of “*wilāya*” is precisely “guardianship”. Seen under this light, the most fitting definition for the Iranian forms of State and government may be that of O. Roy, who labels Iran as a «théocratie constitutionnelle», meaning by that that the Islamic Republic in Iran is a «régime autoritaire d’assemblée se réclamant d’une

and that of other Middle Eastern and North African authoritarian political systems, and it is these characteristics which make the Iranian political system so *distinct*» (our emphases).

¹⁵ Cfr. D. GOSEWINKEL, *The Constitutional State*, in H. PIHLAJAMÄKI – M. D. DUBBER – M. GODFREY (eds.), *The Oxford Handbook of European Legal History*, Oxford University Press, New York 2018, pp. 963–964: in post-1848 Constitutions «the monarch was not sole *pouvoir constituant* or only *pouvoir constitué*. This type included not only the pre-revolutionary Belgium constitution of 1831 and the authoritarian Bonapartist constitutions of France from 1852 and 1870, which proclaimed the ‘delegation’ of powers to the head of state Louis Napoléon by the people and by their will. Also the Statuto Albertino, the Italian constitution of 1848 which had at first referred to the monarch as ‘King by the grace of God’, was modified when it became the overall constitution of the new Italian national state in 1861 and the basis for the monarch’s legitimacy: the Italian king Vittorio Emanuele was now declared to be king of Italy ‘by the grace of God and the will of the Nation’. Common to these constitutions was that they strengthened popular participation in political will-formation. Above all, they strengthened the primacy of parliament in the legislature. Even if, as in the French post-1848 Bonapartist constitutions, the executive dominated, it required plebiscitary legitimation through the universal, equal (male) suffrage inherited from the Revolution».

¹⁶ See L. MANNORI, *Il sovrano tutore. Pluralismo istituzionale e accentramento amministrativo nel principato dei Medici (secc. XVI-XVIII)*, Giuffrè, Milano 1994, *ad indicem*.

¹⁷ Mannori notes «the spread of a new technique of local government, which was destined to survive in its broad features even up to the apogee of the liberal State: and consisting in the assumption in care, by the centre, of a large number of new social interests through the continuous control and direction of intermediate bodies, to which the real burden of the corresponding activity is integrally left. The relationship between the centre and the periphery thus tends to be defined along the lines of a guardianship relation: in which the community, while witnessing a continuous increase in the number of its tasks, is not deemed capable of managing them on its own, and is therefore obliged to seek validation from the central authorities each time. The Tuscan legal system offers an interesting profile of this model: by showing how the preservation of a markedly pluralistic institutional structure is by no means incompatible with a resolute administrative centralization as soon as the centre, having affirmed the minor nature of the *civitas*, has succeeded in gathering into its own hands all the ‘ability to act’ that was previously dispersed among the thousand intermediate bodies of its State» (*ibid.*, p. 139).

légitimité religieuse incarnée dans la personne de l'imam [Ḥomeynī], mais où l'exercice du pouvoir de l'imam, loin d'écraser les institutions et de les vider de leur substance, ménage au contraire un espace du politique, dont l'Assemblée est l'expression»¹⁸. This phrase – “constitutional theocracy” – is less precise than that of P. L. Petrillo – the Iranian form of government «as a “presidential” type although with a duumviral management (Supreme leader and president of the Republic)»¹⁹ –, but it catches one essential feature of inter-institutional relations within it: just like the phrase “constitutional monarchy” refers to parliamentary systems where the monarch has powerful prerogatives, if not the control of the Executive²⁰, similarly a “constitutional theocracy” has a degree of democratic participation in a formally parliamentary system, but the general political direction is firmly controlled by a religious jurist. By upholding this comparison with constitutional monarchies, one may argue that the Leader of the Revolution can be considered as the institutional space where two traditions met. First, the republican transposition of the Orléanistic trace mentioned above, when talking about the monarch in the 1907 SFLs and the President according to the Iranian draft Constitution²¹; and secondly, the doctrine of *velāyat-e faqih*. If, as already stated, the President moulded by the draft Constitution was the republican avatar of the 1907 SFLs' Šāh – although in a formal context of a liberal democracy –, the transposition of many of its prerogatives to the Leader made by the Assembly of Experts “crowned” the latter by making him the real sovereign, in a fashion very similar to that of European constitutional monarchs in the 19th century – in terms of powers, legitimacy and mandate. Being the Leader, though, a religious jurist, and being Iran a Republic, it is not a “constitutional monarchy”, but rather a “constitutional theocracy”. Nevertheless, this definition fails to describe, even to the least extent, the dynamics of Iranian parliamentarism.

Notwithstanding, it must be noted that at first, during the Banišadr Presidency, Ḥomeynī sought to somehow “de-presidentialise” or “de-monarchise” the Leadership by conferring the presidency of the CIR (7th of February) – which acted as a *pro tempore* Parliament in anticipation of the convening of the first elected *Mağles* – and the command of the armed forces (19th of February) to Banišadr

¹⁸ O. ROY, *Une théocratie constitutionnelle*, cit., p. 327.

¹⁹ P. L. PETRILLO, *Iran*, cit., p. 62. Even this definition does not encompass the peculiar complexity of the Iranian institutional framework.

²⁰ «The constitutional monarchy is a *dualistic* form of government, since it is established upon the separation between the executive power of the King and the legislative power of Parliament, both enjoying a separate legitimation. But there is no real balance among powers. Indeed the King holds *prerogatives*, that is to say, powers of his own coming from his position at the top of the State through which he participates to the exercise of the legislative function (by sanctioning laws) and the judicial (nominating judges and being entrusted with the grant of pardon and reprieves). [...] Ultimately the King is the real holder of the political direction, but this does not entail a marginal role of the *Parliament*» (M. VOLPI, *Libertà e autorità*, cit., p. 117). In Parliamentary monarchies, rather, «the king keeps performing an important role, participating to the determination of political direction along with the Government, although in a position of either adversarial or cooperative balance with a Parliament which holds not only the legislative power, but also a power of political control over the executive» (*ibid.*, p. 119)

²¹ See *supra*, ch. 2, §2; ch. 4, § 2.

himself²². Thus, Banišadr added up to two positions within a body of constitutional importance, namely the High Council of National Defence (*Šurā-ye ‘Āli-ye Defā’-e Mellī*, also known as “Supreme Defence Council”), being its member as President of the Republic and presiding it as its chairman (cfr. art. 110 Cost. 1979). Nonetheless, as highlighted by S. Zabih, Ḥomeynī maintained his grip on military institutions via the «Organisational pattern» of the army, since the Constitution grants the Leader the power of nominating two representatives or advisers of his own within the High Council of National Defence²³ – and in any case his charismatic authority, besides his formal constitutional role, fully permeated the process of Islamisation and indoctrination of the army²⁴.

5.2. *The Banišadr Presidency, the Rağā’ī Prime Ministership and the First Mağles: the Ordained Anarchy of an Assembly System*

The delegation of powers from the Leadership to the Presidency brings into play an unavoidable institutional issue the Islamic Republic in Iran had to deal with from the very beginning of its existence, and upon which the experience of the Banišadr Presidency had long-lasting consequences. This issue, which can partially solve the incompleteness of the phrase “constitutional theocracy”, may be summed up by the following question: besides the Leadership – hence, with regards to the relationship between Parliament and Executive –, was the Iranian constitutional framework more parliamentary or more presidential? In a writing from 1987, O. Roy shows no doubt: «La Constitution prévoit un régime d’Assemblée»²⁵, he states when discussing “The institutions according to the Constitution” of the Islamic Republic. Leaving behind the theoretical issue concerning the conceptual scope of the phrase “assembly regime” – for which a good, although problematic, definition could be that of A. Le Piouller, who says that in legal and political literature the concept of “assembly regime” «évoque une catégorie de régimes *distincte des régimes parlementaire et présidentiel* et, d’autre part,

²² Cfr. S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., pp. 22–23, part. note 14 (p. 278): as to the Commandership-in-Chief, «Rafsanjani notes that Khomeini had initially asked the trio [Rafsanjānī himself, Ḥāmene’ī and Beheštī] to devise a list of three or four candidates which should take up the position [of Commander-in-Chief] in a collegial way. The clerical leaders of the IRP responded by stating that a single person was better suited for the commandership in chief of the armed forces and Bani-Sadr was a natural choice»; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 174–175. The text of the 19th of February decree in *Šahīfeh-ye Imam*, 12, p. 136.

²³ See S. ZABIH, *The Iranian Military*, cit., p. 147: «Even though Khomeini, as C-in-C, has delegated that authority to the President, it is important to note that his personal representatives as well as those of the SDC [Supreme Defence Council] are present at the operational area level further to consolidate his hold on the military».

²⁴ Cfr. *ibid.*, pp. 136–163.

²⁵ O. ROY, *Une théocratie constitutionnelle*, cit., p. 330. What the quoted author means by “assembly regime” is easy to explain: for him in Iran «Le Parlement est extrêmement puissant, puisqu’il dispose non seulement du législatif, mais empiète sur l’exécutif (il peut refuser la nomination d’un ministre) et sur le judiciaire (une commission du Parlement sert de cour d’appel pour les plaintes contre l’administration). *Le Parlement est donc le véritable lieu du pouvoir politique*» (*ibid.* Our emphasis). Cfr. also P. L. PETRILLO, *Iran*, cit., p. 74, who states that the «Iranian constitutional system [...] blends charismatic leadership and assembly regime».

distingue cette catégorie des deux précédentes notamment *par le fait que l'Assemblée législative y occupe une place prépondérante par rapport aux autres organes*»²⁶ –, Roy's statement on the Iranian institutional framework raises several points. First of all, as remarked above, it is true indeed that, compared both to the draft Constitution and the 1958 French Constitution, the Iranian charter has modelled a weaker Presidency facing a stronger Parliament – in terms of Legislative-Executive relations. Nonetheless, there can be a question as to whether the constitutional provisions *alone* were sufficient to define the Iranian institutional system as an assembly one – and the extensive reference of authors to the 1958 French Constitution as a model is an analytical clue towards a negative answer, although it might simply conceal a kind of analytical carelessness. As said, Roy was writing the quoted text seven years after the election of the first republican *Mağles*, at a time when the constitutional praxis had already been set. Perhaps, the most proper statement that can be made about this issue is that, textually, the 1979 Constitution provided for a *formally dualistic parliamentary system that had all the potentiality to degenerate into an assembly one*. There is no doubt that many constitutional stipulations – like the confidence not just the Prime Minister or the Council of ministers as a whole, but also each minister had to enjoy, or the absence of a presidential power of dissolution of the Parliament – contributed to shape a strong Parliament. But the formal dimension of the Constitution still needed to be modelled on a practical level. It is at this level that Iranian parliamentarism degenerated into an assembly system. A degeneration the Banişadr Presidency would contribute to form, although against the first President's own will. Reviewing the political history of the Islamic Republic may help in elucidating this point.

After the presidential election of January 1980, legislative elections were to be arranged. The first point that needed a settlement was the electoral law for the *Mağles*. While for the President the Constitution determines a majority system with a potential two-round ballot should no candidate achieve the absolute majority of votes in the first turn (art. 117), as to Parliament art. 62 refers to a «separate law» that was to be adopted in order to determine «Conditions affecting eligibility of voters and candidates, as well as voting procedures». This task was undertaken by the CIR, and it led to the

²⁶ A. LE PILLOUER, *La notion de « régime d'assemblée » et les origines de la classification des régimes politiques*, «Revue Française de Droit Constitutionnel» 58/2 (2004), p. 308. The issue, though, is further complicated by the fact that, as stated by the author, who takes into account the French literature on this topic, there is an «indétermination de la notion de "régime d'assemblée"» (*ibid.*, p. 309), and he arrives as far as to proclaim the «Inutilité scientifique de la notion» (*ibid.*, p. 318). To sum up roughly, the concept of "assembly regime" is essentially more prescriptive than descriptive: «Le concept de "régime d'assemblée" permet en effet [...] : d'une part, de porter une appréciation globale sur un certain nombre de régimes ; d'autre part, de justifier (ou de critiquer) des règles ou des institutions très précises. Quant au premier point, l'utilisation la plus élémentaire du concept de "régime d'assemblée" consiste à jouer de sa connotation très péjorative pour porter, par le simple classement de tel ou tel système politique concret dans ou hors de cette classe, un jugement de valeur sur ledit système. Le seul fait de ranger dans cette catégorie tel régime concret revient en effet à l'accuser sinon de confondre les pouvoirs au profit de l'organe législatif, du moins d'attribuer à ce dernier des compétences démesurées» (*ibid.*, pp. 330–331).

promulgation of the electoral law in early February 1980. Just like for the Presidency, the law borrowed many features, as to the electoral system, from the French 5th Republic – basically, a majority system with a potential runoff. The country was divided into 193 electoral districts – from 2000 onwards they are 207– in which candidates had to compete for absolute majority of votes; in case this majority was not attained in the first round, a runoff would occur between the two most voted candidates. In districts with more than one seat, each voter cast as much votes as seats. To be eligible, candidates had to be Iranian citizens, at least 25 and no more than 80 years old, be literate, and with moral, religious and revolutionary good credentials. There were clear political reasons behind the choice for a two-round majority electoral system, a choice that went far beyond the fascination for the French institutional framework. The IRP intended to capitalise the support coming from its widespread network within society, profiting also from the scarce popular endorsement the other parties enjoyed. It is not surprise that many other political actors censured the electoral law, calling for a proportional representation²⁷. Yet, the appropriation by clerical Islamists of the parliamentary political space through the electoral law was not confined to the majority system. The law, indeed, devised a two-stage mechanism for controlling candidacies, to be carried out – in the absence of the Council of Guardians – by executive committees and supervisory committees. The whole process was basically controlled by the minister of interior – then chaired by Rafsanjānī – and the CIR, and it was intended, as stated by B. Baktiari, to «exclude any opposition candidate who may have been strong enough to pose a challenge»²⁸. This approach proved effective, as in the general election of the 14th of March (first turn) and the 9th of May (runoff) of 1980, the IRP and its allies – first and foremost the Combatant Clergy Society (*Ġāme'e-ye Ruḥāniyat-e Mobārez*, abbr. “JRM”), whereof many members were part of the IRP as well, and the MIR – gained 130 seats upon 270, but only 216 were immediately filled²⁹. Just like the election of the Assembly of Experts in 1979, even

²⁷ Upon the electoral law, cfr. B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 63–64; Y. ALEM, *Duality by Design: The Iranian Electoral System*, ISEF, Washington, D.C. 2011, pp. 32–33. In the words of M. AXWORTHY, *Revolutionary Iran*, cit., p. 180, the electoral «procedure was criticized (by Bani-Sadr among others) for favouring the IRP and tending to exclude candidates from smaller parties».

²⁸ B. BAKTIARI, *Parliamentary Politics in Iran*, cit., p. 65; on these committees, cfr. *ibid.*, pp. 65–67.

²⁹ The figures presented in historical and political literature are not that clear: according to R. KAUZ – H. KHOSRAVI SHAROUFI – A. RIECK, *Iran*, cit., p. 74, upon 270 seats, 85 went to the IRP, 45 to IRP allies, and 140 to independents. S. BAKHASH, *The Reign of the Ayatollahs*, cit., p. 105, affirms that «Of the 241 seats decided, IRP candidates won 85 seats and IRP affiliates perhaps another 45. In practice, an even larger number of deputies, many unaffiliated representatives from small provincial constituencies, tended to vote with the IRP on critical issues. Bani-Sadr's own supporters won only a handful of seats»; cfr. also D. HIRO, *Iran under the Ayatollahs*, cit., p. 157. As said, not all seats were filled immediately. B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 68–70, is more precise, although numbers do not completely check out, as he says that «By the end of June 1980, the ministry of interior announced that 97 were elected in the first round, and 145 in the second round. [...] In the second round, 137 were elected, bringing the total to 234 out of 270. The supervisory committees cancelled elections in 24 districts, which together amounted to 28 seats. [...] After more changes, annulment, and suspensions, the number of deputies present for the first year of the Islamic Majles was 216. [...] In the end, the Islamic Majles had only 216 deputies out of the 270 designated by the constitution. The provinces with vacant seats were East Azerbaijan (7), West Azerbaijan (7), Kurdistan (5), Khorrasan (4), Kermanshahan (4), Kerman (4),

this time electoral procedures were marked by accusations of several kinds of manipulation: preventive gerrymandering; circumvention, via Friday preachers, of regulations concerning the electoral campaign in State broadcast media; fraud³⁰. The turnout, 51,1%, was significantly lower than that of the 1979 March and December referendums (about 90% and 70% respectively), and the first Presidential election (67,4%). This is a meaningful trace as to the degree the Iranian people felt represented by the then prevalent political proposals. To stress even more this hiatus in the political representation, it can be reminded that after the runoff undesired figures who could counter with the IRP were excluded from the *Mağles* through the refusal of their credentials: this was the case, for instance, for Aḥmad Madanī – the second most voted presidential candidate in the January election – and Karim Sanğābī – former minister of foreign affairs under Bāzargān³¹.

The newly elected Assembly first convened on the 28th of May, and when enough credentials to reach the *quorum* were confirmed it started its works, on the 10th of June. Rafsanğānī was elected Speaker with a broad majority, and the Assembly itself changed its own name by adding the attribute “Islamic”³², while Banişadr took the presidential oath, as provided for by art. 121 of the Constitution, in front of representatives. In the early summer of 1980, then, the two institutions constitutionally entrusted with nominating and granting the confidence to the Executive – Presidency and Parliament respectively – were in power. At this point, it was a matter of surmise what their mutual relations ought to be and shape a constitutional practice accordingly. Sure enough, there was no desire for institutional fairness, let alone cooperation. The Gordian knot both the President and the clerical Islamist parliamentary majority yearned for cutting concerned the choice of the Prime Minister and the formation of the Executive. Banişadr, in order to pre-empt any move of the *Mağles*, proposed several ministerial candidates: Aḥmad Ḥomeynī, but this choice clashed with the Leader’s unwillingness to compromise his own son³³; Ḥassan Ḥabibī, who nonetheless was informally rejected; and finally, Moştafa Mir-Salim, a distinguished IRP member the President had already worked with. Mir-Salim, indeed, was part of a list the IRP’s daily newspaper, *Ğomhurī-ye Eslāmī*,

Khuzistan (3), Sistan and Baluchestan (3), Isfahan (2), Tehran (2), Fars (2), Gilan (2), Hamadan (2), Lorestan (1), Hormozgan (1), Ilam (1), Buyerahmad (1), Zanjan (1), and religious minorities, Jewish (1)»; still the final amount is 52 vacant seats, which means 218 filled seats.

³⁰ Cfr. B. BAKTIARI, *Parliamentary Politics in Iran*, cit., p. 68; S. BAKHASH, *The Reign of the Ayatollahs*, cit., p. 105, reports that «At the end of the first round, the Mojahedin, the NF, and several other parties charged election fraud. Khomeini’s brother, Morteza Pasandideh, claimed the IRP had tampered with the vote in the family hometown of Khomain»; similarly, M. AXWORTHY, *Revolutionary Iran*, cit., p. 181, says that «there were [...] accusations of rigging, intimidation and manipulation».

³¹ B. BAKTIARI, *Parliamentary Politics in Iran*, cit., p. 70; S. BAKHASH, *The Reign of the Ayatollahs*, cit., p. 105; M. AXWORTHY, *Revolutionary Iran*, cit., p. 181.

³² B. BAKTIARI, *Parliamentary Politics in Iran*, cit., p. 70.

³³ Cfr. *Şahifeh-ye Imam*, 13, p. 51: in a letter dated June the 22nd, the Leader replied to the President’s request to nominate his own son Aḥmad Prime Minister by saying that he did «not intend to permit my close relatives to occupy such offices. Ahmad is the nation’s servant and at this stage he will have the freedom to serve better».

had published including other few figures the party considered suitable candidates to the Prime Ministership. Though, neither Banišadr nominated Mir-Salim, nor the Parliament cast a vote of confidence for him: at the end of July, the President was simply told by the IRP that his choice, whatever it might be, was not to be accepted. Eventually, Banišadr was forced to acquiesce in the clerical Islamists' nominee, that is to say, Moḥammad-‘Alī Raḡā’ī – a former school teacher who had had youth sympathies towards the FeK, then had joined the FMI, and in the early '60s had become a close associate of Bāhonar. The battle over the Prime Ministership was made even harsher by the grim political climate of that summer, which witnessed an attempted military *coup* foiled by the new-born regime³⁴. The discovery of the scheme and the management – via purges, summary trials and executions – of its perpetrators crossed the selection of the Prime Minister, and the 11th of August – that is to say, barely one month after the *putsch* had been thwarted – Raḡā’ī received the parliamentary confidence, with 153 votes out of 196³⁵.

As first precedent of a constitutional practice that needed to be fully set, Raḡā’ī’s appointment to the Prime Ministership marked the first passage of the Iranian institutional system towards an assembly regime. Per se, the procedure of his nomination was not anti-constitutional. As it can be understood by the premise at the beginning of the chapter, for the formation of the Government the Constitution, through artt. 124 and 87, did not provide for a fixed practice to be implemented: rather, it left institutional actors to set it³⁶. Reading the Constitution, the right the President enjoys in nominating the Prime Minister is by all means preliminary to the vote of confidence the *Maḡles* carries out, and indeed this was what happened at a formal level with Raḡā’ī. *In practice*, though, it was the *Maḡles* that preliminarily imposed the Prime Minister on Banišadr, in an effort to establish, if not a constitutional custom, at least a convention recognising its own prominence over the Presidency in this matter. The institutional conflict between President and Parliament – which was, all things considered, also a deeply ideological and personal conflict³⁷ – was unravelled, then, at a

³⁴ The attempted coup, which involved among others the last imperial Prime Minister Baḥtiār, is described by S. ZABIH, *The Iranian Military*, cit., pp. 123–126; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 184–186; S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 117–120; D. HIRO, *Iran under the Ayatollahs*, cit., pp. 156–157.

³⁵ Upon the struggle over the first Prime Minister’s nomination and on the figure of Raḡā’ī, cfr. S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., pp. 26–29; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 181–183; B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 73–74; S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 106–107; D. HIRO, *Iran under the Ayatollahs*, cit., pp. 161–162.

³⁶ Constitutional provisions in this regard are as simple as meagre: art. 124 states that «The president will nominate a person as prime minister and after obtaining a vote of endorsement from the National Consultative Assembly, he will issue the oath of office to the prime minister»; while for art. 87 «The Council of Ministers, after its formation and introduction to the assembly, and prior to any move or action, should obtain a vote of confidence from the assembly».

³⁷ Some authors describe the forms through which the reciprocal antipathy between Banišadr and Raḡā’ī was displaced: cfr., for instance, S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., pp. 28–29, according to whom Raḡā’ī’s «lack of sophistication and disdain for the brand of intellectualism favoured by the President had [...] created considerable personal friction between himself and Bani-Sadr. Shortly after Rajai’s appointment, the President publicly explained that he considered the new prime minister to be lacking the necessary knowledge for the post»; S. BAKHASH,

meta-constitutional level, that is to say, at a conventional level. To use the words of Randjbar-Daemi, «the IRP-led Parliament sought to thwart the imposition of any candidate by the President without its own prior seal of approval: there was therefore the desire to set a precedent for future cabinets and Parliaments of the Islamic Republic»³⁸. This kind of struggle had several institutional consequences. In the long term, it would affect also the Ḥāmene'ī Presidency, for even the third President, although being a prominent member of the IRP, would be denied to nominate his own preferred candidate to the Prime Ministership in October 1981; in the short term, it conditioned the process of nomination of ministers as well.

