

*Siavush Randjbar-Daemi*

## **Building the Islamic State: The Draft Constitution of 1979 Reconsidered**

*The early drafts of the constitution of 1979 have represented a crucial moment in the creation of the post-revolutionary Iranian state. This article makes use of primary sources of the time and recently revealed material in order to provide a systematic analysis of the events which led to the production of the key versions of the draft constitution and the reaction to them by the multitude of political movements which were then active. The aim of this study is to clarify events and processes which have been left unexplored by the existing academic literature.*

### *Introduction*

In late June 1979, the Provisional Revolutionary Government of Iran (PRG) published the draft text of the Constitution of the Islamic Republic. Commonly known as the *pish nevis-e qānun-e asāsi*, or *pish nevis* in brief, the draft text was the product of a laborious collective endeavor by a select group of legal experts who were entrusted with the task of devising the new constitution in late 1978 by Ayatollah Khomeini in Paris and Mehdi Bazargan, the opposition leader who was to become the prime minister of the PRG, in Tehran. It was also the first full constitutional charter to be published by a state authority in Iran since the one which emerged at the end of the first phase of the Constitutional Revolution of 1906–11.

The publication of the draft text represented a key moment in the creation of the post-revolutionary state. It brought about the formal introduction of a number of institutional innovations within the rubric of Iranian statecraft, such as a president directly selected by the electorate through regular nationwide elections and a formal oversight body entrusted with the verification of the correct application of constitutional and Muslim religious principles, the Guardian Council (GC). Despite being termed an “entirely secular” constitution by its backers and authors, an early complete version of the *pish nevis* also equipped the *ulema* with the right to scrutinize and block legislation approved by the parliament, or Majles, which they interpreted to be in contravention of Islamic principles.

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Siavush Randjbar-Daemi is Lecturer in Contemporary Middle East and Iran at the University of Manchester. The author would like to express his gratitude to Houchang E. Chehabi, Vanessa Martin, Nasser Mohajer and Eskandar Sadeghi-Boroujerdi for their valuable comments and advice on earlier drafts of this article.

The publication of the draft text also acted as a catalyst for the production of a plethora of critiques, discussions and debates by many disparate parties and formations which were then active on the political scene. These discussions were amplified by the lively and relatively free press of the time, which enabled smaller political groups to voice their remarks to a wider audience.

This paper will go through the various stages which led to the publication of the draft text by delving upon its most innovative parts. It contends that the process which culminated in the publication of the PRG's text at the end of June 1979 was a brief but laborious one which has been somewhat incompletely examined by the existing scholarship. The emergence of primary material published by personalities who played a significant role in the production of the various drafts of the *pish nevis* in recent years and, most crucially, the recent publication of Ayatollah Khomeini's thoughts regarding the first version of the constitution has enabled the formulation of a new historical narrative in this regard.

The attitude of the clerical class with respect to the various stages in the preparation of the *pish nevis* will also be re-examined in this study in order to better understand Ayatollah Khomeini's vision regarding the institutional configuration of the post-revolutionary state order. This study will note that Khomeini tactfully waded through the turbulent political waters of the time prior to indirectly encouraging his followers to bring about the stark modifications to the PRG's text which were conducive to the emergence of articles 5 and 110 of the final text of November 1979, which fortified the *faqih's* pre-eminence within the institutional landscape of the Islamic Republic.

This paper also casts a glance at the reaction of the various political organizations and parties to the publication of the *pish nevis* and describe how this process influenced the drafting of the final text. It will also contend that several subtle but crucial changes made to the text between February and June 1979 gave added impetus to Islamist forces aligned to Khomeini, which subjected the text published by the PRG to considerable criticism for not granting the necessary privileges to the clergy. This study will finally also highlight how some of the innovations brought forward by the draft text and part of the critiques it generated have survived to this date and are crucial for a better understanding of the present-day dichotomy between clerically mandated and popularly selected state institutions in the Islamic Republic.

### *The Multiple Versions of the Pish Nevis*

The collapse of the last remnants of the shah's political system on 11 February 1979 brought about the compelling need to redefine the state order. The end of the year-long revolutionary fervor did not coincide with the immediate availability of a constitutional text which would define the new post-monarchical state order.

The existing scholarship generally acknowledges that two distinct constitutional texts, one released by the Bazargan administration in mid-1979 and one approved

by referendum in November of that year, were drafted and formally published by the state authorities during that crucial year. The Provisional Revolutionary Government is credited with releasing a charter in June 1979 which was bereft of any overt implementation of the cardinal jurisprudential doctrine of Ayatollah Khomeini, the *velāyat-e faqih*.<sup>1</sup> While recognizing that previous drafts had been circulating since the autumn of 1978, the accounts of Schirazi, Bakhash and Chehabi state that Khomeini approved the PRG's version and called for it to be put directly to popular approval through a referendum.<sup>2</sup> Schirazi also notes that Khomeini made small amendments to this text but was otherwise satisfied with its general outlook.