The formation of the ministerial team took several months to be completed. Pursuant to art. 133 of the Constitution, ministers had to «be appointed according to the suggestion of the prime minister and with the approval of the president», and then to «be introduced to the parliament for a vote of confidence». Again, an issue of constitutional hermeneutic needed to be clarified through a new praxis, and of course, each institutional actor – perhaps except for the Leader – tried to further its own cause. A first collective vote of confidence occurred on the 10th of September of 1980, when the majority of ministries was filled after a compromise had been found between the President and the Prime Minister³⁹. Nonetheless, key positions, such as the ministries of economy, foreign affairs, labour, and justice, remained vacant, precisely due to divergent opinions between Banišadr and Rağā'ī and their shared unwillingness to give up their role in selecting pivotal cabinet members⁴⁰. Even worse, the whole process of formation of the Executive was interspersed in a major event that would severely affect the history of republican Iran. The 22nd of September, hence forty-two days after the parliamentary vote of confidence to the Prime Minister and twelve days after the first round of ministerial confidence votes, Iran was attacked by Ṣaddām Ḥusayn's Iraq. If the military history of the Iran-Iraq war is not of interest here, for the purposes of our discourse it must be noted that the war did have heavy institutional consequences on the Islamic Republic. As a matter of fact, Banišadr's

The Reign of the Ayatollahs, cit., p. 107: «Banr-Sadr [*sic*] could barely contain his contempt for Raja'ī, whom he declared incompetent and lacking sufficient knowledge of Iran and international affairs to be prime minister. [...] He sent him letters declaring that a man of his ignorance should honor the office of the prime minister by resigning the post».

³⁸ S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., p. 28.

³⁹ According to M. BOROUJERDI – K. RAHIMKHANI, *Postrevolutionary Iran*, cit., p. 144, the *Mağles* approved the nominations of the following ministries: «Agriculture; Culture and higher education; National defense; Energy; Health; Housing and urban development; Industries; Interior; Islamic guidance; Ministerial adviser for executive affairs; Ministerial adviser and head of the Public Health Organization; Post, telegraph and telephone; Roads and transportation». Based on the figures in *ibid.*, where it is said that «Raja'ī's slate of ministers was not voted on individually but approved in a general vote», they all received 169 votes in favour, 14 against, with 10 abstentions.

⁴⁰ For M. AXWORTHY, *Revolutionary Iran*, cit., p. 183, «the dispute [over ministries] set a time-wasting precedent that has become a dismal tradition in Iranian politics. By insisting on his authority in the matter, Bani-Sadr helped to discredit his presidency»; cfr. also S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 108–109: «In September, Raja'ī presented the president with a twenty-one-man cabinet. [...] Bani-Sadr rejected seven of Raja'ī's candidates and approved fourteen. Even these he termed “barely acceptable”. Parliament approved this rump cabinet on 10 September, but several key ministries, including education, foreign affairs, finance, commerce, labor, and justice were left vacant».

management of the military was one among several issues that caused severe friction both with the clerical leadership of the IRP and with Ḥomeynī. Albeit at first the war urged the Iranian political leadership to rally around, the problem of the composition of the Cabinet was still pending at the beginning of the Iraqi invasion. As to Banišadr, he was in an odd position: he was confirmed as Commander-in-Chief by Ḥomeynī through a message to the Nation the Leader delivered the day after the Iraqi invasion, but the IRP and Rağā'ī tried to deprive him of any voice in ministerial affairs – the reason for which Ḥomeynī, although endorsing the President, urged all political actors to refrain from their «petty» factional disputes⁴¹. Disputes did not cease, on the contrary they saw a slow but progressive *crescendo* which would eventually lead to the dismissal of the President.

5.3. *The Road Towards Banišadr's Impeachment: Institutional Conflict and Constitutional Immaturity*

Having retained the Commandership-in-Chief, Banišadr exercised his military function mainly to the front – trying somehow to escape from the conflicts in Tehrān – through a daily contact with the army. Here, another cleavage between him and the clerical Islamists emerged, as while the President tried to oppose purges and to strengthen the regular army despite its lingering ties with the imperial past, the IRP and the Government openly supported the IRGC. According to S. Zabih, Banišadr even created a presidential guard corps whose members included officers who had been imprisoned soon after the revolution and then released in the wake of the war⁴². In addition to the issue of the respective roles of regular army and IRGC in war and their relationship, there were several other matters upon which the President and the IRP majority disagreed: the former wanted to limit the power of revolutionary courts – which were still operating –, while the latter supported them; the former solicited more power for the Presidency, while the latter worked in order to cut its prerogatives in favour of the Prime Ministership and the Parliament; the former tried to get the secular opposition

⁴¹ *Šahifeh-ye Imam*, 13, pp. 199–200: the 23rd of September, Ḥomeynī said that «The Commander-in-Chief, acting as my representative [*i.e.*, Banišadr], and the Commanding Council are the authorities responsible for the affairs of the war», and thus he concluded his message: «All the people and the organs of government must positively put an end to their *petty disputes* as such disputes serve the interest of Islam's enemies» (our emphasis).

⁴² S. ZABIH, *The Iranian Military*, cit., p. 128: «Banišadr demanded that [...] as many imprisoned officers as could be trusted be released to join the officer corps and be assigned to combat duties. In addition, the President organized a battalion of the ground forces ad *Qarde Rais Jomhur* (Presidential Guards) to provide him with protection. [...] [S]ome of the newly released officers constituted the command corps of the Presidential Guards». More generally, cfr. also A. OSTOVAR, *Vanguard of the Imam*, cit., pp. 64–71, who says that «Bani-Sadr attempted to cultivate a close relationship with the military [...]. This provoked the ire of Khomeinists, who distrusted the military and worried that an alliance with Bani-Sadr would be to the detriment of the clergy. The clerics considered this relationship a direct challenge to their power, as did the IRGC, which worried that Bani-Sadr sought to dissolve the organisation or merge it with the regular military. [...] IRP leaders championed the IRGC in Tehran and sought to gain it a greater role in the war».

together, while the latter made strong accusations against opposition figures depicting them as anti-revolutionary or anti-Islamic⁴³. At the end of October, the President arrived as far as to bluntly ask to Ḥomeynī the dismissal of Rağā'ī and the Cabinet. Needless to say, the Leader did not fulfil the request⁴⁴. Actually, attempts to solve consensually the political and institutional cruces between the President and the IRP were made, sometimes even through Ḥomeynī's arbitration: in early December 1980 a meeting occurred among Banišadr, Rağā'ī and Rafsanğānī which resulted in a shared resolution aimed at stopping political quarrels. This truce, though, ended soon: in mid-December the President did not nominate Rağā'ī's candidates to fill the vacant ministries; on the other hand, the Cabinet kept out Banišadr of the US hostage negotiations – which ended the 21st of January of 1981 but entailed a non negligible controversy in the Islamic Republic precisely between Presidency and Cabinet⁴⁵. After a rally the President held the 5th of March of 1981 at Tehrān University during which his supporters uncovered revolutionary committees-related agitators, verbal attacks against him and personal threats and arrests against his associates by the IRP and the clerical-dominated Judiciary reached an unprecedented peak. As a consequence, the 15th of March Ḥomeynī arranged a meeting with Banišadr, Rağā'ī, Rafsanğānī, Beheštī (Chief Justice), Sayyid 'Abdolkarim Musavī Ardebilī (Attorney General), Ḥāmene'ī (Leader's representative in the High Council of National Defence) and Bāzargān. This meeting was followed by a ten-point statement issued by the Leader himself the very next day. It must be noted that in this statement Ḥomeynī did not take anyone's side in the ongoing institutional and political conflict, but rather compelled all political actors to assume a rigorous self-restraint, namely: to act according to the law and the Constitution (point 1); to refrain from vilifying each other (point 2); to respect the authority of the then acting Commander-in-Chief and the High Council of National Defence (points 3, 4 and 5); to avoid speeches in public rallies as long as the war continued (point 7); to supervise radio and television in order to report «detrimental activities» to judicial authorities (point 8); to cooperate (point 9); finally, Friday preachers were asked to make constructive sermons and eschew political controversies (point 10). The most peculiar point with

⁴³ Expressions of these disputes are recalled in S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 129–124; S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., pp. 29–30; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 202–203.

⁴⁴ Cfr. S. BAKHASH, *The Reign of the Ayatollahs*, cit., p. 130: «In late October, in a confidential letter to Khomai, Bani-Sadr sought to enlist the Imam's support in ridding himself of the Raja'i government altogether. He urged Khomai to dismiss the cabinet [...]. The government, he said, was incompetent, lacked public support, and had declared war on the president. Its propaganda incited the people against him. Its policies would lead the revolution to ruin [...]. Comparing himself with the great British wartime leader, Winston Churchill, Bani-Sadr suggested that in the same way Chamberlain had stepped aside for Churchill on the eve of World War II, Raja'i should now step aside for him. Khomai did not act on Bani-Sadr's suggestion»; D. HIRO, *Iran under the Ayatollahs*, cit., p. 170: «In an unpublicised letter to Khomeini on 31 October he [Banišadr] urged the Ayatollah to dismiss the Rajai government».

⁴⁵ Cfr. S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., pp. 30–31; S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 149–151; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 203–205; D. HIRO, *Iran under the Ayatollahs*, cit., pp. 172–173.

regards to political institutions was the sixth: Ḥomeynī decreed the creation of a commission formed by three representatives – one for the President, one for the IRP and the Cabinet, one for the Leader himself – that would handle issues related to both the war and institutional and political conflicts, and that would take decisions by majority⁴⁶. This is the strongest institutional clue suggesting Ḥomeynī’s willingness to create a form of consensual political system, using precisely his guardianship role in a context of conflict that he deemed to be harmful and worthless. But this kind of management highlights also the inadequacy of the Constitution – or better, the inadequacy of the system to find solutions through it. The Constitution alone – mainly via the institutional framework it had shaped – proved unsuited to solve a kind of dialectics which is inevitable in modern pluralistic democracies: indeed, it turned out to be necessary to create a new extra-constitutional organ, just like the future conflict between Parliament and Council of Guardians would contribute to create the Expediency Discernment Council.

In any case, once again the new equilibrium was short-lived. As early as a few days before the meeting, in order to bypass the presidential veto over the missing ministries, the 11th of March the *Mağles* had passed a legislation that allowed the Prime Minister to nominate *ad interim* figures for the ministerial vacancies without the President’s assent. Thus, the constitutional power the President enjoys in sanctioning the nomination of ministers – the Constitution talks about “*taşvib*”, lit. “approval”, “sanction” – was strongly shaded by giving a greater importance to the “proposal” or “suggestion” (“*pişnehād*”) of the Prime Minister. In fact, with this law their respective constitutional positions reversed. Faced with such a situation, Banişadr refused to sign the law and publicly exhibited his contempt for the other constitutional organs – except for the Leadership –, or better he refused to acknowledge the constitutional role of his opponents and to cooperate with them. However, after the March meeting Ḥomeynī was not eager to find a compromise anymore. The 27th of May he delivered an articulate speech on the occasion of the first anniversary of the *Mağles*’ first gathering. After having said that no one is immune from error and biases, and that sin can discreetly spread even in pious persons, he made a strong statement on the supremacy of the Parliament:

the Majlis is the topmost office within this country. If the Majlis ratifies a certain law and if the Council of Guardians, too, gives its approval, no one then has the right to challenge the issue. [...] [I]f [someone] wants to create mischief and damage public opinion with regards to the Majlis and the Council of Guardians, this clearly is corruption and such a person can only be corrupt and should face prosecution under the charges of spreading corruption. [...] The Majlis should

⁴⁶ Upon the rally of the 5th of March, the meeting of the 15th and Ḥomeynī’s statement, cfr. S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 151–155; B. MOIN, *Khomeini*, cit., p. 238; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 205–206; D. HIRO, *Iran under the Ayatollahs*, cit., pp. 175–176. The translated text of the statement in *Şahîfeh-ye Imam*, 14, pp. 174–175.

powerfully deal with issues without fearing anyone or any power. [...] Just because a certain issue may prove to be against the personal preference of one person, he should not end up criticizing the entire Majlis and the Council of Guardians. He should instead alter his own opinion. Our nation certainly faces this challenge today⁴⁷.

Without ever mentioning Banišadr, the Leader then criticised egoism and the cult of personality, giving a clear idea of what may be called, through C. Mortati's words, the core of the «material Constitution»⁴⁸ of the country according to him – basically, Islām:

Do not make claims of national support. The nation is with Islam. It is neither with me, nor with you, and nor is it with anyone else. [...] The nation is not interested in personalities. The nation is not into some kind of hero-worshipping. This nation wants to establish Islamic laws in this country. [...] The public, too, supports the Islamic Republic, as long as the Majlis is Islamic and as long as the government is Islamic and as long as the President is Islamic, they all have public support. The public will stop supporting you if you slip because it is Islam that they are seeking⁴⁹.

For Ḥomeynī, the political situation could not be resolved anymore by means of consensual decisions, but in any case he reminded the founding value of rule of law, which for him entailed the respect of all institutions: «Everyone should honor the decisions of the Majlis that have been endorsed by the Council of Guardians to be in agreement with the Constitution and the laws of Islam. And do not blow the trumpet of law while breaking them yourselves»⁵⁰.

This speech is widely considered by authors as the end of Ḥomeynī's support towards Banišadr, or at least the end of his balanced management of political factions during the first presidential mandate⁵¹; and indeed, it can be said that this event marked the beginning of the end of Banišadr's political and institutional parabola in Iran and of his Presidency. To enhance even more the powers

⁴⁷ *Ṣaḥīfeh-ye Imam*, 14, pp. 318–319.

⁴⁸ See C. MORTATI, *La costituzione in senso materiale*, Giuffrè, Milano 1998, pp. 53–113, who talks about the «material element» of the «fundamental constitution» of a country as «the idea, namely [...] an aim, so comprehensive to allow to entirely appreciate the many interests that gather around the State; so rigid to put itself as fundamental point even across the fluctuations in the power relations that can occur throughout time, but also so flexible that it can preside over the development of associated life, permitting the adaptations required by it» (p. 74).

⁴⁹ *Ṣaḥīfeh-ye Imam*, 14, pp. 319–320.

⁵⁰ *Ibid.*, p. 325.

⁵¹ Cfr. S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 155–156, who states that «Bani-Sadr's refusal to sign this measure [*i.e.*, the *Mağles*' legislation concerning *pro tempore* ministers] into law, and his demand for a referendum to decide the issue between himself and his rivals, led Khomeini to abandon any public pretense at neutrality in the struggle»; for D. HIRO, *Iran under the Ayatollahs*, cit., p. 180, «Khomeini backed the 20 May Majlis decision to strengthen Rajai's power at the expense of Bani-Sadr. He declared on 27 May that anyone attempting to overturn parliamentary laws would face charges leading to the death penalty»; similarly M. AXWORTHY, *Revolutionary Iran*, cit., p. 210: «On 27 May Khomeini made a speech that included what was taken as an attack on Bani-Sadr (who by now was disregarding the constraints on his political activities), saying that the nation was hostile to personality cults and that anyone trying to subvert the authority of the Majles could be prosecuted and could face the death penalty»; in the words of S. A. ARJOMAND, *The Turban for the Crown*, cit., p. 146, «The immediate events leading up to the fall of Bani-Sadr began with the broadcast on May 27 of a speech by Ayatollah Khomeini»; referring to this message, M. AYATOLLAHI TABAAR, *Religious Statecraft*, cit., p. 162, says that it «paved the way for Banišadr's impeachment».

of the Prime Minister to the detriment of the President, on the 30th of May the *Mağles* approved a new law, by rule of which appointments originally resting upon the President – like the chairman of the Central Bank – were now incumbent to the Prime Minister. The persistent refusal by the President to ratify this legislation induced the Parliament to adopt another law, the 10th of June, that forced him in this respect: either he signed laws within five days, or they would enter into force anyway. That same day, Ḥomeynī stripped Banişadr of the Commandership-in-Chief with a telegraphic decree destined to the Joint Staff of the army⁵². The institutional conflict was entangled with a high level of violence, threats, and fierce streets clashes, whereas the IRP majority deemed Banişadr unfit for his office and called for his impeachment, while Banişadr justified his attitude by accusing the clerical Islamists of having established a tyranny, and by urging popular support⁵³. Following a series of street demonstrations and declarations from the MeK and the National Front, which both pledged their support for the President, Ḥomeynī – who had never considered the presidential impeachment as a viable solution until the late spring of 1981⁵⁴ – responded with another address – a very long one –, on the 15th of June. The Leader, among other things, declared the members of the National Front to be apostates, and made a fervent but severe appeal to Banişadr: «Come and repent! Come and repent for your past actions and for inviting the people to insurgency and opposing Islam! Return (to Islam) and all of you will be forgiven!»⁵⁵. The appeal was ignored, but this time the Parliament could start the procedure of impeaching the President – pursuant to art. 110.5 of the Constitution – after having ensured Ḥomeynī’s clearance, although formally the Leader’s preliminary assent was not a requisite for the impeachment to be approved by the Parliament: it was rather a conventional requisite owing to the undisputed charismatic standing of Ḥomeynī. Therefore, the 17th of June the Parliament adopted a statute defining the procedure to ascertain the lack of competence of the President; then the parliamentary discussion occurred the 20th; and finally, the 21st the *Mağles* approved the motion against Banişadr by a very large majority – 177 votes in favour, one against, 12 abstentions and some

⁵² See *Şahifeh-ye Imam*, 14, p. 380: «Mr. Abu’l-Hasan Bani Sadr has been dismissed from the post of Commander-in-Chief of the Armed Forces».

⁵³ In a message to the Nation delivered the 13th of June, Banişadr said: «I tell you, the people, to trust your abilities and do not surrender [...] and resist the club-wielders. You have found the ways of resistance in the past, and you will be able to find them now. [...] It is up to you to worry about the future of the Islamic revolution and your country and resist» (from the English translation in *Text of Bani-Sadr Statement Appealing to the Iranian People*, The New York Times, 13 June 1981).

⁵⁴ For S. BAKHASH, *The Reign of the Ayatollahs*, cit., p. 159, «On 13 June [...] after a meeting with Khomaini, Hashemi-Rafsanjani said it would be “preferable” for Bani-Sadr to remain president, provided he recognized the limitations the constitution placed on the president’s authority. Khomaini confirmed that Bani-Sadr could remain in office».

⁵⁵ *Şahifeh-ye Imam*, 14, p. 394.

20 absences. The next day, Ḥomeynī acknowledged the parliamentary vote and consequently removed Banišadr – who since the 12th had already gone into hiding – from his office⁵⁶.

Here again the “guardianship” role of the Leader recurs, as the dismissal of the President by the Leader can be considered as the mirror moment of his appointment. In the history of republican Iran, the presidential impeachment occurred just once, precisely with Banišadr. What may be of interest here is how Ḥomeynī, as Leader, acknowledged the parliamentary vote impeaching Banišadr, whereas it is difficult to say whether he simply rubber-stamped the determination of the *Mağles* or he actively exercised a guardianship power over the President’s “obedience to the sacred commandments of Islam and the Islamic constitution” – as stated in the appointment decree. Indeed, as it can be understood above, art. 110.5 of the Constitution vests the Leader with the power of dismissing the President should the Supreme Court or the *Mağles* respectively ascertain, through a vote, his dereliction of duty or his political incompetence; yet it is unclear the extent of the Leader’s discretion in sanctioning this vote. As to Banišadr, Ḥomeynī affirmed: «Keeping in view the categorical vote of the honorable members of the Islamic Consultative Assembly as regards Mr. Abu’l-Hasan Bani Sadr’s lack of political competency for occupying the position of President of the Islamic Republic of Iran, I hereby dismiss him from the presidency of the Islamic Republic of Iran»⁵⁷. Given this limited record, it is rather purposeless persisting in analysing the presidential impeachment as a constitutional institution. What can be said is that such a matter pertains more to the pathology than to the regularity of inter-institutional relations. In the concrete case, more than relying upon constitutional theory, Ḥomeynī and the *Mağles* managed and solved the Banišadr affair through a preliminary informal weaving whose institutional ends were precisely the parliamentary vote and the decree of the Leader. The peculiarity of the context, however, does not allow to talk about a constitutional custom as to presidential impeachment. As already remarked, it might seem that the formal institutional framework was considered by political actors as lacking sufficiently suitable instruments for dealing with the issue. By resorting to extra-constitutional tools such as the above-mentioned informal meetings, displays of popular support, and utterances in order to prevail over their respective opponents, Banišadr, the Government, the IRP parliamentary and judicial leadership all contributed to devoid the Constitution of its role. It can be argued that this happened also due to the fact that, rather than a Constitution-compliant behaviour, political actors sought a Ḥomeynī-compliant behaviour. More than the Constitution, Ḥomeynī was considered as the living institution

⁵⁶ As to the dense events between the 27th of May and the 22nd of June, cfr. S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 156–162, who analytically recalls the parliamentary debate over Banišadr’s impeachment as well; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 210–213; S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., pp. 33–36; D. HIRO, *Iran under the Ayatollahs*, cit., pp. 180–185.

⁵⁷ *Şahifeh-ye Imam*, 14, pp. 409–410.

capable of resolving – or at least managing – political disputes and issues efficiently: this is one dimension of the guardianship role of the Leadership. This observation may help unravelling the question posed as to the Leader’s discretion in sanctioning the presidential impeachment: the 21st of June there was no need for discretion, since the guardianship role of the Leader had already been exercised extensively throughout months via those acts recalled above. In fact, the parliamentary vote over Banišadr’s incompetence came after Ḥomeynī had acceded to it to be performed – just like Rağā’ī’s nomination to the Prime Ministership had come after the informal rejection of all Banišadr’s candidates by the *Mağles*. Even in this case, the compliance to constitutional provisions was a formalisation of decisions already taken at a conventional level.

After Banišadr had been put out of business – not only through the impeachment, but also by an arrest warrant issued by revolutionary courts due to which the former President escaped to Paris along with the leader of the MeK – the issue of his succession was rapidly handled: pursuant to art. 130 of the Constitution, a Provisional Presidential Council (*Šurā-ye Movaqqat-e Riyāsat-e Ğomhurī*, lit. “Provisional Council of the Presidency of the Republic”) formed by Rafsanğānī, Rağā’ī, and Beheštī (replaced by Musavī Ardebilī as Head of the Supreme Court after his assassination) took the presidential powers on and, as recalled in the first paragraph, within one month a presidential election was arranged which saw the overwhelming victory of then Prime Minister Rağā’ī – in a severe context of terrorist strikes against the clerical Islamist leadership. From an institutional point of view, it must be noted that this was the first presidential election in which the Council of Guardians exercised its constitutional power of control, allowing just four candidates upon seventy-one to run for the Presidency. Politically, an interesting figure underlying the continuity in political participation is given by the number of votes wherewith Rağā’ī was elected: almost 13 million votes over 14,6 – compared to 10,7 million votes over 14 for Banišadr in 1980⁵⁸.

With reference to Rağā’ī’s Prime Ministership, it can be said that what the Iranian institutional system had experienced until the dismissal of Banišadr was an interesting shaping of a form of Premiership, that is to say, a prominence of the tandem Prime Ministership-Parliament which overruled the Presidency – long before the inter-institutional dialectics became pathological⁵⁹. Indeed, the ideological coincidence and the strong political links that were created between parliamentary majority and Cabinet in the months going from August 1980 to June 1981 may be more ascribable to a monistic parliamentary system like the Westminster – a Premiership system, precisely

⁵⁸ Upon the election of Rağā’ī to the Presidency, cfr. M. PARGOO – S. AKBARZADEH, *Presidential Elections in Iran*, cit., pp. 51–57. Figures from the quoted text *supra*, note 9; numbers in M. BOROUJERDI – K. RAHIMKHANI, *Postrevolutionary Iran*, cit., p. 87, differ slightly but not substantially.

⁵⁹ In the words of S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., p. 39, «By summer 1981, the overall balance of power within the executive branch therefore tilted decisively towards the prime minister».

– or the 3rd French Republic, rather than to a dualistic system like that of the French 5th Republic⁶⁰. This statement might seem in contradiction with what has been said right above in this very chapter about the relationship between Leadership and Presidency: namely, that this relationship is marked by a dualistic feature coming from the double legitimacy the President enjoys – bottom-up (popular election) and top-down (appointment confirmation from the Leader). Though, all this demonstrates the complexity of the Iranian institutional system as shaped by the 1979 Constitution – a complexity operating precisely at different levels. The experience of the Rağā’ī (President)-Bāhonar (Prime Minister) tandem could have been interesting in terms of constitutional development, since it would create a different situation than that with Banišadr, but also than that of Ḥāmene’ī: a situation in which Prime Minister and President would have no ideological reason to stand out against one another. Bāhonar was nominated Prime Minister by Rağā’ī the 5th of August of 1981, and the Cabinet received the confidence by the *Mağles* on the 17th of the same month. Quite interestingly, while the previous year the ministerial team of the Rağā’ī Cabinet had witnessed a single vote of confidence, in 1981 each minister was subject to a separate vote: all nominees were approved except for the minister of Roads and transportation⁶¹. Therefore, it can be said that in this case President, Prime Minister and Parliament demonstrated *grosso modo* an ideological proximity that had no precedent in the history of Republican Iran and that not even the Ḥāmene’ī Presidency would witness in the following months and years. Of course, what this political homogeneity would entail in terms of institutional and constitutional development will remain an open question. As seen, Rağā’ī and Bāhonar stayed in office barely one month, before being assassinated in a terrorist bombing devised by the MeK. But it seems legitimate to ask what form the Iranian institutional framework would have taken had the Rağā’ī Presidency not ended prematurely. As in the case of every hypothetical reasoning, outcomes may vary considerably. Either there could have been a strengthening of the Presidency, with a Prime Minister substantially subject to the former and operating as a link or mediator between the

⁶⁰ The classic and best-known description of the British form of Government is that of W. BAGEHOT – M. TAYLOR (ed.), *The English Constitution*, Oxford University Press, New York 2001, p. 11: «The efficient secret of the English Constitution may be described as the close union, the nearly complete fusion of the executive and legislative powers. [...] The connecting link is the cabinet. By that new word we mean a committee of the legislative body selected to be the executive body». While in Great Britain the link between party, Parliament and Cabinet is both political and institutional – the Cabinet is indeed composed only by MPs, and the Prime Minister is the leader of the majority party –, in the first Iranian experience the link was merely political: the Rağā’ī Cabinet was the expression of a political and ideological majority within the *Mağles*, but it did not operate as a parliamentary committee, nor was there continuity among the party, parliamentary and governmental leadership. Nevertheless, Rağā’ī’s nomination to the Prime Ministership recalls Bagehot’s statement according to which «the nominal prime minister is chosen by the legislature» (*ibid.*). To appreciate similarity and differences between the Iranian institutional system and the British paradigm, cfr. also I. JENNINGS, *Cabinet Government*, Cambridge University Press, Cambridge-New York 1969, pp. 13–19. Concerning the 3rd French Republic, cfr. M. PRÉLOT – J. BOULOUIS, *Institutions politiques*, cit., pp. 495–507, who describe the characteristics of the republican French Constitution as a mix comprising «Le parlementarisme absolu. [...] La primauté des Chambres. [...] La faiblesse de l’exécutif».

⁶¹ Cfr. M. BOROUJERDI – K. RAHIMKHANI, *Postrevolutionary Iran*, cit., p. 145.

Legislative and the Cabinet on one side, and the top executive on the other; or, on the contrary, the President would have acquired a merely ceremonial function – notwithstanding his popular legitimacy – while the Prime Minister would have become the real exerciser of the executive power. There are indeed some clues pointing to the second hypothesis⁶², though besides these speculations Raġā’ī’s and Bāhonar’s death induces to keep to history as it was rather than as it would have been.

5.4. *Institutions and Politics during the Ḥāmene’ī Presidency: the Stabilisation of the Islamic Republic under Factionalism*

The toppling of Banišadr triggered an escalation of violence within the country: clerical Islamists became the target of mainly MeK-related shootings and bombings, causing a fierce reaction from the State apparatus against leftist and non-clerical organisations, and leaving thousands of dead on the ground in a couple of years – in a context that M. Axworthy labels as «the greatest internal challenge Khomeini and his followers had faced since the fall of the Shah»⁶³. After Raġā’ī’s and Bāhonar’s death, another provisional Presidential Council was set up by Rafsanġānī and Musavī Ardebilī, while the *Maġles* granted the confidence to a new Cabinet headed by the then minister of the interior, Moḥammad Reḏā Mahdavi Kanī – a member of the JMR but not of the IRP who had been part of the CIR, had overseen the activity of revolutionary committees in 1979 and, as new Prime Minister, joined the Presidential Council as well. Another election – the second within three months – was scheduled, and Ḥomeynī himself decided to remove the veto over clerical candidacies he had upheld until then, allowing the IRP to nominate its own Secretary, ‘Alī Ḥāmene’ī – who had replaced Beheštī in this regard –, as candidate. Competitiveness was missing due to the lack of a real contender against Ḥāmene’ī, despite that – or precisely because – the assassination attempt that had targeted him a few months earlier had made of him a “living martyr” (*šahid-e zandeh*). All final presidential candidates came from the IRP: Ebrāhim Yazdī of the FMI, for instance, was disqualified by the Council of Guardians. One candidate, Prime Minister Mahdavi Kanī, withdrew some days before the election, and another, then acting Mayor of Tehrān Zavāre’i, publicly endorsed Ḥāmene’ī. There was no surprise, then, when Ḥāmene’ī was elected with more than 97% of votes; if anything, absolute votes

⁶² Cfr. M. PARGOO – S. AKBARZADEH, *Presidential Elections in Iran*, cit., p. 55, according to whom, during the summer electoral campaign of 1981, Raġā’ī «emphasised his obedience to the Imam [...]. Rajai’s modesty is reflected in his perception of the institution of the presidency. He welcomed the president’s meagre power *vis-à-vis* the Supreme Leader and other legal institutions, such as the judiciary and legislature. He further claimed that the constitution afforded the president limited powers in line with the revolution’s objective to fight individualism and monarchic structures».

⁶³ M. AXWORTHY, *Revolutionary Iran*, cit., p. 215; cfr. *ibid.*, pp. 214–216; E. ABRAHAMIAN, *Radical Islam*, cit., pp. 219–223; S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 217–224. According to D. HIRO, *Iran under the Ayatollahs*, cit., pp. 208–209, «By early February 1982 the Mujahedin claimed to have killed over 1,200 religious and political leaders of the regime. In return, the government had executed 4,000 guerrillas, most of them belonging to the Mujahedin».

give an idea of the popular support the Islamic Republic still enjoyed despite the Banišadr affair, the war with Iraq and the terrorist attacks the IRP had experienced so far: 16,8 million voters participated in the election, and 16 million votes went to Ḥāmene'ī⁶⁴.

With the beginning of the Ḥāmene'ī Presidency, the evolution of the Iranian political regime took a peculiar path. One may think that with the impeachment of Banišadr the regime was going to be a fully single-party system monopolised by clerical Islamists. Indeed, in early autumn 1981 a legislation was drafted and approved by the *Mağles* that subjected political parties to the control of the ministry of the interior and created a specific Commission – named “Article 10 Commission”, to be formed by five representatives, one for the Attorney General, one for the High Council of the Judiciary, one for the ministry itself, and two for the *Mağles* – entrusted with the supervision of parties. According to the law, all parties had to endorse the Constitution explicitly, refrain from acting against the independence of the country and the national interest, and be compliant to Islām. Their internal statutes and the composition of their ruling bodies – or any changes affecting them – needed to be approved by the Article 10 Commission, which in turn could censure unlawful party activities with a degree of sanctions going from warnings up to the request of dissolution to courts⁶⁵.

Nevertheless, the idea of a monolithic regime professing a single, unitary and unanimous stance in the political management of the country is somehow deceiving⁶⁶. Even before the cleavage with liberal Islamists – epitomised by Bāzargān and Banišadr – was cancelled through the elimination of their political strength, other cleavages had already emerged within the clerical Islamist majority on economic matters. Yet, the first institutional cleavage in the IRP and its allies to rise concerned the nomination of Mahdavi Kanī's successor to the Prime Ministership. As newly elected President, Ḥāmene'ī was determined to nominate as Prime Minister 'Alī Akbar Velāyatī, an MP belonging to the right faction of the IRP, and whose nomination was destined to find a strong opposition in the *Mağles*. The struggle over the Prime Ministership that started immediately after Ḥāmene'ī's election brings into play the issue of political divisions within the clerical Islamist majority. The IRP and its allies, indeed, were politically split in at least two factions – each one composed by several parties and organisations –, separated mainly, but not only, by their respective stands upon economic matters. Some authors refer to the *čap* (left)-*rāst* (right) cleavage, whereas the former term designated those

⁶⁴ Upon the second presidential election of 1981, cfr. M. PARGOO – S. AKBARZADEH, *Presidential Elections in Iran*, cit., p. 57–62; S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., pp. 40–41.

⁶⁵ The English translation of the law can be found in <https://irandataportal.syr.edu/political-parties-law> (retrieved 10 July 2023).

⁶⁶ This is why here the Iranian republican regime is not considered as a single-party system. Cfr. *contra* P. RIVETTI, *Party Politics in the Islamic Republic*, cit., p. 140: «after a few years of political pluralism, the Islamic Republic walked the same path as the Shah's and turned into a one-party system, with the Islamic Republic Party (IRP) as the only legal party».

patronising economically dirigiste measures, while the latter identified those with economically conservative views⁶⁷. This division mirrored the composite nature of the social and economic actors involved in the revolution: the “oppressed” (*mostaḍa’fān*), namely the lower classes who had grown as a neglected offshoot of the Šāh’s reforms and had sought a kind of deliverance through the revolution on the one hand⁶⁸; and on the other the *bāzārīs*, the merchants who had been integral part of the anti-Šāh front as well but under the Republic demanded the protection of free enterprise and of the right of property⁶⁹. A kind of Islamic leftist radicalism characterised somehow the MIR – which, as seen above, had had an important role in establishing the IRGC – and the so called “*maktabīs*”, a group of relatively young and left-oriented politicians also labelled as “radicals” who would play a capital role in the political life of the country until 1989, raising the longest serving Prime Minister of republican Iran, Mir Ḥoseyn Musavi⁷⁰. On the other side of the political spectrum, in the conservative or right area, there were several parties, like the above-mentioned JRM, and the *bāzār*-related *Mo’tālefeh* (lit. “coalition”) Society or Party. The opponents of those conservatives used to call them “*Hoḡḡatiyeh*”, referring to the homonymous secret Association which promoted messianic expectations (“*hoḡḡat*” literally means “proof”, in this case related to the last Imām as “proof of God”), anti-Bahā’ī policies and strongly conservative economic measures⁷¹. Between radicals and

⁶⁷ Cfr., for instance, M. AXWORTHY, *Revolutionary Iran*, cit., pp. 240–242, in the paragraph titled «*Factions and Elections – Rast va Chap (Right and Left)*»; S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., p. 44, who says that «due to their initial preferences in the economic realm, the two competing groups came to be known respectively as the *jenah-e chap* [...], and the *jenah-e rast*». D. HIRO, *Iran under the Ayatollahs*, cit., p. 244, affirms that «Differences between conservatives and radicals were sharpest on economic policies, particularly those directed towards redistributing wealth and bolstering public and cooperatives sectors of the economy».

⁶⁸ E. ABRAHAMIAN, *Iran Between Two Revolutions*, cit., pp. 434–435, labels the *mostaḍa’fān* as the «army of the urban poor. Impoverished immigrants from the countryside, this underclass squatted in the sprawling new shanty towns and scraped together a living either as construction workers, or, if there were no jobs on the construction sites, as peddlers, hawkers, menial laborers, and even beggars. The sans-culottes of the Islamic revolution, this underclass later became famous as the *mostazafin* (wretched)»; in the words of Y. RICHARD, *Iran a social and political history*, cit., p. 307, «Those who ensured the new regime’s victory and inspired the constituents of 1979 are the *mostaz’afin* (disinherited), the common people of the suburb; these “uprooted peasants” looked for protection and representation».

⁶⁹ Cfr. A. KESHAVARZIAN, *Bazaar and State in Iran. The Politics of the Tehran Marketplace*, Cambridge University Press, New York 2007, pp. 152–157.

⁷⁰ Upon the radical faction, cfr. P. ABDOLMOHAMMADI – G. CAMA, *Contemporary Policies of Iran*, cit., pp. 141–143, according to whom «The radical reformists represent the so-called ‘Islamic left’, though its members do not necessarily belong to the clergy. [...] Their economic policies follow those of the ‘socialists’ and are less conservative than those of the traditionalists close to the *bazari*. Many of their members belong to the urban middle class, and they promote a form of ‘Islamic democracy’ inspired by socialism»; B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 80–81, who feature the *maktabīs* thus: «They advocated a strongly centralized economy, the total nationalization of major industries, and a comprehensive land reform, and they viewed the Islamic revolution as a movement geared to benefit the *mostaza’fin* (downtrodden)». A brief description of the MIR in D. HIRO, *Iran under the Ayatollahs*, cit., pp. 241–242.

⁷¹ Cfr. P. ABDOLMOHAMMADI – G. CAMA, *Contemporary Policies of Iran*, cit., pp. 133–137. On the *Hoḡḡatiyeh* and the metonymic relation of conservative politicians to it made by their rivals, cfr. B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 81–82; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 242–243; D. HIRO, *Iran under the Ayatollahs*, cit., pp. 243–244; S. A. ARJOMAND, *The Turban for the Crown*, cit., pp. 157–159, ascribes the qualification of conservative clerical Islamists as “*Hoḡḡati*” to a political tactics of the Tudeh, underlying «the surreptitious use of the issue of the Hojatiyeh by the Tudeh to create division within the Islamic movement by attaching the label “Hojjati” to prominent clerics and high government office holders». Concerning the *Mo’tālefeh*, A. KESHAVARZIAN, *Bazaar and State in Iran*, cit., p. 101,

conservatives there were a third group following, more than ideological positions, the personal figure of Rafsanjānī⁷². Though, as stated by Redaelli, these groups were not parties *stricto sensu*: «Of course, they were not formalised and officially recognised groups, but rather informal circles with a kind of osmosis among them, also due to the patronage and intra-factionalism within each group featuring Iranian politics»⁷³.

According to Randjbar-Daemi, Velāyatī was close precisely to the *Mo'tālefeh*⁷⁴, and the issue of his nomination to the Prime Ministership not only entailed an institutional dispute between Parliament and Presidency, but it also encompassed political cleavages. Just like under Banišadr, the *Mağles'* opposition to the presidential nominee was clearly displaced, but unlike his predecessor Ḥāmene'ī decided to force the Parliament and, without having secured a majority, sought its confidence for Velāyatī. This move proved hasty: many members of the left faction criticised the candidate and the political choice of the new President, and eventually, on the 22nd of October, the confidence was rejected with 74 votes for, 80 against, and 37 or 38 abstentions. A second nominee – then minister of petroleum Moḥammad Ġaraḍī – was informally rejected, much like Ḥabībī and Mir-Salim the previous year. Eventually, Ḥāmene'ī nominated a member of the left faction: Mir Ḥoseyn Musavī, editor of *Ġomhurī-ye Eslāmī* and acting minister of foreign Affairs with Rağā'ī, confirmed under both Bāhonar and Mahdavi Kanī. On the 2nd of November, the Musavī Cabinet – which would include members coming from both the conservative and the radical factions, like Velāyatī in the ministry of foreign affairs⁷⁵ – was granted the confidence by the *Mağles* with 115 votes for, 48 against and 39 abstentions; this time each minister was subject to a separate vote, as it had happened with Bāhonar's

states that before the revolution just a «small segment of *bazaaris* [...] had been active in the burgeoning Islamist and pro-Khomeini organizations of the early 1960s (Jam'iyat-e Motalefeh-ye Eslami or ICA), the most important of which was the Islamic Coalition Association or Party. Through their *hayats* [committees] and religious schools, ICA developed long-standing social and kinship ties with clerical ideologues of the Islamic Revolution [...] and championed an interpretation of Islam that gave authority and responsibility to the clergy and devout Muslims to take action against “illegitimate” rule. Owing to state surveillance the ICA was operated in a secretive, cell-like, and underground manner, and as a result this did not have a broad base of support in society or the Bazaar. Moreover, one of the leading ideologues of the organization disputes the labeling of the ICA as a “*bazari* party” by differentiating the ICA members from *bazaaris*, by describing them as “cultural figures” (*farhangi*) because they were busy teaching and writing religious works».

⁷² B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 82–83, refers to this group as to the group of the «fence-sitters». Due to its low ideological characterisation, the pro-Rafsanjānī faction is usually labelled as “pragmatist” too.

⁷³ R. REDAELLI, *L'Iran contemporaneo*, cit., p. 62.

⁷⁴ See S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., p. 43, who affirms that Velāyatī «was reputed to be close to the right-wing Motalefeh group»; cfr. also B. BAKTIARI, *Parliamentary Politics in Iran*, cit., p. 81, who reports that «Influential figures like Beheshti, Bahonar, and Mahdavi-Kani, [...] Ali Akbar Velayati, and Ahmad Tavakoli [...] were occasionally referred to as supporters» of the *Hogğatiyeh* by radicals.

⁷⁵ According to D. HIRO, *Iran under the Ayatollahs*, cit., p. 243, «In late 1981, of the twenty-one ministers in the Mousavi government, four were pro-Hojatiyeh: Muhammad Gharzai (oil), Ahmed Tavakoli (labour), Habibollah Asghar-Owlad (commerce) and Ali Akbar Parvarish (education)».

government⁷⁶. Once again, the Parliament reaffirmed its own paramountcy over the Presidency, fostering the assembly feature of Iranian parliamentarism by imposing the substantially parliamentary origin of the Cabinet.

What has been said so far does not mean that political divisions within the clerical Islamist camp first came forth with Velāyatī's nomination. This was one episode of a broader process that in fact had started many months earlier and that would deflagrate in several other circumstances: during the nationalisation of foreign trade and the land reform; after the election of the second *Mağles* and the subsequent institutional frictions; when the Iran-Contra *affaire* was disclosed; with the issue of "absolute guardianship"; and for the succession to Ḥomeynī. More than the content of these issues, what is of interest here is the development of inter-institutional and political relations they entailed.

Months before the dismissal of Banišadr, in March 1981 the *Mağles* had approved a resolution binding the Government to initiate a legislation to nationalise foreign trade: through this move, maintains B. Bakhtiari, «Conservative elements in the Majles were pushed aside, and those who argued for a "reasoned approach" were accused of representing the profiteers»⁷⁷. A draft bill on this subject was indeed submitted by the Rağā'ī Cabinet in May 1981. In spring 1982, under the auspices of the Musavī Government, the Parliament approved the legislation that fully nationalised foreign trade. Nonetheless, the Council of Guardians vetoed it saying that it was contrary to Islām. The struggle over the trade nationalisation was not only inter-institutional, but also intra-institutional. Besides the obvious division within the *Mağles*, the Cabinet too was shot through with political divisions upon the matter. In particular, the minister of commerce, Ḥabibollāh Asgarulādī – a wealthy tradesman belonging to the *Mo'tālefeh* – tried to capitalise the rejection of the bill by the Council of Guardians and convinced the Council of ministers to relocate rice trade to the private sector, with the explicit aim to control its price. However, the decision, which was taken in July 1983, entailed a sharp rise in the price of rice. Radicals MPs soon blamed this choice and attacked conservatives: the Government had to backtrack, while Asgarulādī was forced to resign in August 1983⁷⁸.

Political divisions and factionalism characterised another chapter of the economic policies of the newborn Republic: the land reform, which had non negligible political and social implications too. Even more than the nationalisation of trade, the issue of land distribution involved many capital opposing dynamics: on the one hand, it was seen as an opportunity of social and economic

⁷⁶ On the struggle for the Prime Ministership in the first month of the Ḥāme'ne'ī Presidency, cfr. S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., pp. 41–45; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 216–217; D. HIRO, *Iran under the Ayatollahs*, cit., pp. 198–199; B. BAKTIARI, *Parliamentary Politics in Iran*, cit., p. 80.

⁷⁷ B. BAKTIARI, *Parliamentary Politics in Iran*, cit., p. 90.

⁷⁸ On the nationalisation of trade, cfr. S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 193–194; B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 89–94; upon the Asgarulādī *affaire* cfr. also D. HIRO, *Iran under the Ayatollahs*, cit., p. 244.

enfranchisement by many laborers who had formed the backbone of the revolution; on the other hand, it represented a threat for a principle widely protected by Islamic jurisprudence, namely, private property. Indeed, seizures of land had occurred since the early months of 1979, and while in some areas they had been punished by religious courts and revolutionary officials, in some other they had been encouraged by revolutionary authorities. In April 1980 the CIR enacted a legislation aimed precisely at distributing land to landless peasants and farmers via local committees; the distribution though was chaotic, and it entailed the opposition not only of landowners but also of many Islamic jurists – even prominent ones – who claimed that it was contrary to the Islamic understanding on the enjoyment of private property. Due to widespread criticism, the law was partially suspended by judicial authorities with the approval of Ḥomeynī in autumn of that same year. New draft bills were presented to the *Mağles* only one year later⁷⁹. Since it was patent that such a legislation would affect a domain heavily influenced by Islamic legal principles, in October 1981 Rafsanğānī, as Speaker of the *Mağles*, sent a letter to the Leader, asking whether the Parliament could pass legislation that was contrary to Islamic secondary rules (*aḥkām-e t̄ānaviyeh*)⁸⁰ by using necessity (*darūra*) as exempting justification⁸¹. The Leader replied by saying that the Parliament could indeed pass legislation based on necessity by majority, even overcoming Islamic secondary rules, but on two conditions: 1) that the effects of the law should be temporary and last as long as necessity was attested as subsisting; 2) that proper punishments for officers acting beyond necessity had to be foreseen and, if need be, performed⁸². According to several authors, Rafsanğānī interpreted this reply as a broad delegation of

⁷⁹ A very precise account on these first phases of the land reform process can be found in S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 197–206; cfr. also B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 84–87.

⁸⁰ S. A. ARJOMAND, *Sociology of Shi'ite Islam. Collected Essays*, Brill, Leiden 2016, p. 390, makes a reference to «the legal distinction between the “primary rules” (*aḥkām awwaliyya*) and “secondary rules” (*aḥkām thānawiyya*). The first derive from the sources of the *shari'a*, the second from expediency as the prerequisites for the implementation of the primary rules».