This article provides a different reading of the same events by drawing upon several key primary sources which have come to light in recent years. These have enabled a more thorough analysis of the several different drafts of the *pish nevis* which have been documented by a variety of reliable sources. According to these, it is inferred here that Khomeini did not approve or subject the PRG's text to close scrutiny, but rather thoroughly examined a previous draft which contained several crucial differences with regard to the powers and prerogatives afforded to the clergy. This substantial difference in the narrative of the Ayatollah's involvement in the early stages of the production of the post-revolutionary constitution also enables us to explain his attitudes with regard to the crucial question of the positioning of the clergy within the institutional configuration of the new state order.

*The genesis of the constitution-writing process.* The arrival of Ayatollah Khomeini in France in late 1978 marked the beginning of the final phase of the Revolution and the erosion of any residual control of the monarchical authorities over Iran. From his base in Neuphle Le-Château, Khomeini began to assertively press for the shah's deposition and the creation of a new state order and for the establishment of a democratic political system. The core leadership of the opposition front started to conduct debates at the time over the form and function of the state institutions which were to take effective control of power in Iran after the demise of the monarchy. According to Naser Minachi, one of the founders of the Hosseiniyeh-ye Ershād religious center in Tehran and a close associate of Mehdi Bazargan, the leader of the Liberation Movement of Iran (LMI) and a key figure of the opposition, the issue was then raised that the country urgently needed a new constitution should the shah suddenly "hand over

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<sup>1</sup>See Hamid Enayat, "Iran: Khomeini's Concept of the 'Guardianship of the Jurisconsult,'" in *Islam in the Political Process*, ed. James P. Piscatori (Cambridge and New York, 1983), 160–80, for an invaluable overview of Khomeini's doctrine.

<sup>2</sup>See in this regard Shaul Bakhash, *The Reign of the Ayatollahs* (London, 1985), 74; Asghar Schirazi, *The Constitution of Iran: Politics and the State in the Islamic Republic* (London, 1997), 22–4; and Houchang Chehabi, *Iranian Politics and Religious Modernism: The Liberation Movement of Iran Under the Shah and Khomeini* (Ithaca, NY, 1990), 264–5. This position is also adopted by Saffari, who states "surprisingly, Ayatollah Khomeini actually approved the government's draft constitution. He even suggested bypassing the Constituent Assembly and placing the draft before the people for an immediate vote." Said Saffari, "The Legitimation of the Clergy's Right to Rule in the Iranian Constitution of 1979," *British Journal of Middle Eastern Studies* 20, no. 1 (1993): 66.

the keys” of the country to the opposition front.<sup>3</sup> These talks were given added importance by the revolutionary cleric’s reluctance to take personal control of executive political power. Bazargan has commented that 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. Despite Bazargan’s insistence on an orderly transition of power and a staged process which would make use of the shah’s belated pledge to hold free elections, Khomeini pressed for the formation of a wholly alternative administration on the grounds that an understanding with the shah might dampen the revolutionary ardor.<sup>4</sup> In order to mitigate the reticence of Bazargan, who was unwilling to become the prime minister of the provisional administration, Khomeini emitted a religious decree and imposed his will, as *marjā’*, on the leader of the Liberation Movement and explained his act by stating that Bazargan was the only pious personality who could fulfill such a role. The LMI leader reluctantly agreed to heed Khomeini’s order, thereby indicating his deference to the cleric. The future prime minister commented later that Khomeini’s inclination to hand over political power to the LMI and its allies appeared less than genuine:

my impression (and perhaps that of Dr. Ebrahim Yazdi) was that he [Khomeini] wanted to make use of us solely for the composition of the cabinet and parliament of the period immediately following the [victory of the] Revolution. He appeared to be assured [of alternatives] for the successive timeframe.<sup>5</sup>

During the following six months Khomeini would engage in a complex tussle with the rest of the political scene. While appearing at various stages to be willing to concede the initiative to personalities and formations not aligned to himself, the Ayatollah would make use of his overarching influence at key moments in the evolution of the constitutional debates to redress the latter to his own aims and advantage.

After lengthy discussions in Paris a de facto legislative body called the Revolutionary Council (RC) was secretly founded upon the order of Khomeini. In the latter’s decree announcing its formation, the RC was entrusted, amongst other prerogatives, with the task of approving the members of the new Provisional Revolutionary Government to which Khomeini, who considered himself to have the support of a “clear majority” of the Iranian population, assigned the role of legitimate government.<sup>6</sup> The RC furthermore had the duty of preparing the creation of a Constituent Assembly which would have the remit of approving the final text of the constitution of the post-revolutionary state order and submitting it to popular approval via a referendum. The membership of the RC was mainly drawn from the ranks of the clerical associates of Khomeini and

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<sup>3</sup>Interview with Minachi and Ahmad Sadr Hajj-Seyed-Javadi, justice minister of the PRG, in Parvin Bakhtiarnjad, “Pish Nevis Qānun Asāsi Cheguneh Tahyeh Shod?,” *Iran-e Fardā* 51 (1998): 25.

<sup>4</sup>Nehzat-e Āzādi-ye Iran, *Shourā-ye Enqelāb va Dowlat-e Movaqqat* (Tehran, 1982), 234.

<sup>5</sup>*Ibid.*, 235.

<sup>6</sup>Ruhallah Khomeini, *Sahifeh-ye Imam* (Tehran, 1999), 5: 426–8.

the moderate lay Islamists who had contributed to the anti-shah struggle since the 1960s.<sup>7</sup> In the view of Bazargan, the RC and the PRG were to feature, respectively, as the temporary legislative and executive branches of the latter. The issue of equipping the new post-monarchical state order with a new constitution featured therefore prominently at the top of the priority list of the leadership of the revolutionary struggle.

*Preliminary work in Paris and Tebran.* Despite being engaged with the *minutiae* of the emerging post-monarchical administration from the autumn of 1978, Khomeini refrained from participating directly in the drafting of the constitution. According to Hasan Habibi, a French-trained sociologist who was part of the inner circle of Khomeini's supporters in Neuphle Le-Château, the Ayatollah initially tasked him with devising a written constitution in the winter of 1978.<sup>8</sup> An enthusiastic supporter of the institutional configuration of the French Fifth Republic, Habibi set about devising a state order divided into the canonical executive, judicial and legislative branches. His document, which was completed and submitted to Khomeini's attention prior to the Ayatollah's departure from Paris, 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.<sup>9</sup> According to both Naser Katuziyan, a jurist who featured prominently in the early drafting of the *pish nevis*, and Abolhasan Bani-Sadr, a Khomeini confidant in Paris later to become the Islamic Republic's first president, the first version devised by Habibi amounted to little more than a translation of its French model.<sup>10</sup> The Gaullist framework was enforced through the introduction of a presidential figure who was to be directly elected by the people and who would have the role of supervising the other branches of state. The executive branch of state was completed, again respecting the French model, with a weaker prime ministerial position.

The ostensible replacement of the unelected shah with a strong presidency caused immediate concern amongst Khomeini's associates. Both Bani-Sadr and Ezatollah Sahabi recall that Habibi's insistence on a strong presidency was quickly watered down to assign more powers to the prime minister.<sup>11</sup> Nevertheless, the introduction of the presidency in Habibi's text survived several revisions and made it through to the final text approved by the electorate in November 1979, thus marking a radical innovation within the context of Iranian political culture.

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<sup>7</sup>Bazargan notes that the RC underwent four significant membership turnovers during the course of its existence, but clerics were always a majority component of its membership. Iran, *Showrā*, 236.

<sup>8</sup>Habibi interview, *Keyhān*, 11 Shahrivar 1358 [September 2, 1979]. This has been corroborated by other participants in these discussions, such as Sadegh Tabatabai, a close relative of Khomeini.

<sup>9</sup>This was sarcastically noted later by Bani-Sadr, who believes that Habibi needlessly based himself on that model, since Iran "did not have a De Gaulle" at the outset of the fall of the shah's regime. Hamid Ahmadi, ed., *Khāterāt-e Abulhasan Bani-Sadr* (Frankfurt, 2001), 62.

<sup>10</sup>Naser Katuziyan, "Gozari bar Tadvin-e Pish Nevis-e Qānun-e Asāsi," *Huquq-e Asāsi* 1, no. 1 (2003): 124. Bani-Sadr goes further and calls it a "raw" translation. Hamid Ahmadi, ed., *Khāterāt-e Abulhasan Bani-Sadr* (Frankfurt, 2001), 62.

<sup>11</sup>Ibid.

In the weeks leading to the shah's departure Habibi was also tasked by Khomeini to travel to Tehran and establish contact with a committee formed by a select group of legal experts, who further edited the text. This group, which mostly consisted of secular-liberal personalities, was formed of Naser Katuziyan, a Tehran University law professor, Abdolkarim Lahiji, a renowned human rights lawyer, Fathollah Bani-Sadr, who would later become prosecutor-general, Naser Minachi and Mohammad Ja'fari Langarudi, another prominent jurist.<sup>12</sup> Minachi recalls that the group was entrusted by Khomeini to revise Habibi's text and bring it in tune with the "revolutionary" and "Islamic" ideals of the time.<sup>13</sup> According to Katuziyan, this commission eventually devised a text which was markedly different from the one proposed to it by Habibi.<sup>14</sup> Minachi confirms that Habibi's draft was effectively substituted by a new version due to the several major alterations which were quickly adopted by the legal committee soon after Khomeini's return to Tehran.<sup>15</sup>

*The February version of the draft text.* The final demise of the shah's regime on 11 February 1979 gave increased urgency to the production of the new constitution. The PRG became involved in its drafting directly through an ad hoc committee formed within its ministry for revolutionary projects, which was headed by the veteran Mosadeqist Yadollah Sahabi. On 26 February 1979, barely a fortnight after the collapse of the *ancien régime*, Minachi, who was now the PRG's information minister, declared that the cabinet had presented Khomeini with a first complete version of the draft text.<sup>16</sup> In the aforementioned interview with *Keyhān*, Habibi stated that an initial version was presented to Khomeini on 27 February and a "finalized" draft was given to him on 15 March.<sup>17</sup>

According to article 12 of this text, national sovereignty, or *hākemiyat-e melli*, rested with the people and "no group or personality is entitled to seize it for its own benefit." The next provision specified that this principle was to be exercised through direct recourse to popular votes in a referendum or through the people's deputies within the national parliament.<sup>18</sup> The influence of the prevailing political atmosphere of the time was reflected within article 78, which called upon the Majles not to approve any law contrary to the sacred code of Ja'fari Shi'ism and the constitution itself.