⁸¹ *Darūra*, as Islamic legal institution, is the state of necessity. According to Y. LINANT DE BELLEFONDS, *Darūra, EI²*, II, pp. 163–164, it «does not result from threats expressed by a person, but from certain factual circumstances which may oblige an individual, finding himself in a dangerous situation which they have brought about [...], to do some action forbidden by the law, or to conclude a legal transaction on very unfavourable terms in order to escape from the danger which threatens him. [...] *Darūra* is used in a much wider sense by the commentators when they try to justify [...] practical necessity, the exigencies of social and economic life. This is why other expressions such as *ḥādja* [need] or *ta'āmul al-nās* [how people deal with each other] or *mašlaḥa* [expediency, public interest] are frequently used». The letter's title refers indeed to «necessary laws» (“*qavānin-e darurī*”); its full translation is in *Şahīfeh-ye Imam*, 15, p. 256. Rafsanğānī remarked that «some of the laws approved by the Islamic Consultative Assembly are related to the enforcement Islamic rules and policies or the aspect that their abandonment is not acceptable by the holy Sharia. But due to considerations [*“darūrat”*] such as regulation of general affairs, protection of interests and warding of possibilities of corruption they have to be temporarily implemented in accordance with the secondary rules. Regarding the former rules, we stand in need of approval and discretion of the leader, who according to the Constitution Supervises the three branches of government».

⁸² In his reply, Ḥomeynī stated: «Whatever required for disrupts the establishment owing and whatever is necessary due to its execution relinquishment and whatever conduces corruption and sin on account of its execution or abandonment is to be passed and implemented by the MPs after examining the issue by the majority of the Majlis deputies stipulating their being temporary as long as the issue is verified and automatically will be set aside after settlement of the issue. It

powers by the Leader to the Parliament, as if the latter was now entitled to exercise a “delegated” *velāyat-e faqih* to assess when necessity allowed the adoption of legislative acts even contrary to Islamic principles – as to the land reform, the religiously protected principle was the full enjoyment of private property⁸³.

After a lengthy parliamentary debate, the new legislation on land reform was eventually voted and approved in December 1982. If the purpose of the CIR law had been land distribution, the 1982 law deeply limited the access to it, encouraging rather the establishment of land leasing contracts, namely *muzāra‘a* (sharecropping) and *iğāra* (rental)⁸⁴. The aim was to prevent obstructionism by landlords and avoid that kind of criticism that had contributed to scuttle the 1980 legislation. Moreover, after the rejection of the bill nationalising foreign trade by the Council of Guardians, representatives were fully aware of the restraining and conservative attitude of the 12-judges body towards radical legislative measures. The limited access to land distribution, though, did not prevent the law to be censured: on the 18th of January of 1983 the Council of Guardians rejected it deeming several articles to be contrary either to Islām or to the Constitution. As to the state of necessity, in particular, the Council argued that its subsistence had not been proved. This was a harsh blow for the radical Government and the parliamentary majority⁸⁵. Given the heavy political, social and economic consequences the decision of the Council of Guardians entailed, Ḥomeynī felt compelled to settle new boundaries among institutions. A few days after the rejection of the land reform, the Leader made a speech to all MPs to celebrate the fourth anniversary of the revolution. Talking about – among other things – the risk of popular support towards the Islamic Republic to fade, Ḥomeynī addressed also the topic of the relations between Parliament and Council of Guardians. *En passant* he made an implicit reference to the land reform and affirmed that in legislative matters *darūra* could indeed be ascertained by the Parliament, though through a two-thirds majority. Thus, he was clearly proposing

should be stipulated that any of the office holders overstepping the boundaries provided is taken as offender and liable to legal and religious prosecution» (*ibid.*).

⁸³ Concerning this exchange between Rafsanğānī and Ḥomeynī, cfr. S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 206–207; K. V. FRINGS-HESSAMI, *The Islamic Debate about Land Reform in the Iranian Parliament, 1981–86*, «Middle Eastern Studies» 37/4 (2001), p. 140; B. BAKTIARI, *Parliamentary Politics in Iran*, cit., p. 87.

⁸⁴ Cfr. M. J. L. YOUNG, *Muzāra‘a*, *EP*², VII, pp. 822–823, who says that it is «a lease of agricultural land with profit-sharing. [...] [T]he owner of the land arranges with a husbandman [...] for the latter to have the use of his land for a specified period, during which the husbandman sows, tends and harvests an agricultural crop. [...] When the crop is harvested the two parties to the contract divide the proceeds in agreed shares, the share of the landowner constituting the rent [...] for the lease of his land», and enumerates the conditions wherewith it is in accordance with Islamic law; E. TYAN, *Īdjār*, *Idjāra*, *EP*², III, p. 1017, according to whom «*Īdjār* or *idjāra* is the contract by which one person makes over to someone else the enjoyment, by personal right, of a thing or of an activity, in return for payment».

⁸⁵ K. V. FRINGS-HESSAMI, *The Islamic Debate about Land Reform*, cit., pp. 140–160, contains a thorough study on the legislative *iter* of the law on land reform and the decision of the Council of Guardians; cfr. also S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 208–210; B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 88–89.

an institutional technical solution to moderate the struggle between *Mağles* and Council of Guardians⁸⁶.

As it can be seen by these episodes, the Islamist clerical political élite in Iran was far from being united, and its divisions were patent also at an institutional level. Nevertheless, this did not undermine the efforts aimed at suppressing the opposition that did not fully identify with the Islamic Republic. In April 1982, Şādeq Qoţbzādeh, former foreign minister under Bāzargān and presidential candidate in 1980 – who had been part of the French inner circle of Ḥomeynī as well –, was arrested along with a hundred of other people under charges of plotting to overthrow the Iranian Government and assassinate the Leader. *Āyatollāh* Šari‘atmadārī too was pointed as aware of the scheme, put under house arrest and deprived of his title of *marġa‘ at-taqlīd*. While denying that the intent of plotters was to kill Ḥomeynī, Qoţbzādeh reportedly admitted the existence of a plan to topple the regime. After a public confession on television, in September 1982 he was executed⁸⁷. The definitive demise of this last liberal figure in Iran – following Bāzargān and Banişadr – made the Tudeh the sole non-clerical party within the political landscape in Iran, but this situation did not last long. In February 1983, several Tudeh cadres were arrested, and in May the whole party was outlawed officially due to a plan to overcome the regime and because of its ties with the USSR. In this way, the appropriation of the political arena by clerical Islamists was fully accomplished⁸⁸.

5.5. *The Escalation of Factionalism During the Second Mağles until the Dissolution of the Islamic Republican Party*

The ban of the Tudeh can be considered the last important political development before the election of the second *Mağles* in 1984 – and besides the events concerning the war with Iraq and their political consequences, which are not addressed here due to their complexity. From the institutional point of view, instead, there was a major constitutional implementation with the adoption, in October

⁸⁶ The speech in *Şahīfeh-ye Imam*, 17, pp. 230–237. Specifically upon *darūra*, he said that «some person sits down and says that now the circumstance is extraordinary and that such and such thing must be done while a group opines that it is not extraordinary, it is not possible that because now a group says that it is extraordinary, we will follow it assuming that it has a few people in the majority. You must work in such a way that it accepts it as being extraordinary; the Guardian Council accepts it; that at least two-thirds of the legislature gives its vote in favor of it being extraordinary, they should consult with knowledgeable person» (p. 236).

⁸⁷ On this episode, cfr. S. BAKHASH, *The Reign of the Ayatollahs*, cit., pp. 223; S. ZABIH, *The Iranian Military*, cit., p. 129; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 225–226; D. HIRO, *Iran under the Ayatollahs*, cit., pp. 217–220. For press news, cfr. *Ghotbzadeh's Arrest Confirmed by Iran; Conspiracy Charged*, *The New York Times*, 11 April 1982; E. A. GARGAN, *Ghotbzadeh, Ex-Foreign Minister; Executed in Iran*, *The New York Times*, 16 September 1982.

⁸⁸ The legal ban of the Tudeh is recalled by S. ZABIH, *The Left in Contemporary Iran*, cit., pp. 37–56; D. HIRO, *Iran under the Ayatollahs*, cit., pp. 226–230; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 234–235; S. A. ARJOMAND, *The Turban for the Crown*, cit., p. 159.

1982, of the electoral law for the Assembly of Experts, the popularly elected organ constitutionally entrusted with the election of the Leader or Leadership Council (artt. 107 and 108 of the Constitution). The Assembly's electoral law – although we are referring to the law as amended in 2006 – dictated that Experts had to be *muğtahids*, enhancing so the religious feature of the Islamic Republic⁸⁹. Elections for the 83 members of this *Mağles-e Ĥobregān* – which was like the 1979 Assembly of Experts simply and solely in name – were held in December 1982 and January 1983, and according to the figures of the ministry of interior, they were solidly popularly backed: the turnout was above 77%, with more than 18 million voters upon 23,2 taking part in the ballot⁹⁰. Even with the establishment of this new institution Ĥomeynī seemed to be haunted by the spectre of factionalism – factionalism seen as a mean of foreign enemies to weaken the Republic –, to the point that during and immediately after the Assembly's opening he warned the newly elected “Experts” against the risks of self-interest and division⁹¹. The same worry came from those cleavages splitting the Government and the Parliament, and indeed in mid-December the Leader once again reaffirmed the value of unity and cooperation and the detrimental effects of factional struggles – in such a way, though, that he ended up sponsoring Musavī⁹².

It is in this context that the country and the clerical Islamist élite were approaching the election of the second *Mağles*, scheduled for spring 1984. On the 28th of February of 1984, the *Mağles* approved a new electoral law which did not touch at all the majority system, but nevertheless introduced several changes as to both active and passive electorate – with a general strengthening of the requirements to be eligible. Candidates could present themselves in more than one list, thus

⁸⁹ The electoral law, although with the 2006 amendments, can be found in <https://irandataportal.syr.edu/executive-bylaws-for-the-election-of-the-assembly-of-experts-of-the-leadership> (retrieved 6 August 2023). Of course, it is impossible to distinguish the provisions of the original legislation from those of the 2006 amended one.

⁹⁰ Figures in M. BOROUJERDI – K. RAHIMKHANI, *Postrevolutionary Iran*, cit., p. 265.

⁹¹ In his inaugural address to the Assembly the 13th of July of 1983, the Leader warned that «The slightest nonchalance, negligence, expression of personal prejudice and, God forbid, following carnal passion, which may derail this noble divine act, will give rise to the greatest disaster in the history of Islam» (*Šahīfeh-ye Imam*, 18, p. 5); then, in a speech to ‘Alī Ĥāmene’ī as President of the Assembly and some of its representatives on the 19th of the same month, he admonished: «If our discord, which no doubt is over worldly issues and not for God, leads to difference among people and defeat of the Islamic Republic so that it would not raise its head, do you think God will forgive us for this crime? [...] It hurts me a lot when I hear at times that for example there is difference between some people. Know that the difference is not concerned with Islam» (*ibid.*, pp. 14–15). Cfr. also B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 94–95.

⁹² Ĥomeynī's words are quite interesting. Making a passionate *apologia* of the Musavī Cabinet, he said: «The government has accomplished many tasks. I mean, with all the problems besetting [sic] the country, the government has kept it from falling apart. It has been able to stave off the disaster befalling the country and attend to those wounded in the war. It has also been able to ward off hunger and other problems. [...] When we observe the situation of war, revolution and the enmity displayed by the entire world, we should not charge the government. Now we see the the [sic] Majlis is criticizing the government. In the presence of ulama, the government is being criticized. In bazaar the government comes under [sic] criticism. Television interviews criticize the government. When something occurs, they start to get at the government. [...] I know there are complaints, and problems of every kind, but you should all cooperate with each other. Close ranks to prevent any organization from going under. Collapse of the government today is detrimental to clerics and Majlis» (*Šahīfeh-ye Imam*, 18, pp. 208–209).

several lists had overlapping candidates. The clerical Islamist camp, although not fully cohesive, managed to exclude the last remnants of lay forces, above all the FMI. The presence of many lists sharing common candidates makes it purposeless to talk about a strictly party competition, since, as seen above, Iranian politics developed around loose and under-structured coalitions whose political interests could vary depending on contextual factors. Although even this time irregularities and fraud were reported, the popular participation to the vote (15,6 million voters out of 24,1, that is to say, 64,6%) was perceived as an endorsement to the Islamist clerical rule⁹³. According to several authors, the election of the second *Mağles*, held the 15th of April (first round) and 17th of May (runoff), strengthened the radical faction⁹⁴ and, consequently, the Musavī Cabinet, which sought and managed to receive another vote of confidence in August with 163 votes for, 21 against, 25 abstentions. Even though the number of parliamentary votes to the Cabinet confidence was higher than those of 1981, ministerial candidates faced a non negligible difficulty, since the proposed ministers of culture, of defence, of health, of education and of industry were rejected⁹⁵. Even worse, soon after the confidence vote the Leader brusquely reprimanded the Cabinet for its partisan and strongly etatist policies – somehow disclaiming what he had said nine months earlier –, giving thus momentum to Ḥāmene’ī, who was to face the presidential election the following year⁹⁶.

The 1985 presidential campaign, indeed, developed along Ḥāmene’ī’s complaints about the lack of powers the Presidency was subject to due to the constitutional development of this institution. This time the ballot was not competitive either: besides Ḥāmene’ī, who asserted that his candidacy was not a personal choice but rather the Leader’s, there were only two other competitors, namely, the above mentioned Ḥabibollāh Asgarulādī and Seyyed Maḥmud Kāšānī, another member of the IRP. The vote took place on the 16th of August of 1985. The turnout, compared to 1981, dropped by 20 percentage points (from 74% to 54%), and Ḥāmene’ī won with almost 2 million votes less (from 16

⁹³ A description of the new electoral law and the 1984 elections is given by B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 108–115. According to the figures of R. KAUZ – H. KHOSRAVI SHAROUDI – A. RIECK, *Iran*, cit., p. 74, the IRP gained 130 seats, while the remaining 140 went to independents; cfr. also M. BOROUJERDI – K. RAHIMKHANI, *Postrevolutionary Iran*, cit., p. 174.

⁹⁴ See, for instance, M. AXWORTHY, *Revolutionary Iran*, cit., p. 244, who says that «The results tended to strengthen the leftist element in the Majles»; for B. BAKTIARI, *Parliamentary Politics in Iran*, cit., p. 114, «The most significant change was the ability of the radicals to increase their presence», and he talks about «optimism of the radical camp» after the elections.

⁹⁵ Cfr. B. BAKTIARI, *Parliamentary Politics in Iran*, cit., p. 114–118; M. BOROUJERDI – K. RAHIMKHANI, *Postrevolutionary Iran*, cit., p. 148.

⁹⁶ In a speech to the President and the Cabinet on the 24th of August of 1984 (*Ṣahīfeh-ye Imam*, 18, pp. 29–33), the Leader affirmed: «Do not push aside the bazaar. [...] Do not prevent bazaar from doing things it can do. It is not religiously sanctioned to inhibit the bazaar. People should not be deprived of their privileges. [...] Do not withhold the people, but exercise supervision lest people should not go astray. [...] I have said time and again and the gentlemen have also promised to comply but I do not know how much they have acted accordingly. [...] What counts is that you should serve the oppressed people who have served you. To serve them you should get the bazaar people involved and make them a partner. Protect those who can produce small industries and other businesses such as, of course, those which the government cannot afford».

to 14,2). If presidential powers were one among the issues of the electoral campaign, their extent became a paramount institutional crux soon after Ḥāmene'ī's re-election⁹⁷. The critical point was Musavī's Prime Ministership and his possible substitution with a Prime Minister who could be a presidential, rather than parliamentary, choice. The issue was so widely resonant that in September 135 representatives wrote a missive to the Leader deprecating the rumours about a potential Cabinet change and asking for Ḥomeynī's advice. His reply was cautious but unequivocal: «I consider Eng. Musawi as a religious and committed person and his government successful in this very complicated situation of the country, not currently regarding its change to be advisable. Nevertheless, the right to select is vested with the president and the esteemed Islamic Consultative Assembly»⁹⁸. If on the one hand the President felt compelled not to contradict the Leader's opinion – giving a constitutional value to a personal assessment expressed upon request – and therefore nominated a second Cabinet headed by Mir Ḥoseyn Musavī, on the other hand this was not true for all MPs. Indeed, when the new Executive sought the confidence from the *Mağles* in October, 99 representatives of the right faction ignored Ḥomeynī's statement and either abstained or voted against, while 162 voted for. Institutionally speaking, this episode underlines the monistic nature of Iranian parliamentarism, whereas the coincidence between the opinion of the parliamentary majority and that of the Leader straitened the presidential discretion in this matter. Nonetheless, if one takes into account Ḥomeynī's authority and his willingness to create a form of consensual political system, then the letter of those 135 MPs did not achieve its goal. In sum, the second mandate of Ḥāmene'ī was beginning under the auspices of an intensifying factional struggle. In the words of Randjbar-Daemi,

the '99 MP Incident' would have deep consequences in the developing political history of the Islamic Republic. It is often considered the moment in which Khamenei and Mousavi definitely parted ways politically and terminated any prospect of a workable *cohabitation* within the executive branch [...].

The events surrounding the reconfirmation of Mousavi in 1985 also revealed the extent to which the *vali-ye faqih*'s opinions were not considered an incontestable element of statecraft but were subject to open challenges by the emerging rightist faction. These episodes, therefore, became moments in which the sanctity of Khomeini's judgments were submitted to remarkable levels intra-elite questioning⁹⁹.

⁹⁷ About the 1985 presidential election, cfr. M. PARGOO – S. AKBARZADEH, *Presidential Elections in Iran*, cit., pp. 62–66; S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., pp. 46–48, according to whom prior to the electoral campaign «Khamenei began to challenge the division of political power within the executive branch by openly decrying the lack of authority of his own institution, which was still hampered by the prerogatives detracted from it during the final stages of Bani-Sadr's presidency».

⁹⁸ *Ṣahifeh-ye Imam*, 19, p. 356. For the text of the letter, *ibid.*, pp. 354–356.

⁹⁹ S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., pp. 49–50; on these episodes, cfr. *ibid.*, pp. 48–50; B. BAKTIARI, *Parliamentary Politics in Iran*, cit., p. 124–130.

In addition to the presidential election and the subsequent conflict over the Prime Ministership, the summer of 1985 witnessed another important political and institutional development. In July, the Assembly of Experts had nominated *āyatollāh* Ḥoseyn-‘Alī Montazerī – the Speaker of the 1979 Constituent Assembly – as Ḥomeynī’s successor to the Leadership, recognising him as *marḡa‘ at-taqlīd*. The choice had remained secret until it was disclosed in November of that same year, and then confirmed by Rafsanḡānī – causing also some protests about the decision-making process in this matter¹⁰⁰. But in 1985 the first meeting of what was to become the Iran-Contra *affaire* occurred as well: it was a meeting in Hamburg between Iranian and Israeli officials that would lead to arms supplies by the US to Tehrān through Tel Aviv in exchange of hostages’ releases by Lebanese Shī‘i militias related to the Iranian regime. Contacts among US, Israeli and Iranian officials continued up until late 1986, reaching a peak with a secret journey of Robert McFarlane – Reagan’s National Security Advisor until December 1985 – to Tehrān in May 1986, when he met with the chairman of the *Maḡles*’ Foreign Affairs Committee, Moḡammad Hādī ‘Alī Naḡafābādī, who was also a close advisor to Rafsanḡānī. The exchange was sponsored precisely by Rafsanḡānī, with the purpose of strengthening the Iranian military in the ongoing war against Iraq. But it involved also internal dynamics within the clerical Islamist leadership, which at that time was split not only with regards to economic and social policies, but upon issues of international relations as well. Specifically, while some radicals, like Montazerī, tended to favour the idea of exporting the Islamic revolution, pragmatists – headed by Rafsanḡānī – and the right opposed such prospect, because of the international isolation and the diversion of military stuff from the war that it entailed. The conflict on this matter blew in October 1986, when Seyyed Mehdī Hāšemī – Montazerī’s son-in-law’s brother – and many of his associates – among them, his brother Hādī and Montazerī’s son, Sa‘id – were arrested on charges of having kidnapped a Syrian diplomat. Mehdī Hāšemī had previously been the head of the Office of Liberation Movements (OLM), an organisation somehow related to the IRGC and whose purpose was to export the revolution abroad – it helped establishing *Ḥizbullāh* in Lebanon. In 1986 the OLM was disbanded by Iranian authorities, something which was followed precisely by Hāšemī’s arrest. One week after the arrest, the existence of the arms-hostages exchange between US and Iran via the Israeli mediation was disclosed by a Lebanese newspaper, which had been informed about it by someone from Hāšemī’s group. This revelation was received with great outrage both in the US and in Iran. While Rafsanḡānī tried to dismiss the issue, Naḡafābādī’s involvement risked costing the

¹⁰⁰ Cfr. U. VON SCHWERIN, *The Dissident Mullah*, cit., pp. 72–75; according to S. A. ARJOMAND, *The Turban for the Crown*, cit., p. 162, «It is evident that the two-thirds majority necessary for the election of a successor to Khomeini could not be reached when the 1985 session adjourned. Hashemi-Rafsanjani and the other supporters had enough of a sense of urgency then to circumvent due process of law announcing the “election” of Montazeri in the interim late in November 1985»; cfr. also M. AXWORTHY, *Revolutionary Iran*, cit., pp. 245–246.

former the Speakership of the Parliament. The 20th of November, though, the Leader minimised the scandal, denying that McFarlane had had any contact with Iranian institution-holders, and criticising those who were calling for investigations on the issue¹⁰¹. Soon the controversy waned. As to Mehdī Hāšemī, he was tried by order of Moḥammad Reyšahrī, minister of intelligence – who secured the assent of Ḥomeynī in this regard –, and eventually executed in September 1987¹⁰². What is certain is that, by striking Mehdī Hāšemī, the “pragmatist” and conservative wings of the clerical Islamist establishment hit hard Montazerī as well: the deputy Leader, indeed, had repeatedly asked for Ḥomeynī’s intervention in the matter prior to Hāšemī’s execution, though to no avail¹⁰³. His stature was in any case deeply weakened.

The exposure of the Iran-Contra exchange and its consequences in the internal politics of Iran visibly proved that the bitterness of factionalism was not manageable anymore, despite all calls to unity the Leader had been making throughout years. By acknowledging the seriousness of divisions within the IRP – a party, as remarked above, that had arisen eight years earlier under the reluctant auspices of Ḥomeynī –, on the 1st of June of 1987 the party Secretary General and Iranian President, Ḥāmene’ī, and the Speaker of the *Mağles*, Rafsanḡānī, on behalf of the Central Committee of the IRP, asked the Leader to dissolve it: «the present interests of the revolution – they asserted – lies in the dissolution of the Islamic Republic Party and termination of all its activities»; the Leader responded: «It is approved»¹⁰⁴.

¹⁰¹ *Šaḡīfeh-ye Imam*, 20, pp. 147–150.

¹⁰² In a letter to Reyšahrī dated October the 27th, 1986, the Leader talked about «anti-revolutionary and deviant elements affiliated to Mahdi Hashimi» and specified that «since the event deals with Islam, the revolution and the security of the country, the Ministry of Information is solely responsible for investigation» (*ibid.*, p. 134).