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<sup>12</sup>None of Khomeini's clerical associates nor any member of the radical revolutionary groups, such as the Fadāyān-e Khalq or the Mojāhedīn-e Khalq, were involved at this stage.

<sup>13</sup>Bakhtiarnejad, "Pish Nevis," 25.

<sup>14</sup>Katuziyan, "Gozari," 124.

<sup>15</sup>Bakhtiarnejad, "Pish Nevis," 25. The first modifications brought to Habibi's text therefore diluted the powers of the presidency in favor of the prime ministerial institution.

<sup>16</sup>*Āyāndegān*, 9 Esfand 1357 [February 28, 1979].

<sup>17</sup>The text of this latter version appears in full, possibly for the first time, in Naser Katuziyan, *Zendege-ye Man* (Tehran, 2007), 193–220. It is entitled here "The First Complete Version of the *pish nevis*" and most likely refers to the 15 March text referred to Habibi.

<sup>18</sup>*Ibid.*, 195–6.

The post of the presidency, described by articles 89 through 114, was closely linked to its French model. Article 89 introduced the presidency as the “highest authority” of the land and assigned to its holder the duty of supervising the correct execution of the constitution and regulating the relationship between the three independent branches of state.<sup>19</sup> In a break with the provisions put in place by the Constitution of 1906, which envisaged elections only at the parliamentary level, article 91 tasked the electorate with the selection of a new president every four years.<sup>20</sup> Article 106 assigned the position of commander in chief of the armed forces to the president and made the choice of the chief of staff, who had to be nominated by the council of ministers, subject to presidential approval. The head of the executive branch was also vested with the right of refusing to sign a law approved by parliament which he deemed to be contrary to either the spirit of the constitution or Islamic principles. The president could then invoke the supervision and judgment of a newly introduced institution, the Guardian Council.

The executive role of the president in the day-to-day administration of the country was diluted by articles 115 through 125, which assigned this duty to the council of ministers and to its head, the prime minister. The latter was to be selected by the president but had to obtain and maintain the support of the majority of parliament deputies. The president was therefore entrusted with the task of supervising and defining the overall guidelines of state administration and policy, much like the French model.

Another crucial part of this text is its seventh chapter, which introduced the Guardian Council and defined its powers. Its first provision, article 151, defined the “Council of Guardians of the Constitution” (or Guardian Council for short) as having the duty of protecting the constitution from the “likely infringements” that could be brought against the constitution itself by the legislative branch. The GC was to be composed of fifteen members, equally divided between esteemed jurists chosen by the Majles, *mojtaheds* who were aware of the exigencies of the time and who were chosen by the *marāje*’ of Qom, and five members selected by the judiciary.<sup>21</sup> Article 152 stipulated that the GC was mandated to examine the compatibility of laws passed by parliament with either the constitution or Islamic principles. The Guardian Council had the right to unilaterally abrogate the law under its examination if the same was found to be non-compliant with either the charter or Islamic regulations. Article 154 crucially vested the clerical component of the GC with the right to veto any legislation, stating as it did that

the decisions of the Guardian Council are subject to the approval of a majority of its members. In the case of a contravention of sacred principles, the consensus of the

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<sup>19</sup>Ibid., 207.

<sup>20</sup>Ibid., 208. Due to the fact that the parliamentary elections were held through local constituencies, for the first time in Iranian political history, the population was therefore entrusted with the selection of an eminent state official through a nationwide election.

<sup>21</sup>Ibid., 218–19.

*mojtaheds* shall be binding, even taking into account their minority presence within the Council.<sup>22</sup>

This specific provision had potentially far-reaching consequences, as it effectively ensured the primacy of the high-level Shi'i ulema in the legislative process. While constituting only a third of the members of the Guardian Council, the *mojtaheds'* component was effectively given the right to block any legislation through the "catch-all" of the lack of adherence to Islamic principles interpreted by themselves.

Article 155 granted another key duty to the Council, that of exerting *nezārat*, or "supervision," over the presidential elections and other polls, such as referendums. This prerogative, which made it to the final text approved in November 1979, would be subject to considerable re-interpretation and contention during the following decades.<sup>23</sup>

This first official draft of the post-revolutionary constitution did not assign any specific powers to the clergy within the judicial sphere of the state, and did not contain any overt reference to the *velāyat-e faqih*, the fringe doctrine which had been refashioned by Khomeini during his exile in Najaf in the late 1960s. The February text hence assigned a supervisory role to the clergy which was not dissimilar from the one they had been granted by the Supplement of the Constitution of 1906, but proceeded to formalize and strengthen those powers within a powerful institution whose prerogatives were now defined explicitly and extensively.<sup>24</sup>

The February text also aimed to redress the balance of power in favor of the electorate after the failure of the *masbruteh* Constitution of 1906 to effectively curb the overarching role of the monarchical institution within the Iranian polity. Nevertheless, the Shi'i clergy were afforded crucial rights in the legislative branch of the state, where their deliberations could in essence overrule any decision taken by the secular component of the Guardian Council. As such, in its first formal draft, the *pish nevis* fell short of being a charter within which a firm distinction between the religious and lay spheres could be found and was, on the other hand, a constitution which took into account the emergence of the direct involvement of the clergy within the institutions of state, which was a manifest by-product of the revolutionary turmoil of the time. According to one of its authors, the February text was devised during the "heat of the Revolution" and "in the shadow of the Revolutionary slogans."<sup>25</sup> It would

<sup>22</sup>Ibid., 219.

<sup>23</sup>These provisions would be included in article 99 of the final text and would include the Majles elections, which are not explicitly listed in the February text.

<sup>24</sup>The addendum to the 1906 text stated that a committee formed of five *mojtaheds* was vested with the power to "reject or repudiate any proposal that is at variance with the sacred laws of Islam ... In such matters the decision of this committee of 'olamā' shall be followed and obeyed, and this article shall continue unchanged until the appearance of the Hidden Imam." Quoted from Said Amir Arjomand, "Constitutional Revolution— iii. The Constitution," *Encyclopaedia Iranica Online*, unpaginated, <http://www.iranicaonline.org/articles/constitutional-revolution-iii>.

<sup>25</sup>Katuziyan, "Gozari," 122.

therefore have been extremely unlikely for this version of the *pish nevis* to be devoid of provisions in favor of the clergy.

### *The Developments of Spring 1979*

*The critiques of Khomeini and other leading marāje'.* The aforementioned version of the draft text described above was presented to Ayatollah Khomeini, who by early March 1979 had triumphantly returned to Qom after a fifteen year absence and had temporarily established his personal office there. Based on what has been revealed nearly three decades later in a monograph published by a prominent state body of the Islamic Republic, Khomeini personally annotated in the margins of the text handed over to him prior to returning it to the Revolutionary Council and made a number of pointed and terse comments, but was not opposed to its overall institutional structure. Amongst the points raised by Khomeini was the request for an amendment which would prohibit any modification of article 15, which defined Twelver Shi'i Islam as the official religion of state and stipulated that the president had to be Shi'i.<sup>26</sup> He also called for the clarification of article 55, which attributed to the Majles the right to expropriate and nationalize private industrial and agricultural holdings.<sup>27</sup> Khomeini also objected to article 106, which attributed the position of commander-in-chief of the armed forces to the president. According to him, this provision marked a throwback to the shah's time and was unnecessary, due to fact that the prime minister was the effective head of the executive branch. Khomeini also questioned for the same reason the decision to confer on the president the right to declare war, or cease hostilities.<sup>28</sup> He further objected to the wording of article 152, which stipulated that the Guardian Council could examine the conformity of laws passed by parliament with Islamic law only when requested to do by either the president, the head of the Supreme Court, or one of the *marāje'* and suggested instead that the *marāje'* should be given priority in the right to invoke the Guardian Council's examination.<sup>29</sup> The Ayatollah was, furthermore, opposed to allowing women to become president, a right which was implicitly granted by the text presented to

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<sup>26</sup>Khomeini's critiques to the February text are described in detail, possibly for the first time, in Seyyed Javad Vara'i, *Mabāni va Mostanadāt Qānun-e Asāsi beh Revāyat-e Qānūngožār* (Qom, 2006), 55–8, and reproduced in full in *ibid.*, 1082–90. This is an extensive analysis on the constitution-writing process of 1979–89 which was published by the Majles-e Khobregān, the institution tasked with monitoring the performance of the Supreme Leader. The version of the draft text reproduced here is identical to the one published separately by Katuziyan, save for a minor numerical discrepancy in the composition of the Guardian Council.

<sup>27</sup>*Ibid.*, 56. Khomeini was apprehensive that the article 55 in its original form would be tantamount to giving the impression that the constitution had a communist slant.

<sup>28</sup>*Ibid.*, 57. Both of these critiques were not heeded and the articles were left untouched in the draft text published by the PRG in June 1979.