¹⁰³ Upon the figure of Mehdī Hāšemī, cfr. H. FOROZAN, *The Military in Post-Revolutionary Iran*, cit., pp. 54, 170–172, who affirms that «in 1986, the shadow Office of Liberation Movements (OML), led by Ayatollah Montazeri’s supporter Medi [*sic*] Hashemi, was eliminated at the initiation of Iran’s pragmatists in power, who felt that Hashemi’s [*sic*] rouge activities would undermine Tehran’s grand bargain for the release of the US hostages held by Hezbollah. The dissolution of the OLM constituted a severe setback for Mehdī Hashemi, a former member of the Sepah’s Command Council, who had already left the Sepah to form his own export of the revolution organisation under the patronage of Khomeini’s designated successor Ayatollah Hossein Ali Montazeri. In 1986 Hashemi [...] leaked the news of the Iran-US arms deal»; the struggle over the exportation of the revolution and the Hāšemī *affaire* is recalled also by A. OSTOVAR, *Vanguard of the Imam*, cit., pp. 118–120, according to whom «while negotiating with the Americans, Rafsanjani sought to weaken his rival Ayatollah Montazeri by undermining the influence of the latter’s radical base. [...] Rafsanjani removed the Office of Liberation Movements from the IRGC and merged it with the Foreign Ministry. [...] [T]his was a blow to radical interventionists. Medhi Hashemi [...] was detained and an investigation into his activities commenced. [...] In protest, some of Hashemi’s associates leaked information to a Lebanese newspaper exposing the covered negotiations and attempted arm purchases between Rafsanjani, the United States, and Israel [...]. The attempt to undermine Rafsanjani backfired. [...] With Khamenei’s backing, Rafsanjani led a crackdown on radical activists resulting in the mass arrests of Hashemi’s and Montazeri’s supporters [...]. By 1987, the radical faction, which had become tainted by its association with Hashemi (who was forced to publically confess to crimes against the Islamic revolution and subsequently executed that year), had lost much of its influence within both the IRGC and the government»; cfr. also U. VON SCHWERIN, *The Dissident Mullah*, cit., pp. 90–105; S. A. ARJOMAND, *After Khomeini. Iran Under His Successors*, Oxford University Press, New York 2009, pp. 33, 134–136; B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 130–138; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 252–257.

¹⁰⁴ The text of the letter and Ḥomeynī’s reply in *Šaḡīfeh-ye Imam*, 20, pp. 256–257. Ḥāmene’ī and Rafsanḡānī recognised «that the existence of the party will no longer have those benefits and utilities which were experienced the

With the dissolution of the IRP, Ḥomeynī once again reaffirmed, perhaps unwillingly, his own prominent role in the shaping of the Islamic Republic's political and institutional system. Much like in 1979 he had acted as the IRP's demiurge upon request, so in 1989 he was addressed to euthanise it. This move represented another intervention by the Leader within factional rivalries, whereas the IRP itself, although formally guided by the President, was a stronghold of the radicals¹⁰⁵. If factionalism persisted as a constant of Iranian politics even without the IRP, similarly Ḥomeynī remained the *pivot* of the whole system, destined to influence it in depth up until his death. The end of the IRP was indeed the last great political and institutional development in Iran before a series of events mainly managed by Ḥomeynī that would form the prologue of the 1989 amendment process. These events heavily impacted on the material dimension of the Constitution, representing the base upon which many features of the formal revision that would occur in the wake of Ḥomeynī's death would take shape. Many premises to this process, though, occurred also in the period analysed right above. It is therefore difficult to find a clear caesura between this chapter and the following. 1988 can be a fair point for many reasons.: through the ruling on "absolute guardianship" (December 1987-January 1988), the creation of the Expediency Discernment Council (February 1988), the end of the war against Iraq (August 1988), the dismissal of Montazerī as designated successor to the Leadership (March 1989), the nomination of the Commission for the constitutional amendments (April 1989), and Ḥomeynī's death (June 1989), Iran was going to witness, within one year and a half, a sudden political, institutional and constitutional development.

beginning of the work. On the contrary, it is possible that the factionalism in the present circumstances may cause difference and discord as well as rupture in the unity and cohesion of the nation. It could even make the forces confront one another and undermine one another».

¹⁰⁵ Cfr. B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 140–141, who underlines that «Rafsanjani [...] recommended Khomeini that the IRP should be dissolved. He convinced Khomeini that the radical faction had gained ascendancy and that this would transform the institution into a rubber-stamp assembly for radical measures. President Khamene'i was also supportive of this action [...]. Ayatollah Montazeri was also supportive since the radicals in the Majles had led the campaign in condemnation of Mehdi Hashemi. The only person who opposed the measure was Musavi».

6. The 1989 Amendments and the Orphan Islamic Republic: How Politics Overruled Religion

On the 28th of June of 1989, a popular referendum sanctioned the amendments to the 1979 Constitution, while simultaneously Akbar Hāšemī Rafsanġānī was elected President to succeed ‘Alī Ḥāmene’ī, who in turn had been nominated by the Assembly of Experts as new Leader following Ḥomeynī’s death on the 3rd of June. If on the one hand all these events marked the beginning of what some authors consider a “second Republic” in Iran¹, on the other they were also the arrival point of a process that had started at least one year and a half earlier. In the scientific literature on the Islamic Republic, two homonymous works titled “*After Khomeini*” – one by S. A. Arjomand and the other by A. Ehteshami – have addressed precisely the history and the politics of post-1989 Iran. What is interesting is that both authors have dedicated a non negligible space to the political and institutional developments that Iran had witnessed before Ḥomeynī’s death². The Leader, indeed, played a capital role in modelling even those amendments that would enter into force after his passing. At the beginning of 1988, Ḥomeynī declared that the exercise of “absolute guardianship” (“*velāyat-e motlaq*”) compelled the Islamic government to act, if necessary, even against religious principles, if that was required by the system’s “public interest” (“*maṣlaḥat*”). His ruling of this issue was the first step of a broader path that would somehow “secularise” or “de-sacralise” the Constitution. With the elimination of *marġa’iyya* from the constitutional requisites of the Leadership – done following Ḥomeynī’s will – this process was ultimately finalised.

The complex developments synthetically recalled right above are the subject of the present chapter. The first section deals with the main political and institutional events of 1988: Ḥomeynī’s ruling of absolute guardianship, the creation of the Expediency Discernment Council, and the end of the war with Iraq. The second section explains the issue of the succession to Ḥomeynī, placing the ouster of *āyatollāh* Montazerī within the context of the changes that the Islamic Republic was undergoing at the time. Finally, an assessment of the 1989 amendment process is contained in the third section – the arrival point of this analysis of the Islamic Republic in Iran.

¹ Cfr. *supra*, ch. 5, part. note 4; but also M. AXWORTHY, *Revolutionary Iran*, cit., p. 297, who affirms that «the political landscape of Iran was transformed between the summer of 1988 and the summer of 1989; building on earlier developments like the dissolution of the IRP, the promulgation of the doctrine of *velayat-e motlaq*, the creation of the Expediency Council and arguably, the prison massacres. Some have called it an Iranian Thermidor; others have gone so far as to say that what emerged was a second republic».

² S. A. ARJOMAND, *After Khomeini*, cit., pp. 17–35; A. EHTESHAMI, *After Khomeini. The Iranian Second Republic*, Routledge, London-New York 1995, pp. 1–26.

6.1. *Absolute Guardianship and Expediency: the First Material Amendments to the Constitution*

The dissolution of the IRP in late-1987 – beside demonstrating that republican Iran was not a single-party system, either *stricto* or *lato sensu* – was certainly caused by factionalism, and nevertheless it did not entail the cessation of struggles between radicals and conservatives. In early December, the minister of labour, Abolqāsem Sarḥaddizādeh, a member of the left, asked the Leader whether the Government could establish conditions on the use of public or Government-held goods and utilities; Ḥomeynī answered affirmatively³. This reply triggered a massive avalanche. Ten days after his exchange with the minister of labour, Ḥomeynī addressed the worries expressed to him by the secretary of the Council of Guardians, Loṭfollāh Šāfi Golpāyegānī, according to whom, after the ruling, «many individuals have argued that [...] the government may set any social, economic, labor, family, commercial, urban-related, agricultural and other order as replacement of the pure and simple orders of Islam»⁴. The Leader did not try to reassure him, on the contrary he reaffirmed and enhanced what he had said to Sarḥaddizādeh: «In all cases in which the people are benefiting from the government services and facilities, the government can collect an amount for utilizing them with the Islamic requirements and even without any requirement. This is true in all cases under the government control and it is not limited to the cases that have been mentioned in the letter of the minister of labor»⁵. Ḥāmene’ī attempted to make a “balanced” hermeneutic of Ḥomeynī’s statements that could run with the hares and hunt with the hounds, namely, ascertain the new prerogative recognised to the Government while respecting Islamic law. Therefore, in the Friday prayer of the 1st of January of 1988, the President stated that «His Eminence the Imam has clarified in his discussion of the issue that this work, this measure by an Islamic government, does not trample upon accepted Islamic laws and decisions. This goes to the heart of the honourable secretary of the Guardian Council’s question. [...] Of course, in Islamic society, the accepted commandments are just as I say, that is, the *fatwā* of the *vilayāt-i [sic] faqīh*»⁶. Six days later, the Leader bluntly replied to the President saying that he had not understood what the Islamic government was and that he had misinterpreted the sense of his own words. According to Ḥomeynī, being the Islamic government a manifestation of the “absolute guardianship” (*velāyat-e moṭlaq*) of the Prophet, then the very acts of the ruler pertain to the field of “primary laws of Islam” (*aḥkām-e avvaliye-ye eslām*) and therefore they can override secondary rules. In his own words, directly addressing Ḥāmene’ī, he said:

³ See the exchange in *Šahīfeh-ye Imam*, 20, p. 407.

⁴ *Ibid.*, p. 411.

⁵ *Ibid.*, p. 412.

⁶ This English translation of Ḥāmene’ī’s speech is in Y. HOVSEPIAN-BEARCE, *The Political Ideology of Ayatollah Khamenei*, cit., pp. 94–95.

It is clear from your statements during the Friday prayer that you do not regard as correct the government in the sense of absolute guardianship delegated by God to the Noble Prophet [...], as among the most important Islamic laws and preeminent over all divine religious laws. And quoting me as saying that government has authority within the framework of the divine laws is totally inconsistent with my statements. If the authorities of the government were within the framework of the secondary religious laws, then the thesis of the divine government and absolute guardianship entrusted to the prophet of Islam [...] should be a meaningless and empty phenomenon. [...]

I have to state that the government, which is a branch of the absolute guardianship of the Messenger of Allah [...], is one of the primary laws of Islam, and it takes precedence over all secondary laws including prayer, fasting and *Hajj*. The ruler [...] can unilaterally annul religious contracts forged with the people in case the contracts are against the interest of Islam and the country. He can prevent any affair – devotional or else – whose occurrence is against the interests [*maṣāleḥ*] of Islam as long as it is so. [...]

Whatever has been said so far or will be said stems from lack of knowledge on the absolute divine guardianship⁷.

All these rulings invested into an extremely sensitive area, since they implicated, among other things, the complex relationship between Parliament and Council of Guardians – which, as seen above, was sometimes marked by a considerable degree of political conflict. Ḥomeynī introduced a capital concept, that of *maṣlaḥat*, which can be translated as “public interest”, or “expediency”. *Maṣlaḥat*, though, has also a technical legal meaning, as it is included among the sources of Islamic law⁸. Following the Leader’s clarification of the 6th of January, one month later the top officials of the Republic – the President, the Speaker of the *Mağles*, the Prime Minister, the President of the Supreme Court – and his son Aḥmad asked him whether he had thought to establish a new authority that, based on Islamic canon law (“*šar‘-e moqaddas*”), the Constitution (“*qanun-e asāsī*”), or the discernment of expediency of the system and society (“*tašḥiṣ-e maṣlaḥat-e neẓām ve ġāme‘eh*”), would settle those issues between *Mağles* and Council of Guardians that could not be agreed upon. Although Ḥomeynī did not fully concur with this idea, he acquiesced in it. In February 1988 the Council of the Discernment of the System’s Public Interest (*Mağma‘-e Tašḥiṣ-e Maṣlaḥat-e Neẓām*, also known as “Expediency Discernment Council”) was thus formed, composed by Ḥāmene‘ī, the jurists of the Council of Guardians, the Prime Minister and the concerned minister, and Aḥmad Ḥomeynī. It had to take decisions by majority, and its rulings were final⁹.

⁷ *Šaḥīfeh-ye Imam*, 20, pp. 426–427.

⁸ Cfr. M. KHADDURI, *Maṣlaḥat*, *EI2*, VI, pp. 738–740: «Strictly speaking, *maṣlaḥa*, like *manfa‘a*, means “utility” and its antonyms are *maḍarra* and *mafsada* (“injury”); but generally speaking, *maṣlaḥa* denotes “welfare” and is used by jurists to mean “general good” or “public interest”. Anything which helps to avert *mafsada* or *ḍarar* and furthers human welfare is equated with *maṣlaḥa*».

⁹ The letter and Ḥomeynī’s answer in *Šaḥīfeh-ye Imam*, 20, pp. 439–441. Upon the conflict between Parliament and Council of Guardians, the signers of the letter remarked «the need for the interference of the Jurist-Guardian [*deḥālat-e velāyat-e faqih*]», and then asked: «We have been informed that you are on the threshold of setting a reference authority,

As it can be seen, even eight years after the Constitution had entered into force, it was necessary to resort to the Leader in order to unravel institutional and political issues that the institutional and political leadership of the Republic was not able to solve. However, once again the solution presented by the Leader was extra-constitutional, although this did not seem to be a relevant problem: the legal authority of the Constitution itself was juxtaposed with other sources, namely, Islamic law and the determination of the public interest. The decision to establish the Expediency Discernment Council was based not on constitutional provisions, but rather upon Ḥomeynī's authority as supreme *faqīh* – a kind of authority the signers of the letter referred to as well –, hence as *muğtahid*, and upon the judgements of what was expedient for the political system and the Iranian society. This development was the final stage of what S. A. Arjomand has called «The explicit degradation of the Constitution of the Islamic Republic»¹⁰ under Ḥomeynī, but besides the issue of the constitutional awareness of the political leadership of the Islamic Republic, the rulings on absolute guardianship and expediency can be considered as the first steps of the constitutional amendment process that would take place in 1989 – a change that, at this stage, impacted on the material rather than on the formal Constitution. Iran, indeed, was approaching Ḥomeynī's death, who in February 1988 was heading towards the age of 86. Although none could know that the Leader would die in the late spring of 1989, his old age compelled to face the issue of the succession to him as *Rahbar* and the settlement of the constitutional, institutional and political system.

The creation of the Expediency Discernment Council and the curtail of the powers of the Council of Guardians it entailed caused a serious setback for the conservative faction¹¹. This major constitutional development conditioned the election of the third *Mağles* – scheduled for the 8th of April (first round) and 13th of May (runoff) of 1988. Although in 1987 the conservatives, along with

which in case of the Majlis and the Guardian Council's failure to resolve the disagreement between themselves, would express an administrative law based on the sacred religious law, the Constitution or expediency of the system and society. In case Your Eminence has already made a decision in this regard, urgent action is ideal in view of the fact that there are now numerous cases of the important issues of society that have remained undecided». Concerning the issue of absolute guardianship and the establishment of the Expediency Discernment Council, cfr. B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 141–144, who asserts that «Khomeini's actions reflected the degree of frustration within his circle concerning the factional disputes. [...] [T]he establishment of the "special assembly" was beyond the Islamic Republic's constitutional structure. Coupled with the other decrees by Khomeini, the role assigned to this body further weakened the Majles's influence»; S. A. ARJOMAND, *After Khomeini*, cit., pp. 33–35; E. SADEGHI-BOROUJERDI, *Revolution and Its Discontents. Political Thought and Reform in Iran*, Cambridge University Press, New York 2019, pp. 108–113; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 272–275; S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., pp. 52–54.

¹⁰ S. A. ARJOMAND, *After Khomeini*, cit., p. 34.

¹¹ «Khomeini's ruling had shifted the balance of factional power to the favor of Musavis's government and reduced the authority of the Majles and the Council of Guardians. The latter's constitutional authority over "interpreting the laws" was undermined» (B. BAKTIARI, *Parliamentary Politics in Iran*, cit., p. 143); similarly, M. AXWORTHY, *Revolutionary Iran*, cit., p. 274, when talking about the establishment of the Expediency Discernment Council, affirms that «the effect of this innovation was to emphasize the new doctrine of *velayat-e motlaq*, the strengthening of the state and those running it, the upper hand of the statist, leftist faction and the relative weakness of the right».

the pragmatists of Rafsanjānī, had managed to pass an electoral law that had reinforced the powers of the Council of Guardians with regards to the control over candidacies to the detriment of the ministry of interior – headed by a radical, Seyyed ‘Alī Akbar Moḥtašamipūr, since 1985 –, even this time the radicals got the upper hand in the elections. The dissolution of the IRP did not eliminate the political cleavages that had divided the clerical Islamist camp theretofore, but rather it favoured the emergence of new political and party entities whose membership reflected – unlike the post-1981 IRP – common ideological grounds. Simplistically put, while the JRM (the above-mentioned Combatant Clergy Society) became the *pivot* of the right, the left gathered around a new subject, the Combatant Clerics Association (*Maḡma ‘-e Ruḡāniyun-e Mobārez*, abbr. MRM), which arose from a split of the JRM soon after the first round of the 1988 elections. The MRM came to hold a solid majority in third *Maḡles*: the power growth of the radical faction was patent in the composition of the parliamentary governing board, since then controlled by Rafsanjānī, and now solidly in the hands of radicals – except for the Speakership and a couple of other positions¹². Nevertheless, as seen above Ḥomeynī was sensitive to every power shift, and as if to counterbalance the implicit endorsement to the radicals he had made just before the election, immediately after the convening of the third Legislature he decided – upon Ḥāmene’ī’s advice – to delegate the Commandership-in-Chief to Rafsanjānī, on the 2nd of June¹³. At the end of June, Musavī was confirmed Prime Minister with an overwhelming parliamentary majority of 204.

The nomination of Rafsanjānī as Commander-in-Chief was not out of context: the first round’s election day itself had taken place in a period of massive Iraqi missile strikes against many Iranian cities – among which the capital – carried out from mid-March until mid-April. More generally, the war initiated by Ṣaddām Ḥusayn was concluding its eighth year with a substantial stalemate; both countries were economically and militarily exhausted. In mid-April the Iranian army had been pushed away from al-Fāw, south-east Baṣra, thus demonstrating that a military and political downfall of the

¹² Upon the 1988 parliamentary elections and the birth of the Combatant Clerics Association, cfr. B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 145–151; ID., *Parliamentary Elections in Iran*, «Iranian Studies» 26/3/4 (1993), p. 377; A. RAHNEMA, *The Political History of Modern Iran*, cit., pp. 441–442, says that the third *Maḡles* was «dominated by the radical wing of the Imam’s line [...] The Assembly of Militant Clerics and their allies had a resounding majority with 170 deputies, while the conservatives, led by the Association of Militant Clergy mustered only 100 deputies».

¹³ See the message to the nation Ḥomeynī delivered on the 31st of March, in *Ṣaḡifeh-ye Imam*, 21, pp. 8–11: «The heroic people of Iran would meticulously cast their votes in favor of candidates who are devoted to Islam and committed to the people. They would elect ones who have a sense of responsibility in rendering services to people, who have experienced the bitter taste of destitution, and support the Islam of the barefooted on earth in their words and deeds. They should back the Islam of the downtrodden, the Islam of the oppressed people in history, the Islam of the combatant mystics, the Islam of the good-natured mystics». According to B. BAKTIARI, *Parliamentary Politics in Iran*, cit., p. 147, «The message was a big setback for Rafsanjani and Azari-Qumi», the latter being the parliamentary leader of the conservatives in the second *Maḡles*. The text of the appointment decree of Rafsanjānī as Commander-in-Chief in *Ṣaḡifeh-ye Imam*, 21, pp. 54–55.

Ba‘thist regime was totally unrealistic¹⁴. Yet, when the Parliament granted the confidence to Musavī in late-June, the sudden acceptance of a ceasefire was far from expected. Indeed, if on the one hand Rafsanjānī had indeed turned moderate on war issues after having strongly supported the Iranian offensive of 1982¹⁵, on the other hand the radicals – along with the IRGC commanders – preserved their «uncompromising position vis-à-vis Saddam Hussein» which they deemed «important to their revolutionary objectives and had been instrumental in their electoral victory»¹⁶. Nevertheless, at the beginning of July a sudden crisis rushed the events: the USS *Vincennes* shot down a civilian airliner, the Iran Air Flight 655. Besides the diplomatic incident caused by this tragedy, the involvement of a US military ship worried the clerical leadership of the Islamic Republic about a possible enlargement of the conflict beyond Iraq – which, by the way, was in any case supported by many Western and Arab countries. With Ḥomeynī’s assent, then, and under the impulse of Ḥāmene’ī and Rafsanjānī, the top Iranian officials decided to formally accept the UN Security Council Resolution 598 (1987), which dictated the implementation of a ceasefire and the withdrawal of military forces from occupied territories. On the 20th of July, Ḥomeynī announced this outcome in a message broadcasted nationwide, and destined to be known as the speech of the «poisoned chalice»¹⁷. As soon as the Iranian commitment for a ceasefire became public, Ṣaddām Ḥusayn launched a renewed offensive, but to no avail. All Iraqi attacks failed, and a MeK-led incursion towards Kermānšāh turned into a massacre for many of the 7.000 *Moğāhedīn* who took part in the operation. Finally, in August the Iraqi dictator too acquiesced in a ceasefire, which became effective under the UN auspices on the 20th of August¹⁸.

While the Iran-Iraq war was witnessing its final phases and was heading towards the ceasefire, at an institutional level Iran was still deprived of a fully functioning Cabinet. Musavī did not present the ministerial team for the confidence vote within the prescribed term of one week after the confidence to the Prime Minister, but the *Mağles* itself, by way of derogation from the Parliament’s rules, granted

¹⁴ These military developments are recalled, among others, by M. AXWORTHY, *Revolutionary Iran*, cit., pp. 268–272; A. OSTOVAR, *Vanguard of the Imam*, cit., pp. 96–98; D. HIRO, *The Longest War. The Iran-Iraq Military Conflict*, Routledge, New York 1991, pp. 199–210.

¹⁵ Cfr. H. FOROZAN, *The Military in Post-Revolutionary Iran*, cit., pp. 81–82; A. OSTOVAR, *Vanguard of the Imam*, cit., pp. 98–99, states that «Rafsanjani had been a leading advocate for continuing the war over the years. Like Khomeini, Rafsanjani did not outwardly back away from his uncompromising position on the war. Behind the scenes, he worked to form a consensus among Iran’s leaders and military commanders to end the conflict»; similarly, M. AXWORTHY, *Revolutionary Iran*, cit., pp. 277–278, asserts that «The crucial figure in this was Rafsanjani, who since 1982 had been prominent in the aggressive prosecution of offensives against Iraq. By mid-1988 the mixed results of the most recent Iranian offensives [...] plus the success of renewed Iraqi offensives [...] had already had its effects on Rafsanjani’s assessment of Iran’s chances in the conflict».

¹⁶ B. BAKTIARI, *Parliamentary Politics in Iran*, cit., p. 154.

¹⁷ *Ṣahīfeh-ye Imam*, 21, pp. 71–94.

¹⁸ The Iran Air Flight 655 disaster, the MeK offensive, and the acceptance of UN Resolution 598 are described by M. AXWORTHY, *Revolutionary Iran*, cit., pp. 275–283; D. HIRO, *The Longest War*, cit., pp. 211–212, 241–250; A. RAHNEMA, *The Political History of Modern Iran*, cit., pp. 442–445.

him two months to do so. Musavī dragged the issue until early-September, when he suddenly and unexpectedly announced his resignation in a letter to the President. The official reason behind this act laid, according to Musavī, in the institutional weakness of the Prime Ministership, with special regards to foreign affairs¹⁹. Many authors, though, underlines Musavī’s willingness to secure the Leader’s support by presenting himself as an ostracised figure, whereas his final aim was to acquire the necessary political strength to appoint people to his liking in key ministries occupied by conservatives theretofore – like the ministry of foreign affairs. His move proved more than unfruitful: it boomeranged on him. Not only did Ḥāmene’ī refuse to accept the resignation, but Ḥomeynī himself intervened in the dispute, labelling Musavī’s resignation «surprising», and directly addressing the Prime Minister: «if ever you decided on it, at least you must have informed me or the high-ranking officials of the system. [...] Continue your service at the stronghold of premiership and within the framework of Islam and the Constitution. In case some of the ministers are not approved, it happens as in the past. It is the legal right of the Majlis to vote for the minister it likes». Indeed, within a few days, the new ministerial team was nominated and – except for three ministries: IRGC, education, agriculture – it received the parliamentary confidence²⁰.