<sup>29</sup>*Ibid.*, 58. The original text's pecking order assigned priority to the president, followed by the president of the Supreme Court. The *marāje'* were listed in last position.

him.<sup>30</sup> Elsewhere, Khomeini called for the Lion and Sun emblem to be removed from the national flag.<sup>31</sup>

Khomeini's criticisms were therefore 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. Habibi stated in September 1979 that he had doubts during the preparation of his own constitutional draft on Iranian society's readiness to fully comprehend the "exalted significance" of *velāyat-e faqih*. He also claimed to have attempted the implementation of the doctrine within the institutional confines of the newly formed Guardian Council.<sup>32</sup> This attempt appeared to have been implicitly endorsed by Khomeini, who refrained from criticizing the crucial article 154.

Habibi's remarks also belie the fact that there was no uniform view at the time on the implementation of the Shi'i doctrine. In a press interview in late March 1979, the spokesman of the Bazargan cabinet, Abbas-Amir Entezam, declared, for example, that the Revolutionary Council was to be entrusted with the role of exercising the *velāyat-e faqih*.<sup>33</sup>

The other *marāje'* of Qom, who were also given the opportunity to comment on the draft text, raised other points of concern. Ayatollah Mohammad-Reza Golpayegani, who together with Khomeini, Marashi Najafi and Kazem Shari'atmadari had held the informal leadership council which stood at the helm of the Qom seminary system after the death of Ayatollah Borujerdi in 1961, made scattered comments on the need to ensure adherence to Islamic principles within the various sections of the constitution. According to a member of the Revolutionary Council, Ayatollah Shari'atmadari, whose comments are not readily available, took issue with the definition of Persian as the sole official language and was ostensibly in favor of cultural federalism.<sup>34</sup>

*The transition from the February text to the June PRG text.* After the remonstrations of the senior clerics of Qom, the February text was subject to further debate within the

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<sup>30</sup>According to Ezatollah Sahabi, Ayatollah Hossein Beheshti, a prominent associate of Khomeini and a leading ideologue of the Islamic Republican Party (IRP), was on the other hand in favor of women being allowed to compete for the presidency and stated that it was Shi'i culture, rather than the *shari'a*, which stood at the root of the opposition, within clerical circles, to an all-inclusive role for women within political life. Interview with Sahabi, Bahman Ahmadi-Amui, *Eqtesād-e Siyāsi-ye Jomhuri-ye Eslāmi* (Teheran, 1999), 43.

<sup>31</sup>This request was finally implemented by the PRG in June. Another version of the *pish nevis* published by *Keyhān* in April and detailed below still contained the original wording of article 21.

<sup>32</sup>Habibi interview, *Keyhān*, 11 Shahrivar 1358 [September 2, 1979]. Crucially, Habibi laments that the present version of the *pish nevis* (i.e. the June one), bound the GC with the Majles, while the previous version (the February text) had created an "independent" Guardian Council which, as seen above, was crucially handed the power of vetoing any Majles bill deemed in contravention to the *shari'a*. This view is also reflected in Naser Katuziyan's commentary on the PRG's June text, which was published in August 1979.

<sup>33</sup>*Āyandegān*, 11 Farvardin 1358 [March 31, 1979].

<sup>34</sup>Vara'i, *Mabāni*, 59. This was due to Shari'atmadari's strong connections with the northern Azarbaijan region, most of the inhabitants of which were his followers and speakers of the Turkic Azeri language.

PRG's Council for Revolutionary Planning, which was at that point in time mainly staffed by leaders and affiliates of the National Front. According to Ezatollah Sahabi, the son of the minister for revolutionary planning and a prominent political activist in his own right, the March text was subject to the scrutiny of the RC between April and June 1979 and several modifications were made to it during this period.<sup>35</sup> Evidence of this may be found in the charter which was leaked to *Keyhān* at the end of April. The mass-circulation afternoon daily then published what it defined as the "proposed text of the constitution."<sup>36</sup> Khomeini's previous remarks were therein partially taken into account. Article 55 now stated, for example, that the principles of the *shari'a* would be respected while proceeding with the aforementioned expropriations.

The chapter dedicated to the Guardian Council also carried several significant modifications with respect to the February text. Each of the three components previously defined carried four members instead of five. Article 57 now posited that the Majles deputies were mandated to be "nationalist-leaning" and be devoid of "deviatory leanings" towards either the "right or the left."<sup>37</sup> Article 154 of the *Keyhān* text further stipulated that any parliamentary bill which was rejected by the clerical component of the Guardian Council due to contravention with the *shari'a* would be referred to "one of more *marāje*" for a final ruling.

After several more weeks of discussion within the temporary state bodies, the Bazar-gan cabinet finally unveiled its official version of the *pish nevis* in mid-June 1979. This version, which will be henceforth referred to as the June text and which was unofficially published by *Keyhān* on 14 June 1979, contained several significant differences from the text which was submitted to Khomeini at the end of February or the April one published by the same newspaper, such as the different order under which the various branches of state were now defined.<sup>38</sup>

The state system retained the formal division into three nominally independent branches, the executive, legislative and the judiciary. Article 75 again introduces the president as the "highest official authority" of state. Subsequent articles nominate him as commander in chief of the armed forces and appointer of the chief of staff.

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<sup>35</sup>Ezatollah Sahabi claims that the RC devolved "deep scrutiny" to the text it received from the PRG between the months of Ordibehesht and Khordād of 1358. Mohammad Vahid Qalafi, *Majles-e Khobregān va Hukumat-e Dini dar Iran* (Tehran, 2005), 376.

<sup>36</sup>*Keyhān*, 8/9 Ordibehesht 1358 [April 28/29, 1979]. The text published here was the first publicly available version of the *pish nevis*. It has been described by Schirazi as being Habibi's original version which, as can be inferred from the material presented above, is likely not to be the case. The newspaper warned its readers that the version it published would probably be subject to further modification before being placed at the disposal of the Constituent Assembly.

<sup>37</sup>Khomeini had asked for these modifications in his previous critiques in order to ensure that the Parliament would not feature members closely aligned to either the eastern or western blocs.

<sup>38</sup>The article ordering was markedly different from previous texts examined here, thus ruling out the possibility that the aforementioned critiques of Khomeini could apply to the June text. Ayatollah Shari'atmadari raised the possibility that the text presented to him "three or four months before" could have been subject to significant alteration during a press conference on June 10. He also stated on this occasion that he had previously listed "seven or eight" items that needed corrections in that text, but refrained from describing their content in detail. *Jomburi-ye Eslāmi*, 21 Khordād 1358 [June 11, 1979].

Article 76 mandates the president to belong to the Muslim faith and have Iranian origin and citizenship.<sup>39</sup> The president is also mandated to nominate the prime minister, an office largely reminiscent of its pre-revolutionary predecessor, as well as to approve the latter's choices for the composition of the cabinet.

The most important differences between the February and June texts were to be found in the section devolved to the Guardian Council. Chapter 10 of the June text, which was devolved entirely to the GC, now stipulated that the Guardian Council was formed of eleven members, five *mojtaheds* who were to be selected by the Majles from a list of capable clerics provided to it by "renowned" *marjās*, and six lay experts, who were to be equally selected from the ranks of law professors and judges by the Majles. Despite now placing the *marāje'* at the top of the pecking order of the authorities who were entitled to call the GC into action, as requested by Khomeini, the previous article 154 was entirely removed from Chapter 10 of the June text. The decisions of the Council were to be approved by a majority of two-thirds of its members, thereby making the vetoing powers of its clerical component slightly more implicit.<sup>40</sup> The supervisory body was, however, limited in this version to sending an unapproved bill back to the Majles for further debate and modification and was crucially stripped of its previous right to reject the law outright, even in the case of bills which were found in violation of the *shari'a*. This marked a reduction of the overall power and influence of the clerical component of the Guardian Council, which had still been accorded the right to reject the Majles' bills in the text leaked in April.

The June text therefore considerably diluted the mandatory nature of adherence to the *shari'a*. The reasons for this modification are likely to rest in a sudden surge to prominence of the secular component, largely composed of the leadership of the National Front, within the PRG's Council for Revolutionary Affairs, which is alluded to by Karim Sanjabi in his memoirs.

There are few indications on the June text being subject to Khomeini's detailed article-by-article analysis. According to several statements made by Bani-Sadr, who went to Qom with Ayatollah Beheshti to confer with Khomeini on the June text prior to its public release, the leading cleric had raised issue with half a dozen articles, including provisions allowing women to run for president. These comments were not, however, formally communicated by Khomeini to the PRG, as had been the case for the previous February text. In a press conference on the day in which the June text appeared on *Keyhān*, Yadollah Sahabi stated that the official publication of the PRG's constitution had been delayed because the government had been informed from Qom that Khomeini had raised comments and criticism on a few articles. Sahabi then claimed that the text would be publicly released as soon as the Ayatollah's viewpoints could be incorporated within it.<sup>41</sup> Two days later, Sahabi announced, however, that the

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<sup>39</sup>The earlier draft stipulated that the president should be of Twelver Shi'i faith. This provision was resurrected and adopted by the Assembly of Experts in autumn 1979.

<sup>40</sup>These descriptions are from the text published in *Ettela'āt*, 26 Khordād 1358 [June 16, 1979], which was officially endorsed by the PRG.

new charter had been returned to the PRG from Qom without any alteration or additional comment by Khomeini.<sup>42</sup> The latter had stated that he would make his views known within the one-month period accorded to the general public.<sup>43</sup>

Khomeini finally waded into the debate over the constitution on 15 June and delivered a series of significant public remarks over the following days. His first comments on the PRG's text warned against a protracted period of examination and deliberation, which had been informally described as the remit for the original Majles-e Mo'assesān. In his most pointed comments, on 20 June, Khomeini exhorted Islamic scholars and political organizations to air their comments and publish Islamic critiques in the press: "Do not wait for the Westernized intellectuals or those who do not adhere to Islam to air their own opinions first ... People who are knowledgeable about Islam should examine the current constitution instead."<sup>44</sup> Khomeini's words were most likely a reaction to the campaign mounted by the non-religious forces, which had started to press for a constitution entirely bereft of Islamic markers. By failing to approve the June text as an authentically Islamic constitution, Khomeini moved to provide cover for his supporters, who could now assume the initiative in the elections for the constituent assembly and control its proceedings in order to significantly reshape the structure of the state as described in the draft constitution which had hitherto circulated.