6.2. *The Succession to Ḥomeynī: from Āyatollāh Montazerī to Ḥoḡgatoleslām Ḥāmene’ī*

Although ended, the war did have significant aftermaths in the political and institutional life of the Islamic Republic. First of all, the offensive the MeK had led in late-July represented the prelude to a massive physical purge of political prisoners. Right after the failure of the MeK offensive and the Iranian victory over it, on the late days of July Ḥomeynī issued a decree²¹ in which he ordered that those who supported the “hypocrites” (*monāfeqin*) – one of the labels the clerical Islamist

¹⁹ In his letter to the President, Musavī thus enumerated the reasons behind his choice: «1. Loss of authority of the government in foreign policy. [...] 2. Extra-territorial operations take place without the knowledge and orders of the government. [...] 3. The break-up of the Budget and Planning Organization from the Prime Minister’s Office, which was done for political reasons [...]. 4. Decline of the legitimate and legal authority of the government and the responsibility of the government and ministers as caused by various councils. 5. My inability to be answerable to the members of the cabinet and the honorable deputies of the Parliament regarding actions taken in the name of the government but without its knowledge» (full English translation of the text in <https://irandataportal.syr.edu/letter-by-prime-minister-mousavi-explaining-resignation-to-president-khamenei>, retrieved on 22/10/2023).

²⁰ *Ṣaḥīfeh-ye Imam*, 21, pp. 117–118. These events are recalled by B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 152–158, who underlines that «Musavi felt that he could persuade Khomeini to endorse a cabinet of his choice by using the “resignation” tactic [...] In his reply, Khamene’i reacted strongly [...], Khomeini criticized Musavi as strongly as Khamene’i [...]. Thus, Musavi was reinstated by Khomeini without any endorsement of his cabinet selection»; cfr. also S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., pp. 37–38, 54–57, who affirms that «Mousavi’s move was therefore probably an initiative designed to gather additional support from Khomeini».

²¹ The English translation of the decree (labelled as a “*fatwā*”, although it was a *ḥukm*, cfr. *infra*, note 26) can be found in G. ROBERTSON, *The Massacre of Political Prisoners in Iran, 1988*, Abdorrahman Boroumand Foundation, s.l. 2011, pp. 41–42; needless to say, the text is not reported in *Ṣaḥīfeh-ye Imam*.

leadership or Iran used to refer to the MeK – had to be considered as “rebellious” (*moḥāreb*) and thus punished with death²². Thousands of political prisoners – mainly MeK members, but also people related to the Tudeh and the FeK – were re-tried and eventually sentenced to death, in what M. Axworthy has called «the blackest episode in the record of the Islamic republic»²³. Mass executions went on for several months: not only were they an institutionally legitimised breach of human rights, but they engendered a division in the leadership of the Islamic Republic as well. Indeed, since the beginning of the killings Montazerī – having been made aware of the situation – repeatedly expressed his disapproval in several letters sent to both the Leader and the Head of the Supreme Court, Musavī Ardebilī; Ḥomeynī did not even reply. According to his own memoirs, the deputy Leader directly addressed the judicial committee of the main capital’s prison, Evin, by asking its members – among whom current President Ebrāhim Ra’isī – to stop the killings. The committee members answered that they would carry on their task anyway. Eventually, executions stopped in early autumn, with an estimated number of deaths ranging from about a thousand to several thousands. Montazerī’s condemnation of the mass executions deepened the political and personal rift that had emerged between him and Ḥomeynī since the Iran-Contra *affaire* and the trial of Mehdī Hāšemī, representing a key moment in the path that would lead to his downfall²⁴.

February 1989 marked the tenth anniversary of the revolution – ten years since Ḥomeynī’s return to Iran, since the nomination of Bāzargān, since the fall of Baḥtiar. Making an assessment on the achievements of the revolution, Montazerī recognised that there had been “past mistakes”: according to him, revolutionary fervour had often taken the place of political competence, and the leadership of the Islamic Republic needed to improve its own quality, better understand the people’s needs, and open up to criticism. Apparently, the stance the deputy Leader expressed on the occasion of this

²² “*Monāfeqin*” is the Farsi equivalent of the Arabic plural “*munāfiqūn*” (sing. “*munāfiq*”): it is a Qur’ānic word, and according to A. BROCKETT, *al-Munāfiqūn*, *EP*², VII, pp. 561–562, «it is usually translated [...] as “hypocrites” [...] but also [...] “doubter” or [...] “waverer”. While these connotations are present, the term in the Qur’ān is usually stronger and covers a wide semantic range. In LXIII, 3 the *munāfiqūn* are apostates [...]. *Djihād* is to be waged against them (IX, 73; LXVI, 9) and they are to be killed (IV, 89; XXX, 60). In the rest of the sura named after them, LXIII, they are berated in the strongest terms. They are liars (1), obstructors (2), ignoramuses (3), propped-up timbers, the enemy (4), arrogant (5), unforgivable deviants (6), they dissent over levies. [...] It may be said that the English word “hypocrite” most closely fits post-Qur’ān Muslim usage of *munāfiq*, but the English word that comes nearest to *munāfiq* in its totality of use in the Qur’ān is “dissenter”. As to “*moḥāreb*”, it derives from the Arabic word “*ḥirāba*”, which can be translated *grosso modo* as “warfare”, or “rebellion”: upon it, cfr. K. ABOU EL FADL, *Rebellion*, *EQ*, IV, p. 364, who recalls a «Qur’ānic pronouncement which strongly condemns people who fight God and his Prophet and spread corruption on the earth (*muḥsidūn fī l-arḍ*) by destroying property and life (*wa-yas’awna fī l-arḍi fasādan*, Q 5:33). The verse (known as *āyat al-ḥirāba*) sets out severe punishments, including banishment and death, for those who commit such a hideous deed».

²³ M. AXWORTHY, *Revolutionary Iran*, cit., p. 291.

²⁴ Upon mass executions in Iran in 1988, cfr. G. ROBERTSON, *The Massacre of Political Prisoners*, cit., *ad indicem*; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 283–291; A. RAHNEMA, *The Political History of Modern Iran*, cit., pp. 445–446; an account from the perspective of Montazerī, with extensive quotations, can be found in U. VON SCHWERIN, *The Dissident Mullah*, cit., pp. 105–112.

anniversary was carefully ignored by the other top officials²⁵. But within a few days, a major event – with international consequences too – occurred. Indeed, on the 14th of February Ḥomeynī issued a *ḥukm* through which he declared «that the author of the book, *The Satanic Verses*, which has been written and published against Islam, the Prophet and the Quran, as well as the publishers aware of its content, are sentenced to death»²⁶. As it is widely known, the author concerned was the Indian-born British writer Salman Rushdie, while the editor was Viking Press. The issue of the *ḥukm* against Rushdie deserves a careful analysis, since it brings into play several dimensions of the political and institutional history of republican Iran at the eve of Ḥomeynī's death. *The Satanic Verses* had been published in September 1988, and it had acquired a worldwide notoriety, winning two international prizes, but being also banned by Pakistani Prime Minister Benazir Bhutto already in October of that same year. In his biography on Ḥomeynī, B. Moin reports that in late-September, when informed about the book's sarcastic content concerning Prophet Muḥammad and Islām, the Leader laconically said: «The world has always been full of lunatics who have talked nonsense. It is not worth replying to this sort of thing. Do not take it seriously»²⁷. It must be underlined that Moin presents this sentence as coming «From a private source»²⁸, and if one cannot put into question the good faith of the author, nonetheless the quotation can hardly be used to uphold a scientific discourse²⁹. Be that as it may, the book did circulate and was even reviewed in Iran some months prior to the condemnation of its author – a circumstance that leads to think that Ḥomeynī was indeed aware of its existence and, if possible,

²⁵Cfr. U. VON SCHWERIN, *The Dissident Mullah*, cit., pp. 112–118, who quotes extensively some of Montazerī's statements; S. AKHAVI, *The Thought and Role of Ayatollah Hossein'ali Montazeri in the Politics of Post-1979 Iran*, «Iranian Studies» 41/5 (2008), p. 651, states that: «In Qom, on the anniversary of the revolution that year, Montazeri called for the government to “make up for past mistakes” and establish a free society. He complained that the rhetoric of the decade since the revolution had caused the country to be “isolated in the world and turned the people pessimistic toward us ... The people of the world thought our only task here in Iran was to kill”. Noting the large numbers of human casualties and towns destroyed, and sorrowing over unspecified “social and political mistakes”, he urged atonement. He [...] called for an end to media censorship, including of his own remarks»; Montazerī's statements are reported also in D. MENASHRI, *Iran (Jumhuriyye Islamiyye Iran)*, in A. AYALON, H. SHAKED (eds.), *Middle East Contemporary Survey. 1988*, vol. XII, Westview Press, Boulder-Oxford 1990, p. 488.

²⁶The text in *Ṣaḥīfeh-ye Imam*, 21, p. 265. As in the case of the decree that authorised the mass killings of political prisoners, the 1989 decree against Rushdie was not, technically, a *fatwā*, that is, a jurisprudential response issued upon request, but a *ḥukm* – and thus it is labelled in the Farsi original of *Ṣaḥīfeh-ye Imam*, see online http://www.imam-khomeini.ir/fa/C207_44691/ فتوای قتل سلمان رشدی، نویسنده کتاب کفرآمیز آیات شیطانی (retrieved on 24/10/2023). According to E. TYAN, *Fatwā*, *EP*², II, p. 866, a *fatwā* is an «opinion on a point of law, the term “law” applying, in Islam, to all civil or religious matters. The act of giving a *fatwā* is a *futyā* or *iftā*; [...] the person who gives a *fatwā*, or is engaged in that profession, is a *mufīṭ*; – the person who asks for a *fatwā* is a *mustafīṭ*. The institution of the *futyā* corresponds with the Roman institution of *jus respondendi*». Cfr. also I. GOLDZIJHER, *Aḥkām*, *EP*², I, p. 257, who says that “*ḥukm*” (pl. “*aḥkām*”) means «decision, judgment. [...] In the field of religious law, *aḥkām* is therefore synonymous with the *furū*’, the positive law as opposed to legal theory or jurisprudence; but as it also means judicial decisions, the term is more specifically used of the application of legal rules to concrete cases».

²⁷B. MOIN, *Khomeini*, cit., p. 283.

²⁸*Ibid.*, p. 331.

²⁹In this regard, B. WINSTON, *The Rushdie Fatwa and After. A Lesson to the Circumspect*, Palgrave Macmillan, New York 2014, p. 61, says that Moin's «quotation is obviously too pat not to be considered suspect».

of its content way before the beginning of February 1989³⁰. Many authors explain the adoption of the decree condemning Rushdie with two points. First of all, on the 12th and 13th of February, protests against the book erupted first in Islamabad and then in Srinagar – the capital of Kashmir –, and in those occasions several protesters died because of the police repression. As Leader of the greatest Shī‘i country in the world, it seems that Ḥomeynī wanted to carve out a space in the leadership of global Islamism, and the hostility towards a book that had caused deadly protests might suit for the cause³¹. But there were above all – and this is the second point – internal questions related to the sudden outburst of the Rushdie *affaire*. As just recalled, between the 8th and the 11th of February the deputy Iranian Leader Montazerī had publicly asked for a deep political change within the Islamic Republic towards a liberalisation of the system. A couple of days later, Ḥomeynī ordered the killing of a worldwide renowned writer. The decree against Rushdie was a direct response to Montazerī and a clear disavowal of his opinions, but it had paradoxical consequences. If some authors see the Rushdie *affaire* as the ultimate prelude to Montazerī’s dismissal, politically it caused non negligible paradoxes. Eager to regain the Leader’s support, Musavī and the radical faction in the *Mağles* immediately backed Ḥomeynī’s decision, arriving as far as to pass a bill that imposed the interruption of diplomatic relations with Great Britain. On the other hand, Ḥāmene‘ī and Rafsanġānī, fully aware of the disruptive political consequences at an international level of Rushdie’s condemnation, tried to patch the issue up, particularly the former by saying that if Rushdie had repented the *ḥukm* would have been withdrawn. But soon the Leader himself repudiated the chance of a repentance and confirmed his own decree³².

³⁰ Cfr. M. AXWORTHY, *Revolutionary Iran*, cit., pp. 297–298; in the words of B. WINSTON, *The Rushdie Fatwa*, cit., p. 61, Ḥomeynī «might, though, have taken early notice of the novel, not least because he is obviously satirised therein as a ‘mad mullah’ living in exile. He had himself been so placed during the Shah of Iran’s reign, so that he would take an interest in a random Western fiction, in which he pretty clearly figured, is not impossible. More likely, though, was that the book swam into his consciousness the following year. It had been reviewed, negatively but fairly, in Iran, and foreign Farsi-language broadcasts had included readings from it».

³¹ Cfr. M. AXWORTHY, *Revolutionary Iran*, cit., p. 297, who affirms that after the incidents in Pakistan and Kashmir «Khomeini and his advisers decided that they should take a leading role in the international Muslim reaction against the book»; similarly, according to R. REDAELLI, *L’Iran contemporaneo*, cit., pp. 63–64, «It is clear that, with his choice, the leader tried to revive the image – by then fogged – of Iran as a prominent country in the defence of Islam and in the struggle against the West in the whole Islamic world»; the issue is analytically – and a bit didactically – addressed also by B. WINSTON, *The Rushdie Fatwa*, cit., pp. 61–69.

³² See *Şahifeh-ye Imam*, 21, p. 270: on the 18th of February, Ḥomeynī affirmed that «If Salman Rushdie repents and even becomes the ascetic of the time, it is incumbent upon the Muslims to make use of his life and property in sending him to hell». Upon the internal political consequences in Iran of the decree against Rushdie, cfr. B. WINSTON, *The Rushdie Fatwa*, cit., pp. 69–72; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 298–300, who asserts that «It seems possible that Khomeini’s *hokm* against Rushdie two days later was a response to Montazeri [...]. It would have been characteristics of Khomeini to counter-attack in such a way as to confirm the thrust of his previous actions with something even more dramatic and radical, that would make Montazeri’s protests irrelevant»; B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 167–171, according to whom «The outcome of the Rushdie affair worked very much to the advantage of the radical faction. [...] Khomeini’s verdict on Salman Rushdie unraveled a tremendous amount of diplomatic work»; S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., pp. 57–58.

Thus, a composite front came out weakened from the Leader's firmness in commanding the murder of an allegedly blasphemous author. Not only the pragmatist *entente* between the President of the Republic and the Speaker of the *Mağles*, whose aim was to have the country credited as a reliable partner after the end of the war, was weakened. But also the deputy Leader and its careful and open stances were publicly refuted. A week after the promulgation of the *hukm* against Rushdie, Ḥomeynī sent a letter to the whole clergy³³, and even this time harsh criticism towards the positions Montazerī had expressed at the beginning of the month was clearly intelligible – although the deputy Leader's name was never mentioned. In this letter, many *topoi* of Ḥomeynī's rhetoric resurfaced – for instance, his recurrent condemnation of division: «The foremost religious and divine duty – he wrote – is to preserve the unity and solidarity of the revolutionary seminary students and clergy, or else, a gloomy night is ahead of us and the fear of wave and whirlpool is so horrible»³⁴. But several other points in the letter evidenced a clear argumentative attitude: responding to those voices, like Rafsanğānī's or Montazerī's, which had retrospectively deemed the prosecution of the war after the failure of the Iraqi invasion in 1982 harmful, Ḥomeynī affirmed:

I have to say that in a fair analysis of the events of the revolution, especially the events during the ten years after the victory, in most of the objectives and arenas the Islamic Revolution of Iran has been successful. With the help of God Almighty, we are not overpowered and defeated in any arena. Even in the war, victory belonged to our nation; the enemies achieved nothing in imposing all those damages. [...]

Every day of ours in the war we have had a blessing from which we have benefited in all scenes. [...]

I do formally ask apology from the mothers, fathers, sisters, brothers, spouses and children of the martyrs and disabled war veterans for the erroneous analyses these days³⁵.

Finally, a third point that deserves to be highlighted is that concerning the requisites of the Leadership according to Ḥomeynī:

A *mujtahid* must have the acumen, tact and sagacity of guiding a grand Islamic and even non-Islamic society. Apart from sincerity, piety and asceticism that the *mujtahid* must possess, he must be really a manager and efficient. Government in the view of the true *mujtahid* is the practical philosophy of the entire jurisprudence in all aspects of man's life. Government is the manifestation of the practical dimension of jurisprudence in dealing with all the social, political, military and cultural questions. Jurisprudence is the real and complete theory of administering man from cradle up to the grave³⁶.

³³ The English translation of the letter in *Şahifeh-ye Imam*, 21, pp. 275–292.

³⁴ *Ibid.*, pp. 283–284.

³⁵ *Ibid.*, pp. 284–285.

³⁶ *Ibid.*, p. 290.

The huge political and institutional development that was to come – namely, the dismissal of Montazerī – was somehow anticipated in this letter. As already remarked, Ḥomeynī was unable or unwilling to recognise a decision-making process marked by a too high degree of disagreement among political actors. His ultimately revolutionary understanding of political representation – whereas he was convinced to represent, as leading *marḡa*‘, the whole nation –, his management of factional politics, and his bitter reactions towards any opinion contrary to his ideas demonstrate this: that the conception of politics and democracy as a continuous bargaining among competing and dissenting ideas was not his own. This is not a normative judgement: it can serve, rather, to understand Ḥomeynī’s reaction in front of a supposed successor that during time had progressively distanced from him. Montazerī’s criticism could not be accepted because it fostered division within the Islamic Republic. Thus, religious credentials were not a sufficient feature for a Leader: “he must be really a manager and efficient”. The issue then was: was Montazerī really a manager and efficient? Could he avoid the awakening of division within the system once Leader? History would demonstrate that Ḥomeynī’s answers to those questions were negative.

Montazerī was officially dismissed on the 26th of March, but it is clear that Ḥomeynī had come up with the decision weeks, if not months, before. This is patent when one reads the message that the Leader delivered on the 22nd of March – during the Islamic anniversary commemorating the birth of the Twelfth Imām –, which anticipated a foregone conclusion: «I have stated again and again – Ḥomeynī asserted – that I have not concluded a pact of brotherhood with anyone in whatever position he might be. The framework of my friendship lies in the correctness of the way of the person. Defending Islam and the Party of God is an inalterable principle of the policy of Islamic Republic»³⁷. Two days later, Western media published some of Montazerī’s letters of 1988, in which he had condemned the prisoners’ massacres. At this point, the rift between the Leader and his deputy was irreconcilable – a circumstance that Ḥomeynī publicly acknowledged in a letter to Montazerī, written «With a wounded and broken heart». The accusations were severe:

As it has become clear that after me you would hand over the country and the dear Islamic Revolution of the Muslim people of Iran to liberals and through their channel to hypocrites, you have lost the merit and legitimacy of being the future leader of the system. [...]

I wear [*sic*] by God that from the beginning I was opposed to your nomination; then I knew you as simpleminded with no acumen and produce for leadership. But you are an educated person useful for theological seminary. If you persist

³⁷ *Ibid.*, p. 327. Concerning this letter, cfr. among others, M. AXWORTHY, *Revolutionary Iran*, cit., pp. 301–302; B. MOIN, *Khomeini*, cit., pp. 285–287.

in such kinds of activities, I have definitely a different duty. You know that I do not turn away from my duty. By God, I did not vote for Bazargan to become premier, yet I considered him a good person. By God I did not give my vote for Bani Sadr to be president and in all the cases, I accepted the views of the friends. [...]

I pray to God to grant patience and forbearance to the old father of the dear people of Iran, to forgive him, and to take him away from this world so that he would not experience the bitter taste of friends' treachery. Our gratification lies in God's gratification. We have nothing of our own; whatever exists is deprived from Him³⁸.

Such a long quotation seems necessary, for it would be difficult to paraphrase and condense it in few words – and still, quoting just some parts of the letter curbs its stylistic sharpness. Indeed, this letter encapsulates so many different aspects of Ḥomeynī, both as Leader and as a person, that it is impossible to separate the two dimensions: there are his very psychology, his faith, his political thought, his institutional concerns. In a way, it demonstrates once again that the study of political institutions does not concern solely aseptic rules, but it is grounded in the very life and personal history of institution-holders. Montazerī responded to this letter on the 28th of March with a submissive and deferent reply, and eventually Ḥomeynī himself softened his own tone: he accepted his deputy's resignation acknowledging their mutual affection³⁹.

Montazerī's resignation opened a non negligible institutional issue, in so far as other possible political successors to Ḥomeynī bearing the title of *marḡā* ' were missing. To solve this paramount issue, the political and institutional system resorted to the amendment of the Constitution. Thus, in early April, a group of deputies addressed the Leader suggesting precisely a change of the constitutional text – a suggestion to which Ḥomeynī replied at the end of the month by nominating an *ad hoc* commission called "Assembly for the Review of the Constitution" ("Šurā-ye Bāznegarī-ye Qānun-e Asāsī", or Review Assembly). Limits *ratione materiae* were set: the Leader's decree of nomination of the Review Assembly stated that amendments would concern: the Leadership; the Executive and the Judicial powers; the *Maḡles* – with reference to the number of deputies and its official denomination; the constitutionalisation of the Expediency Discernment Council; and the formalisation of the constitutional amendment procedure. Twenty members of the Review Assembly were appointed by the Leader – among them there were Ḥāmene'ī, Rafsanḡānī, Musavī, Ḥassan

³⁸ *Šahīfeh-ye Imam*, 21, pp. 330–331.

³⁹ Upon the fall of Montazerī, cf. U. VON SCHWERIN, *The Dissident Mullah*, cit., pp. 118–123; B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 171–174; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 302–303; B. MOIN, *Khomeini*, cit., pp. 287–290. In his letter to the Leader, Montazerī stated: «I still deem it incumbent upon me to obey and carry out Your Eminence's order [...]. Concerning my designation as acting leader, I myself was not amenable from the beginning [...]. Now, I categorically announce my absence of readiness», while Ḥomeynī replied: «I sincerely thank you for announcing your lack of readiness for being the acting Supreme Leader after acceptance. Everybody knows that you have been a product of my life and that I am very much fond of you. In order not to repeat the same mistakes, I advise you to purge your of unrighteous persons, and strictly prevent the coming and going of those who oppose the system, who are acting in the name of your interest toward Islam and the Islamic Republic» (*Šahīfeh-ye Imam*, 21, pp. 333–335).

Ḥabībī, Musavī Ardebilī, Mahdavī Kanī –, while other five were to be selected by the *Mağles* among its own deputies. The amendments had to be approved within two months at most⁴⁰. Ḥomeynī was not able to see the end of the Review Assembly’s work: he died of the 3rd of June of 1989. The following day, the Assembly of Experts, not unanimously, nominated President Ḥāmene’ī as Leader, thus violating the Constitution then in force⁴¹. On the one hand, it is true that formally the 1979 Constitution was still not amended, and therefore artt. 5 and 107 required the Leader to be a source of emulation. On the other, though, it has been already remarked how many times the formal dimension of the Constitution had been changed “materially”. Even in this instance, the Assembly of Experts, more than applying the 1979 Constitution, executed one of the last orders of Ḥomeynī. On the 29th of April, indeed, he had replied to a question of ‘Alī Meškinī – then Chairman of the Assembly of Experts and member of the Review Assembly – concerning the Leadership, and he had stated that *marğa ‘iyya* was not a necessary requirement to it⁴².

With Ḥāmene’ī’s rise to the Leadership, a new phase in the Iranian political and institutional history began; perhaps, for some, a new Republic was shaped. The war with Iraq had ended; the founder of the Islamic Republic was not present anymore; the Constitution was being amended. And precisely the constitutional amendment process can be an analytical issue that can allow to appreciate the Islamic Republic as an “institutional product” living throughout history.

⁴⁰ The text of the decree in *Şahifeh-ye Imam*, 21, pp. 363–364: «The subjects to be treated consist of: (1) leadership, (2) centralization in the management of the Executive Power, (3) centralization in the management of the Judiciary, (4) centralization in the management of the Islamic Republic of Iran Broadcasting (IRIB) in such a way that the three branches of government have supervisory power over it, (5) number of representatives in the Islamic Consultative Assembly, (6) Expediency Council for resolving intricate problems of the system and the leadership counsel in such a way that they are not within the scope of any of the branches, (7) Way of reviewing the Constitution, and (8) Changing the name of the “National Consultative Assembly” into “Islamic Consultative Assembly”». The text of the decree talks about «fifty representatives of the Islamic Consultative Assembly chosen by the Majlis», though some authors report five: cfr. for instance S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., p. 60; B. BAKTIARI, *Parliamentary Politics in Iran*, cit., p. 179.

⁴¹ Cfr. S. A. ARJOMAND, *After Khomeini*, cit., pp. 35–36, who affirms that «The swift election of Khomeini proved the most remarkably smooth succession in the history of world revolutions. It was unconstitutional, however, as he did not have the rank of *marja ‘iyyat* (being a source of emulation) as required by Articles 107 and 109 of the 1979 Constitution, which was still in force when Khomeini died. Constitutionality is not a mark of revolution, and the spirit of the move was probably to divide Khomeini’s power between his two closest lieutenants»; M. AXWORTHY, *Revolutionary Iran*, cit., pp. 303–304. Among the authors who analytically recalls the vote procedures of the Assembly of Experts in that instance, cfr. S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., pp. 61–63; B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 174–177.

⁴² «[B]eing a *marjah* is not necessary. A just *mujtahid* approved by the honorable experts throughout the country is enough. If the people voted for the experts in order to determine a just *mujtahid* to act as the leader of their government; once they also determine a person to assume the Leader, naturally he is also acceptable to the people» (*Şahifeh-ye Imam*, 21, p. 371). Cfr. S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., pp. 60–61, who states that Ḥomeynī «demonstrated a keen knowledge of the necessity for impersonality of state institutions by fostering the creation of a new *faqih* role that was better transmissible across the clerical component of the Iranian political class».

6.2. *The 1989 Amendments to the Constitution: Rationalisation à la Iranienne*

On the 8th of July of 1989, the Review Assembly entrusted with the amendment of the 1979 Constitution ended its works. In total, 45 articles were revised, and two new chapters – the thirteenth and the fourteenth, of one article each – were added. Most of the amendments (21 upon 45) affected the chapter on the Executive power.

Starting from the Leadership, art. 5 was revised following Ḥomeynī's guidelines: if originally it stipulated that the Leader had to be a «jurisprudent who is just, pious, courageous, knowledgeable about his era, and a capable administrator, and is recognized and accepted by the majority of people as leader», the last sentence («recognized and accepted...») has disappeared⁴³. Artt. 107 and 109 were amended accordingly: the former was heavily modified so that all references to *marḡa'iyya* were removed; moreover, an explicit *post mortem* mention of the leading role of Ḥomeynī was put, while the decision-making process related to the Assembly of Experts – which according to the 1979 text operated only when the majority of the people did not recognise and accept a *marḡa'* as Leader of the revolution – has become the norm⁴⁴. Similarly, among the conditions to be eligible to the Leadership (art. 109), the fact of being a *marḡa'* was eliminated, and a new point requiring «justice and piety in leading the Islamic community» was added. This general enlargement of the qualifications to access the Leadership was accompanied by a specular expansion of the Leader's powers and prerogatives. The differences compared to the 1979 text are several. Besides the functions already recognised to him, now pursuant to art. 110 the Leader enjoys a formalised role in: «determining the overall politics of the Islamic Republic system of Iran after consultation with the Expediency Council»; in «supervising the proper implementation of the general policies of the system»; in «issuing referendums»; in «coordinating the relationship among the three branches of the government and resolving any conflict among them»; in «resolving issues in the system that cannot be settled by ordinary means through the Expediency Council». In a way, all these changes marked the constitutionalisation of the end of the 1979 revolution. As said in the third and fourth chapter, what featured the revolution was Ḥomeynī's role as both religious figure and as revolutionary leader – a

⁴³ For the purposes of this chapter, the English translation of the Constitution is not that of R. K. RAMAZANI, *Constitution of Iran*, cit., but rather F. PAPAN-MATIN, *The Constitution of the Islamic Republic of Iran (1989 Edition)*, «Iranian Studies 47/1 (2014), pp. 159–200, which, as it can be understood, contains also the 1989 amendments.

⁴⁴ Art. 107 stipulated that, after Ḥomeynī, «the responsibility for designating the leader shall be with the Experts who are appointed by the people. The Experts consider all the qualified jurisprudents as discussed in Articles 5 and 109, and consult with one another about them. If they find one of them the most knowledgeable about the rules and subjects of jurisprudence, or political and social issues, or acceptability by the public, or significance in any one of the qualifications indicated in Article 109, that person shall be selected as the leader; otherwise, one of the Experts is chosen and declared as the leader».

double-faced role that received a constitutional sanction. By removing all references to the Leader as source of emulation “recognised and accepted by the majority” of the nation, the Review Assembly somehow relegated the 1979 revolution, conceived as an event hypostatizing both Islamic and revolutionary fervour, to the past. Ḥāmene’ī, indeed, did not possess neither the religious credentials to be a *marǧā’* – being rather a middle-ranked *hoǧǧatoleslām* –, nor the personal charisma that Ḥomeynī had enjoyed and that had allowed him to become the main figure of a nation-wide revolutionary movement. Politics overruled religion precisely because the core content of *velāyat-e faqih*, that is to say, the idea of an Islamic government held by the most knowledgeable jurists and in which political representation could take the form of the public recognition of *marǧā’iyya*, was abandoned. Managerial criteria and political values replaced religious authority, in a process epitomised exactly by the succession between Ḥomeynī and Ḥāmene’ī to the Leadership. This becomes even clearer by reading the new art. 57, which subordinates the exercise of the three powers – executive, legislative, and judicial – to the «supervision of the absolute authority of the command [*velāyat-e moṭlaqeh-ye amr*] and religious leadership of the community of believers [*emāmat-e ommat*]», a not to the coordination of the President of the Republic anymore. In other words, the Leader is no longer just the “guardian sovereign”, the external although often meddling arbitrator whose interventions were aimed at unravelling those institutional and political issues that other actors – Presidency, Prime Ministership, *Maǧles*, etc. – could not or did not want to manage. Besides the fact that Ḥāmene’ī himself was a key figure of a precise political faction, through the amendments the Leader has become in any case an actor fully immersed in the daily management of political affairs, enjoying a kind of power unmatched and by no mean counterbalanced by any other institution⁴⁵.

If the Presidency had seen a weakening of its institutional and constitutional position in the passage between draft Constitution and 1979 Constitution, something similar happened also with the 1989 amendments. Following the revision of art. 57, the text of the new art. 113 does not recognise anymore the presidential role in «coordinating the relations among the three powers», while art. 122 does not confine the political responsibility of the President only to the people – as in the original formulation – but extends it also to the Leader and to the *Maǧles*. One of the main paradoxes of the 1989 amendment process was the elimination of the Prime Ministership. This decision was paradoxical in many respects. First of all, it denied an eight-years long praxis of constitutional and institutional empowerment of the Prime Minister to the detriment of the President – as it has been

⁴⁵ Upon the amendments to the figure of the Leader, cfr. S. A. ARJOMAND, *After Khomeini*, cit., pp. 39–40; S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., pp. 63–65; A. SCHIRAZI, *The Constitution of Iran*, cit., pp. 106–111.

demonstrated in the previous chapter. Secondly, it substantially presidentialised the form of government in Iran: the President has assumed once for all the chairmanship of the Council of ministers (art. 134) and has become the sole authority empowered to appoint ministers (art. 133) – something Banišadr would have wished for. The President has even the right to nominate deputies, with a first deputy entrusted with «the responsibility of administrating the cabinet of the ministers and coordinating the other deputies» (art. 124). Nevertheless, the amended Constitution has retained the parliamentary confidence for ministers (art. 133), proving unable to remove that strange relationship between Legislative and Executive marked by the presence of the confidence and by the complete absence of a power of dissolution of the Parliament. Hence, presidentialisation of the form of government but conservation of some features of an assembly regime. If anything, the new art. 133 specifies that, once obtained the confidence by the *Mağles*, ministers do not have to seek it when the parliamentary Assembly changes – an issue that had characterised the political struggle between Musavī and Ḥāmene’ī in 1984.

As to the judicial branch, a new monocratic figure, the Head of the Judiciary (*Ra’is-e Qovveh-ye Qadāiyyeh*), has replaced the High Council of the Judiciary as supreme judicial authority of the country. The Head of the Judiciary is nominated by the Leader for a five-years term (art. 158) and must be a *muğtahid*. All the powers pertaining to the High Council of the Judiciary have been transferred to this figure, including the management of all judicial careers (art. 159). It is now incumbent upon him, and not upon the Leader, the appointment of the President of the Supreme Court and of the Attorney General (art. 162), as well as the supervision of the administrative justice (art. 173) and of the General National Investigative Organization (art. 174). The regulation of media underwent significant changes as well: pursuant to the revised art. 175, the Leader nominates and dismisses the «head of the mass media of the Islamic Republic of Iran», whose organisation remains under the joint supervision of the three powers. Art. 176, then, has established the Supreme Council on National Security (*Šurā-ye ‘Ālī-ye Amniyat-e Mellī*), entrusted with the «protect[ion of] national welfare, [the] safeguard [of] the Islamic Republic, and territorial integrity and national sovereignty». It is composed by the President of the Republic – who acts as its chairman –, the Speaker of the *Mağles*, the Head of the Judiciary, ministers, high administrative and military officers, and two representatives of the Leader. Finally, filling a major constitutional empty space, chapter fourteenth has introduced a regulation for the amendment of the Constitution. The task is incumbent upon a special Commission, formed by the members of the Guardian Council, the President of the Republic, the Speaker of the *Mağles*, the Head of the Judiciary, five members of the Assembly of Experts, ten representatives of the Leader, three members of the Cabinet, three members of the Judiciary, ten MPs,

and three university professors. The initiative for the amendment process belongs to the Leader: after a consultation with the Expediency Discernment Council, the Leader informs the President of the Republic about the issues that need to be amended by the above-mentioned Commission. Once the Commission ends its work, the Leader signs the amendments, and the people can approve or reject them via referendum.

Indeed, a popular referendum was scheduled and performed to approve the 1989 amendments. It took place on the very same day in which Ḥāmene'ī's successor to the Presidency was to be elected, on the 28th of July. Upon 30 million voters, a bit more than half (16,4) cast their ballot, and if the Presidency was easily conquered by Rafsanjānī, similarly the referendum was largely endorsed with 16 million "yes". An interesting element of analysis about the 1989 amendment process is that it did not formalise the constitutional practice that had conditioned the history of the Islamic Republic theretofore. The most natural outcome of such a process, in that very context, would have resulted in an enhancement of the Prime Ministership, with the creation of a form of strong Premiership *vis-à-vis* a popularly elected but neutral Presidency, which in turn would have maybe represented the institutional link between the tandem Parliament-Prime Ministership on one side, and the Leadership on the other. On the contrary, the choice of the Review Assembly was to cancel *tout court* the Prime Minister, thus responding more to a contingent political desire of one specific political group, rather than following the actual development of political institutions in the past nine years⁴⁶. The Iranian institutional and constitutional system was ultimately rationalised by making the President the sole top exerciser of the executive power, though in a schizophrenic way, given the permanence of the relationship of confidence with the *Mağles* through the ministries. Nevertheless, as said at the end of the chapter on the 1979 Constitution, a full assessment of a specific constitutional rule can be made only when its formal dimension is analysed along with the actual practice of that rule. And if here an attempt has been made to study ten years of constitutional practice and institutional development precisely to appreciate the 1979 Constitution, the 1989 revised text provides historians, political scientists and legal scholars with almost other thirty-four years of Iranian history they can take delight in.

⁴⁶ This point is clearly explained by B. BAKTIARI, *Parliamentary Politics in Iran*, cit., pp. 178–186, who remarks that «The council for their appraisal of the constitution implemented what Rafsanjani and his cohorts wanted. It dissolved the post of the Prime Minister and placed all decision-making power with the president»; cfr. also S. RANDJBAR-DAEMI, *The Quest for Authority in Iran*, cit., pp. 65–67, according to whom «The Revision Council ultimately swayed towards the position favoured by Rafsanjani and Khamenei and dismissed the concerns of the minority which rallied around Mousavi, with the result that the prime ministerial institution was abolished and most of its powers transferred to the strengthened presidency».

Conclusion

Assessing the end of the “first” Islamic Republic in Iran opens the issue of the “second” Islamic Republic’s institutional development. This further analysis, though, could have some problematic profiles, starting from the fact that, as to late-2023, the history of this regime is still in being. Some decades of distance are necessary in order to perform a historical investigation, but still political scientists, legal scholars and, to a lesser extent, historians are faced with an interesting case study. If possible, the following points of analysis can be retained from the present work.

First of all, one may investigate the evolution of the form of government in Iran from a parliamentary to a presidential system – although vitiated by the retention of the parliamentary confidence to ministers. The elimination of the Prime Ministership has indeed simplified the institutional framework of Iran, to the detriment of institutional pluralism. The result has been that of a weakening of the *Mağles*, which had to find new ways to express its own subjectivity in front of the President other than the choice of the Prime Minister.

Another issue pertains to the management of factional politics, in particular by the Leadership. If in 1989 the conservative-pragmatist cartel was successful in cornering the radical faction by simultaneously eliminating the figure of the Prime Minister, appropriating the Leadership and making the Presidency as the sole top executive institution, Ḥātāmī’s presidential victory in 1997 exemplified the (re-)organisational effort of what can be roughly called the “left” in the post-Ḥomeynī era. Nevertheless, as said at the end of the sixth chapter, Ḥāmene’ī was not like Ḥomeynī: first of all, his political placement has been far less impartial than his predecessor’s. More than that, the Leadership’s increased powers – as if to compensate the minor charismatic stand of Ḥāmene’ī – has featured this institution far beyond what has been defined above as “guardian sovereign”. Under Ḥomeynī, the Leadership acted as an arbiter, or even as the rule-maker, to the point that the institutional figures that did not want to comply to Ḥomeynī’s rules, like Banişadr or Montazerī, were dismissed. Ḥomeynī shaped new institutions and set boundaries for the decision-making process of the existing ones: he was a full institution-builder. Conversely, under Ḥāmene’ī the Leadership lost this demiurgic feature. If during Ḥomeynī’s Leadership almost no institutional actor – except those who were discharged – ever dared to contest him even implicitly, this is not true for Ḥāmene’ī, as the patent “cohabitations” with Ḥātāmī and Ruḥānī – but also, to a lesser extent, the frictions with Rafsanġānī and Aḥmadineżād – demonstrated. The transformation of the Leadership from an “institution-building institution” to an institution fully immersed within the daily political dialectics and whose policies can be restrained by the Presidency – as much as minimally – could be an interesting point of analysis.

Finally, the history recalled in this work may represent itself the “constitutional genealogy” of the Iranian political and institutional system from 1989 up until today. Adopting a perspective of political and institutional history may help also in formulating analytical categories for today’s Iran. In general, such an endeavour is highly problematic, not only due to the analytical effort that this theme compels to engage in, but also and above all because the limits between a descriptive approach to a contemporary political regime and a prescriptive or axiological one are always vague. Moreover, this path would no longer be historical, nor would be it solely focused on political institutions. Yet, it would demonstrate once again the fruitfulness of a multi- and trans-disciplinary approach within political sciences.

Bibliography

Books and articles

Bazargan ha ottenuto da Khomeini la sospensione dei processi politici, Corriere della Sera, 17 March 1979.

Digesto delle Discipline Pubblicistiche. Aggiornamento, UTET, Torino 2010.

Draft Constitution of the Islamic Republic of Iran, ALGAR, H. (trad.), Muslim Youth Movement of Malaysia, Kuala Lumpur s.a.

Fucilati in Iran l'ex Premier Hoveida e sei militari, Corriere della Sera, 8 April 1979.

Ghotbzadeh's Arrest Confirmed by Iran; Conspiracy Charged, The New York Times, 11 April 1982.

Sahifeh-ye Imam. An Anthology of Imam Khomeini's Speeches, Messages, Interviews, Decrees, Religious Permissions, and Letters, voll. 5–21, The Institute for Compilation and Publication of Imam Khomeini's, Tehran 2008.

Text of Bani-Sadr Statement Appealing to the Iranian People, The New York Times, 13 June 1981.

ABDOLMOHAMMADI, PEJMAN – CAMA, GIAMPIERO, *Contemporary Domestic and Foreign Policies of Iran*, Palgrave Macmillan, s.l. 2020.

ABRAHAMIAN, ERVAND, *Iran Between Two Revolutions*, Princeton University Press, Princeton 1982.

———, *Radical Islam. The Iranian Mojahedin*, I.B. Tauris, London 1989.

———, *Khomeinism. Essays on the Islamic Republic*, University of California Press, Berkeley 1993.

———, *A History of Modern Iran*, Cambridge University Press, Cambridge-New York 2008.

ABU-MANNEH, BUTRUS, *The Islamic Roots of the Gülhane Rescript*, «Die Welt des Islams» 34/2 (1994), pp. 188–201.

ACKERMAN, BRUCE, *Revolutionary Constitutions. Charismatic Leadership and the Rule of Law*, Harvard University Press, Cambridge (MA) 2019.

ADIB-MOGHADDAM, ARSHIN (ed.), *A Critical Introduction to Khomeini*, Cambridge University Press, New York 2014.

AFARY, JANET, *The Iranian Constitutional Revolution, 1906-1911. Grassroots Democracy, Social Democracy, and the Origins of Feminism*, Columbia University Press, New York-Chichester 1996.

AFKHAMI, GHOLAM REZA, *The Life and Times of the Shah*, University of California Press, Berkeley 2009.

- AKHAVI, SHAHROUGH, *The Thought and Role of Ayatollah Hossein 'ali Montazeri in the Politics of Post-1979 Iran*, «Iranian Studies» 41/5 (2008), pp. 645–666.
- ALEM, YASMIN, *Duality by Design: The Iranian Electoral System*, ISEF, Washington, D.C. 2011.
- ALGAR, HAMID, *Roots of the Islamic Revolution in Iran*, Islamic Publications International, Oneota 2001.
- AMIR-MOEZZI, MOHAMMAD ALI, *The Silent Qur'an and the Speaking Qur'an: Scriptural Sources of Islam Between History and Fervor*, ORMSBY, E. (trad.), Columbia University Press, New York 2016.
- AMIR-MOEZZI, MOHAMMAD ALI – JAMBET, CHRISTIAN, *What is Shi'i Islam? An Introduction*, CASLER, K. — ORMSBY, E. (trads.), Routledge, Abingdon-New York 2018.
- ANSARI, ALI M., *Modern Iran Since 1797. Reform and Revolution*, Routledge, Abingdon-New York 2019³.
- ANSARIPOUR, M. A., *The Role of the Council of Guardians in the Islamicization of Iranian Law*, «Yearbook of Islamic and Middle Eastern Law» 16 (2010), pp. 127–146.
- ARJOMAND, SAID AMIR, *The Shadow of God and the Hidden Imam: Religion, Political Order and Societal Change in Shiite Iran from the Beginning to 1890*, University of Chicago Press, Chicago 1987.
- , *The Turban for the Crown. The Islamic Revolution in Iran*, Oxford University Press, New York 1988.
- (ed.), *Authority and Political Culture in Shi'ism*, State University of New York Press, Albany 1988.
- (ed.), *Constitutional Politics in the Middle East. With special reference to Turkey, Iraq, Iran and Afghanistan*, Hart, Oxford-Portland 2008.
- , *After Khomeini. Iran Under His Successors*, Oxford University Press, New York 2009.
- AVERY, PETER – BOYLE, JOHN ANDREW – FRYE, RICHARD N. – HAMBLY, GAVIN – JACKSON, PETER – LOCKHART, LAURENCE – MELVILLE, CHARLES (eds.), *The Cambridge History of Iran*, voll. 4-7, Cambridge University Press, Cambridge-New York 1968-1991.
- AXWORTHY, MICHAEL, *Iran: Empire of the Mind*, Basic Books, New York 2008.
- AYALON, AMI – SHAKED, HAIM (eds.), *Middle East Contemporary Survey. 1988*, vol. XII, Westview Press, Boulder-Oxford 1990.
- , *Revolutionary Iran. A History of the Islamic Republic*, Oxford University Press, New York 2013.
- BAGEHOT, WALTER – TAYLOR, MILES (ed.), *The English Constitution*, Oxford University Press, New York 2001.

- BAKHASH, SHAUL, *The Reign of the Ayatollahs. Iran and the Islamic Revolution*, Basic Books, New York 1984.
- BAKHTIARI, BAHMAN, *Parliamentary Elections in Iran*, «Iranian Studies» 26/3/4 (1993), pp. 375–388.
- , *Parliamentary Politics in Revolutionary Iran: The Institutionalization of Factional Politics*, University Press of Florida, Gainesville 1996.*
- BARBER, NICHOLAS W., *The Principles of Constitutionalism*, Oxford University Press, Oxford 2018.
- BAYAT, MANGOL, *Iran's First Revolution. Shi'ism and the Constitutional Revolution of 1905-1909*, Oxford University Press, New York 1991.
- , *Iran's Experiment with Parliamentary Governance. The Second Majles, 1909-1911*, Syracuse University Press, Syracuse (NY) 2020.
- BEARMAN, PERI J. – BIANQUIS, THIERRY – BOSWORTH, CLIFFORD EDMUND – VAN DONZEL, EMERI JOHANNES – GIBB, HAMILTON ALEXANDER ROSSKEEN – HEINRICH, WOLFHART PETER – KRAMERS, JOHANNES HENDRIK – LECOMTE, GÉRARD – LÉVI-PROVENÇAL, ÉVARISTE. – LEWIS, BERNARD – MÉNAGE, VICTOR LOUIS – PELLAT, CHARLES – SCHACHT, JOSEPH (eds.), *The Encyclopaedia of Islam*, 12 voll., E. J. Brill, Leiden 1986-2004.
- BEDERMAN, DAVID J., *Custom as a Source of Law*, Cambridge University Press, Cambridge-New York 2010.
- BELLER, STEVEN, *A Concise History of Austria*, Cambridge University Press, Cambridge-New York 2006.
- BENEDETTI, FILIPPO – SPERELLI, GIAN MARCO, *Le rivoluzioni costituzionali in Giappone, Russia, Persia e Impero ottomano tra XIX e XX secolo. Un percorso circa-europeo*, «Giornale di Storia Costituzionale / Journal of Constitutional History» 44/II (2022), pp. 205–225.
- BODENHEIMER, EDGAR, *Jurisprudence. The Philosophy and Method of the Law*, Harvard University Press, Cambridge-London 1981.
- BONINI, FRANCESCO, *Storia costituzionale della Repubblica. Un profilo dal 1946 a oggi*, Carocci, Roma 2007.
- BONINI, FRANCESCO – GUERRIERI, SANDRO – MORI, SIMONA – OLIVETTI, MARCO (eds.), *Il settennato presidenziale. Percorsi transnazionali e Italia repubblicana*, il Mulino, Bologna 2022.
- BOOZARI, AMIRHASSAN, *Shi'i Jurisprudence and Constitution: Revolution in Iran*, Palgrave Macmillan, New York 2010.

* The author's surname is spelled "Baktiari" in this work.

- BOROUJERDI, MEHRZAD – RAHIMKHANI, KOUROSH, *Postrevolutionary Iran. A Political Handbook*, Syracuse University Press, Syracuse (NY) 2018.
- BOUCHARD, NORMA – FERME, VALERIO, *Italy and the Mediterranean. Words, Sounds, and Images of the Post-Cold War Era*, Palgrave Macmillan, New York 2013.
- BROWNE, EDWARD GRANVILLE, *The Persian Revolution of 1905-1909*, Cambridge University Press, London 1910.
- BRUMBERG, DANIEL – FARHI, FARIDEH (eds.), *Power and Change in Iran: Politics of Contention and Conciliation*, Indiana University Press, Bloomington-Indianapolis 2016.
- BURY, JOHN PATRICK TUER (ed.), *The New Cambridge Modern History. The Zenith of European Power 1830-70*, vol. X, Cambridge University Press, London-New York 1960.
- CAETANI, LEONE, *Annali dell'Islām. Dall'anno 7 al 12 H.*, vol. II, Ulrico Hoepli, Milano 1907.
- CARAMANI, DANIELE, *Elections in Western Europe Since 1815. Electoral Results by Constituencies*, Palgrave Macmillan, London 2000.
- CAREY, JOHN M. – SOBERG SHUGART, MATTHEW (eds.), *Executive Decree Authority*, Cambridge University Press, New York 1998.
- CAVAGGION, GIOVANNI, *La formazione del Governo. Aspetti e problemi tra quadro costituzionale e nuove prassi*, Giappichelli, Torino 2020.
- CAVATORTA, FRANCESCO – STORM, LISE – RESTA, VALERIA (eds.), *Routledge Handbook on Political Parties in the Middle East and North Africa*, Routledge, Abingdon-New York 2021.
- CENTONZE, ALESSANDRO, *Il potere di grazia, la funzione sociale della pena e la rilettura costituzionale delle misure di clemenza individuale*, «Rassegna penitenziaria e criminologica» 2 (2009), pp. 5–48.
- CHURCH, CLIVE H., *Europe in 1830. Revolution and Political Change*, Routledge, Abingdon-New York 1983.
- CORBIN, HENRY, *En Islam iranien. Aspects spirituels et philosophiques. Le shî'isme duodécimain*, vol. 1, Gallimard, Paris 1971.
- COSTA, PIETRO – ZOLO, DANILO (eds.), *The Rule of Law. History, Theory and Criticism*, Springer, Dordrecht 2007.
- CREASY, EDWARD SHEPHERD, *History of The Ottoman Turks: from the Beginning of Their Empire to the Present Time*, vol. II, Richard Bentley, London 1856.
- CRONIN, STEPHANIE (ed.), *Reformers and Revolutionaries in Modern Iran. New Perspectives on the Iranian Left*, RoutledgeCurzon, London-New York 2004.
- DABASHI, HAMID, *Theology of Discontent. The Ideological Foundations of the Islamic Revolution in Iran*, New York University Press, New York 1993.

- DAFTARY, FARHAD, *A History of Shi'ī Islam*, I.B. Tauris-The Institute of Ismaili Studies, London-New York 2013.
- DAFTARY, FARHAD – MISKINZODA, GURDOFARID (eds.), *The Study of Shi'ī Islam. History, Theology and Law*, I.B. Tauris-The Institute of Ismaili Studies, London-New York 2014.
- DE FELICE, RENZO, *Mussolini il fascista. La conquista del potere 1921-1925*, Giulio Einaudi, Torino 1966.
- DE GRAZIA, LUCIANA, *Costituzionalismo ed esperienze costituzionali in Iran*, «Rivista Associazione Italiana dei Costituzionalisti» 2 (2015), pp. 1–18.
- DELANEY, ERIN F. – DIXON, ROSALIND (eds.), *Comparative Judicial Review*, Edward Elgar, Cheltenham-Northampton (MA) 2018.
- DUVERGER, MAURICE, *Political Parties. Their Organization and Activity in the Modern State*, NORTH B. – NORTH R. (trads.), Methuen-John Wiley & Sons, London-New York, 1959².
- , *Les Institutions de la Cinquième République*, «Revue française de science politique» 9/1 (1959), pp. 101–134.
- EHTESHAMI, ANOUSHIRAVAN, *After Khomeini. The Iranian Second Republic*, Routledge, London-New York 1995.
- EL-HIBRI, TAYEB, *The Abbasid Caliphate: A History*, Cambridge University Press, Cambridge-New York 2021.
- ELIA, LEOPOLDO, *Costituzione, partiti, istituzioni*, il Mulino, Bologna 2009.
- ESPOSITO, JOHN L. – EL-DIN SHAHIN, EMAD (eds.), *The Oxford Handbook of Islam and Politics*, Oxford University Press, New York 2013.
- FAVOREU, LOUIS – GAÏA, PATRICK – GHEVONTIAN, RICHARD – MESTRE, JEAN-LOUIS – PFERSMANN, OTTO – ROUX, ANDRE – SCOFFONI, GUY, *Droit constitutionnel*, Dalloz, Paris 2019²¹.
- FILORAMO, GIOVANNI (ed.), *Islām*, Laterza, Roma-Bari 2007.
- FISCHER, MICHAEL M. J., *Iran. From Religious Dispute to Revolution*, University of Wisconsin Press, Madison 1980.
- FOROZAN, HESAM, *The Military in Post-Revolutionary Iran. The Evolution and Roles of the Revolutionary Guards*, Routledge, Abingdon-New York 2016.
- FRINGS-HESSAMI, KHADIJA V., *The Islamic Debate about Land Reform in the Iranian Parliament, 1981-86*, «Middle Eastern Studies» 37/4 (2001), pp. 136–181.
- GAGE, NICHOLAS, *Protesters March for 2nd Day in Iran; Violence Is Limited*, The New York Times, 12 December 1978.
- GARGAN, EDWARD A., *Ghotbzadeh, Ex-Foreign Minister, Executed in Iran*, The New York Times, 16 September 1982.

- GHOBADZADEH, NASSER, *Theocratic Secularism. Religion and Government in Shi'i Thought*, Oxford University Press, New York 2023.
- GIANNINI, AMEDEO, *La Costituzione Persiana*, «Oriente Moderno» 11/7 (1931), pp. 317–334.
- GILISSEN, JOHN, *La Constitution belge de 1831 : ses sources, son influence*, «Res Publica» 10/2 (1968), pp. 107–141.
- GROTE, RAINER – RÖDER, TILMANN (eds.), *Constitutionalism in Islamic Countries: Between Upheaval and Continuity*, Oxford University Press, New York 2012.
- GUOLO, RENZO, *La via dell'Imam. L'Iran da Khomeini a Ahmadinejad*, Laterza, Roma-Bari 2007.
- HALLAQ, WAEL B., *An Introduction to Islamic Law*, Cambridge University Press, Cambridge 2009.
- HART, HERBERT L. A., *The Concept of Law*, Oxford University Press, Oxford-New York 1994².
- HIRO, DILIP, *Iran under the Ayatollahs*, Routledge, Abingdon-New York, 1987.
- , *The Longest War. The Iran-Iraq Military Conflict*, Routledge, New York 1991.
- HODGSON, MARSHALL G. S., *The Venture of Islam. The Expansion of Islam in the Middle Periods*, vol. 2, University of Chicago Press, Chicago-London 1977.
- HOVSEPIAN-BEARCE, YVETTE, *The Political Ideology of Ayatollah Khamenei. Out of the Mouth of the Supreme Leader of Iran*, Routledge, Abingdon-New York 2016.
- IBRAHIM, YOUSSEF M., *Ex-Premier Hoveida is Executed in Iran After Closed Trial*, The New York Times, 8 April 1979.
- , *Iran's Clergy Given Big Role in Charter*, The New York Times, 29 April 1979.
- JAHANBAKHS, FOROUGH, *Islam, Democracy and Religious Modernism in Iran (1953-2000). From Bāzargān to Soroush*, Brill, Leiden 2001.
- JAKAB, ANDRÁS – DYEVE, ARTHUR – ITZCOVICH, GIULIO (eds.), *Comparative Constitutional Reasoning*, Cambridge University Press, Cambridge-New York 2017.
- KANDELL, JONATHAN, *Iran Prints Draft of a Constitution For Islamic State Under President*, The New York Times, 16 June 1979.
- KASABA, REŞAT (ed.), *The Cambridge History of Turkey. Turkey in the Modern World*, vol. 4, Cambridge University Press, Cambridge-New York 2008.
- KATZMAN, KENNETH, *The Warriors of Islam. Iran's Revolutionary Guard*, Routledge, Abingdon-New York 1993.
- KAYALI, HASAN, *Elections and the Electoral Process in the Ottoman Empire, 1876-1919*, «International Journal of Middle East Studies» 27/3 (1995), pp. 265–286.
- KEDDIE, NIKKI R. (ed.), *Religion and politics in Iran: Shi'ism from quietism to revolution*, Yale University Press, New Haven 1983.

- , *Modern Iran: Roots and Results of Revolution*, Yale University Press, New Haven-London 2003.
- , *Religion and Rebellion in Iran. The Tobacco Protest of 1891-1892*, Routledge, Abingdon-New York 2012.
- KESHAVARZIAN, ARANG, *Bazaar and State in Iran. The Politics of the Tehran Marketplace*, Cambridge University Press, New York 2007.
- KHAN, HAMID, *Constitutional and Political History of Pakistan*, Oxford University Press, Karachi 2019³.
- KHOMEINI, RUHOLLAH, *Islam and revolution. Writings and Declarations of Imam Khomeini*, ALGAR, HAMID (ed.), Mizan Press, Berkeley 1981.
- KIFNER, JOHN, *Iranian Official Explains Trials and Their Suspension*, The New York Times, 18 March 1979.
- KOHLBERG, ETAN, *A Medieval Muslim Scholar at Work: Ibn Tāwūs and His Library*, E. J. Brill, Leiden 1992.
- (ed.), *Shī'ism*, Routledge, Abingdon-New York 2016.
- KURZMAN, CHARLES, *The Unthinkable Revolution in Iran*, Harvard University Press, Cambridge-London 2004.
- LENTINI, PETER (ed.), *Elections and Political Order in Russia*, Central European University Press, Budapest 1995.
- LE PILLOUER, ARNAUD, *La notion de « régime d'assemblée » et les origines de la classification des régimes politiques*, «Revue Française de Droit Constitutionnel» 58/2 (2004), pp. 305–333.
- LO JACONO, CLAUDIO, *Storia del mondo islamico (VII-XVI secolo). Il Vicino Oriente da Muḥammad alla fine del sultanato mamelucco*, vol. 1, Einaudi, Torino 2003.
- MAN, IGOR, *Iran - L'ex premier Hoveyda giustiziato ieri con sei militari*, La Stampa, 8 April 1979.
- MANNORI, LUCA, *Il sovrano tutore. Pluralismo istituzionale e accentramento amministrativo nel principato dei Medici (secc. XVI-XVIII)*, Giuffrè, Milano 1994.
- MANTRAN, ROBERT (ed.), *Histoire de l'Empire Ottoman*, Fayard, Paris 1989.
- MARICHAM, JAMES M., *Khomeini Appoints a Dissident to Lead Provisional Regime*, The New York Times, 6 February 1979.
- MARRANI, DAVID, *Dynamics in the French Constitution. Decoding French Republican Ideas*, Routledge, Abingdon-New York 2013.
- MARSHALL, GEOFFREY, *Constitutional Conventions. The Rules and Forms of Political Accountability*, Oxford University Press, Oxford-New York 1984.

- MCAULIFFE, JANE DAMMEN (ed.), *Encyclopaedia of the Qur'ān*, 6 voll., E. J. Brill, Leiden-Boston 2001-2006.
- MIRKINE-GUETZEVITCH, BORIS, *Les nouvelles tendances du Droit constitutionnel. Les problèmes de la rationalisation du pouvoir dans les constitutions de l'Europe d'après-guerre*, «Revue du droit public et de la science politique en France et à l'étranger» XLV/1 (1928), pp. 5–53.
- MITCHELL, COLIN P., *The Practice of Politics in Safavid Iran: Power, Religion and Rhetoric*, I.B. Tauris-British Institute of Persian Studies, London-New York 2009.
- MOIN, BAQER, *Khomeini. Life of the Ayatollah*, I.B. Tauris, London-New York 2009.
- MORGAN, DAVID O. – REID, ANTHONY – ROBINSON, CHASE F. – ROBINSON, FRANCIS (eds.), *The New Cambridge History of Islam*, voll. 1, 3, 5, Cambridge University Press, Cambridge-New York 2010.
- MORONI, FERMINIA, *Le Costituzioni della Repubblica Islamica dell'Iran*, «Oriente Moderno» 88/1 (2008), pp. 109–136.
- MORTATI, COSTANTINO, *La costituzione in senso materiale*, Giuffrè, Milano 1998.
- MOTTAHEDEH, ROY, *The Mantle of the Prophet. Religion and Politics in Iran*, Oneworld, London 2000.
- MOUSAVI, SEYED REZA, *La religion et le système politique en Iran: étude comparative des révolutions de 1906 et 1979*, «Canadian Journal of Political Science / Revue canadienne de science politique» 32/2 (1999), pp. 347–366.
- NASR, SEYYED HOSSEIN – DABASHI, HAMID – NASR, SEYYED VALI REZA (eds.), *Expectation of the Millennium: Shi'ism in History*, State University of New York Press, Albany 1989.
- NEWMAN, ANDREW J., *Safavid Iran: Rebirth of a Persian empire*, I.B. Tauris, London-New York 2006.
- NOHLEN, DIETER – GROTZ, FLORIAN – HARTMANN, CHRISTOF (eds.), *Elections in Asia and the Pacific. A Data Handbook. The Middle East, Central Asia and South Asia*, Oxford University Press, New York 2001.
- OSTOVAR, AFSHON, *Vanguard of the Imam. Religion, Politics, and Iran's Revolutionary Guards*, Oxford University Press, New York 2016.
- PAIDAR, PARVIN, *Women and the Political Process in Twentieth-Century Iran*, Cambridge University Press, Cambridge-New York 1995.
- PAPAN-MATIN, FIROOZEH, *The Constitution of the Islamic Republic of Iran (1989 Edition)*, «Iranian Studies» 47/1 (2014), pp. 159–200.
- PARGOO, MAHMOUD – AKBARZADEH, SHAHRAM, *Presidential Elections in Iran. Islamic Idealism since the Revolution*, Cambridge University Press, Cambridge-New York 2021.

- PASCOE, DANIEL – NOVAK, ANDREW (eds.), *Executive Clemency. Comparative and Empirical Perspectives*, Routledge, Abingdon-New York 2021.
- PEGORARO, LUCIO – RINELLA, ANGELO, *Sistemi costituzionali comparati*, Giappichelli, Torino 2017.
- PETRILLO, PIER LUIGI, *Iran*, il Mulino, Bologna 2008.
- PIHLAJAMÄKI, HEIKKI – DUBBER, MARKUS D. – GODFREY, MARK (eds.), *The Oxford Handbook of European Legal History*, Oxford University Press, New York 2018.
- PISTOSO, MAURIZIO – CURZU, SILVIA, *La Costituzione della Repubblica Islamica Dell'Iran*, «Oriente Moderno» 60/1/6 (1980), pp. 245–271.
- PEPELIER, PATRICIA – LEMMENS, KOEN, *The Constitution of Belgium. A Contextual Analysis*, Hart, Oxford-Portland 2015.
- PRELOT, MARCEL – BOULOUIS, JEAN, *Institutions politiques et droit constitutionnel*, Dalloz, Paris 1990¹¹.
- RAHNEMA, ALI, *The Political History of Modern Iran. Revolution, Reaction and Transformation, 1905 to the Present*, I.B. Tauris, London-New York-Dublin 2023.
- RAMAZANI, ROUHOLLAH K., *Constitution of the Islamic Republic of Iran*, «Middle East Journal» 34/2 (1980), pp. 181–204.
- RANDJBAR-DAEMI, SIAVUSH, *Building the Islamic State: The Draft Constitution of 1979 Reconsidered*, «Iranian Studies» 46/4 (2013), pp. 641–663.
- , *The Quest for Authority in Iran. A History of the Presidency from Revolution to Rouhani*, I.B. Tauris, London-New York 2018.
- REDAELLI, RICCARDO, *Constitutional complexity and political paradoxes of the Islamic Republic of Iran*, «Oriente Moderno» 87/2 (2007), pp. 483–496.
- , *L'Iran contemporaneo*, Carocci, Roma 2011².
- RICHARD, YANN, *Iran a social and political history since the Qajars*, FLOOR, W. M. (trad.), Cambridge University Press, Cambridge-New York 2019.
- ROBERTSON, GEOFFREY, *The Massacre of Political Prisoners in Iran, 1988*, Abdorrahman Boroumand Foundation, s.l. 2011.
- ROMANO, SANTI, *Principii di diritto costituzionale generale*, Milano, Giuffrè, 1946².
- , *The Legal Order*, CROCE, M. (trad.), Routledge, Abingdon-New York 2017.
- ROTELLI, ETTORE, *Storia delle istituzioni politiche: nascita di una storiografia*, «Amministrare. Rivista quadrimestrale dell'Istituto per la Scienza dell'Amministrazione pubblica» 1 (2016), pp. 311–358.
- ROUX, JEAN-PAUL, *Histoire des Turcs. Deux mille ans du Pacifique à la méditerranée*, Fayard, Paris 2000.

- ROY, OLIVIER, *Une théocratie constitutionnelle : les institutions de la République islamique d'Iran*, «Politique étrangère» II/52 (1987), pp. 327–338.
- SABAHI, FARIAN, *Storia dell'Iran. 1890-2009*, Bruno Mondadori, Milano 2009.
- SADEGHI-BOROUJERDI, ESKANDAR, *Revolution and Its Discontents. Political Thought and Reform in Iran*, Cambridge University Press, New York 2019.
- SCARCIA, GIANROBERTO, *A proposito del problema della sovranità presso gli Imāmiti*, «Annali dell'Istituto Universitario Orientale di Napoli» VII (1957), pp. 95–126.
- , *Intorno alle controversie tra Aḥbārī e Uṣūlī presso gli Imāmiti di Persia*, «Rivista degli studi orientali» 33/3/4 (1958), pp. 211–250.
- SCHACHT, JOSEPH, *An Introduction to Islamic Law*, Oxford University Press, Oxford-New York 1982.
- SCHIRAZI, ASGHAR, *The Constitution of Iran. Politics and the State in the Islamic Republic*, I.B. Tauris, New York 1997.
- SCHMITT, CARL, *Political Theology*, SCHWAB, G. (trad.), University of Chicago Press, Chicago 2005.
- SHAIN, YOSSIE – LINZ, JUAN J. (eds.), *Between states. Interim governments and democratic transitions*, Cambridge University Press, New York 1995.
- SHAKIBI, ZHAND, *Pahlavi Iran and the Politics of Occidentalism. The Shah and the Rastakhiz Party*, I.B. Tauris, London-New York 2020.
- SOHRABI, NADER, *Revolution and Constitutionalism in the Ottoman Empire and Iran*, Cambridge University Press, Cambridge-New York 2011.
- STELZER, MANFRED, *The Constitution of the Republic of Austria. A Contextual Analysis*, Hart, Oxford-Portland 2022.
- TAMANAH, BRIAN Z., *Legal Pluralism Explained. History, Theory, Consequences*, Oxford University Press, New York 2021.
- VEGAS, FERNANDO, *Scende dall'alto in nome di Allah*, La Stampa, 20 June 1979.
- VOLPI, MAURO, *Libertà e autorità. La classificazione delle forme di Stato e delle forme di governo*, Giappichelli, Torino 2022⁸.
- VON SCHWERIN, URLICH, *The Dissident Mullah. Ayatollah Montazeri and the Struggle for Reform in Revolutionary Iran*, I.B. Tauris, London-New York 2015.
- WHITTINGTON, KEITH E. – KELEMEN, ROGER DANIEL – CALDEIRA, GREGORY A. (eds.), *The Oxford Handbook of Law and Politics*, Oxford University Press, New York 2008.
- WINSTON, BRIAN, *The Rushdie Fatwa and After. A Lesson to the Circumspect*, Palgrave Macmillan, New York 2014.
- ZABIH, SEPEHR, *The Left in Contemporary Iran. Ideology, Organisation and the Soviet Connection*, Croom Helm, London-Sydney 1986.

———, *The Iranian Military in Revolution and War*, Routledge, Abingdon-New York 2011.

Websites

http://en.imam-khomeini.ir/en/s5_167/English/Book (retrieved on 30 September 2023).

<https://irandataportal.syr.edu/appointment-of-mehdi-bazargan-as-prime-minister> (retrieved on 27 June 2022).

<https://irandataportal.syr.edu/political-parties-law> (retrieved 10 July 2023).

<https://irandataportal.syr.edu/executive-bylaws-for-the-election-of-the-assembly-of-experts-of-the-leadership> (retrieved 6 August 2023).

<https://irandataportal.syr.edu/letter-by-prime-minister-mousavi-explaining-resignation-to-president-khamenei> (retrieved on 22/10/2023).

<http://www.imam->

[khomeini.ir/fa/C207_44691/](http://www.imam-khomeini.ir/fa/C207_44691/) فتوای قتل سلمان رشدی، نویسنده کتاب کفرآمیز آیات شیطانی (retrieved on 24/10/2023).

Table: Romanisation of Persian and Arabic Alphabets

Farsi

ء = '	ب = b	پ = p	ت = t	ث = t̤	ج = ğ
چ = č	ح = ḥ	خ = ḫ	د = d	ذ = z̤	ر = r
ز = z	ژ = ž	س = s	ش = š	ص = ṣ	ض = ḍ
ط = ṭ	ظ = ṭ̤	ع = '	غ = ğ	ف = f	ق = q
ک = k	گ = g	ل = l	م = m	ن = n	ه = h
ه = eh	و = v	ی = y	ا / آ = ā	ای / ای / ی = ī/i/i	او / و = u
اَ = a	اِ = e	اُ = o			

Arabic

ء = '	ب = b	ت = t	ث = t̤	ج = ğ	ح = ḥ
خ = ḫ	د = d	ذ = ḏ	ر = r	ز = z	س = s
ش = š	ص = ṣ	ض = ḍ	ط = ṭ	ظ = ṭ̤	ع = '
غ = ğ	ف = f	ق = q	ک = k	ل = l	م = m
ن = n	ه = h	و = w/ū	ي = y/ī	ا = ā	ة = a
اَ = a	اِ = i	اُ = u			

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