### *The Fate of the Pish Nevis*

*The debate over velāyat-e faqih and the role of the clergy within the state system.* Khomeini's initial public reaction to the unveiling of the PRG's official text mostly consisted of refraining from issuing a definitive judgment and encouraging the religious community to produce its own reactions. On 19 June, Ayatollah Golpayegani released a long declaration on the PRG's text in which he declared that the constitution had to be adapted to the principles of the *shari'a* and respect the principles of *imāmat* and *velāyat-e faqih*, to avoid becoming the charter of a *zolmāneh*, or "tyrannical" and *taghuti*, or "idolatrous" state system.<sup>45</sup> Golpayegani's intervention marked the first instance in which a senior member of the clergy had publicly called for an explicit inclusion of the *velāyat-e faqih* within the new constitutional framework. This position would be reinforced in the following weeks by other prominent members of the clergy.

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<sup>41</sup> *Āyandegān*, 26 Khordād 1358 [June 16, 1979].

<sup>42</sup> Testimonies provided by leading political figures in the summer of 1979 are often conflicting on this point. Abolhasan Bani-Sadr stated for example on July 4 that Khomeini had raised objections to nine articles of the "present" constitution, and added that the grievances of Ayatollahs Khomeini and Shari'at-madari were addressed in the timeframe between the early version of the *pish nevis*—which he defined as lacking uniformity—and the final one. Similar points were raised by, amongst others, the interior minister Ahmad Sadr Hajj Seyyed Javadi. It is likely that Khomeini aired these concerns in private but did not feel the need to make them public, for reasons discussed subsequently.

<sup>43</sup> *Āyandegān*, 29 Khordād 1358 [June 19, 1979].

<sup>44</sup> Ruhallah Khomeini, *Sahifeh-ye Imam* (Tehran, 1999), 8: 219–21.

<sup>45</sup> *Keyhān*, 30 Khordād 1358 [June 20, 1979].

On 27 June, Ayatollah Hossein-Ali Montazeri, a prominent aide of Khomeini, produced a detailed rebuttal of the PRG's draft text which was widely distributed by the mass-circulation daily *Jomburi-ye Eslāmi*, the official organ of the newly formed Islamic Republican Party (IRP). The core of Montazeri's argument, which was to be adopted by the rest of the Islamic forces, was centered upon a preliminary implementation of *velāyat-e faqih* which extended beyond the legislative interpretation hitherto tacitly approved by Khomeini or the vague appeal by Golpayegani. According to Montazeri, the western-inspired separation of the three branches of state stipulated in the June text was to be considered void in an authentically Islamic system, due to the need of ensuring the rigorous subordination of all state decisions to Islamic principles.<sup>46</sup> Montazeri proceeded to declare that a "just *faqih*" who was well-versed in present-day matters was to be assigned the role of a supervision over the executive, legislative and judicial branches. Within the context of the June text, which assigned such a role to the president, Montazeri stated that the presidency had therefore to act under the direct supervision of the just *faqih*, or be taken over by the latter. Montazeri also assigned all other duties that were associated to the presidency in the draft text, such as the right to dissolve parliament and the commandership of the armed forces, to the *faqih*, thus effectively devising a blueprint for the powers of the *faqih* as later defined by the final text of the constitution.<sup>47</sup> Montazeri then proceeded to openly criticize the wording of article 75, which, as detailed above, defined the president as the highest authority of the land. The influential cleric, who later would chair the final constituent assembly, stated that this provision, as worded in the PRG's constitution, would effectively equate the new Islamic state to its "despotic" monarchical predecessor.<sup>48</sup> Montazeri finally stated four conditions which were to be respected by all presidents: adherence to the Twelver Shi'i faith, possessing mature intelligence, being morally upright and acting in complete accord with the *faqih*.

Despite taking issue with the draft text's definition of the president as the senior state authority, Montazeri did not call for the abolition of the presidency, nor did he explicitly postulate the inclusion of a separate institution consisting of the *faqih* within the state structure. His critique implicitly conceded that the president should have a non-ceremonial role in the structure of the new state. Montazeri also did not accept the Guardian Council, as defined in the June text. After noting that the opinions of the *marāḡe'* and the five-member clerical component could be disregarded entirely in the case of a parliamentary bill in violation of Islamic principles, Montazeri remarked that the present Council was bereft of the veto power accorded to the five-*mojtahed* council present within the *masbruteh* text but failed to propose a solution to this shortcoming.<sup>49</sup>

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<sup>46</sup>Montazeri's critique was distributed at the time in the form of a booklet titled "Dow Payām" [Two messages] and has been reprinted in his memoirs. Hossein Ali Montazeri, *Khāterāt* (Qom, n.d.), 2: 895–6.

<sup>47</sup>Ibid., 896.

<sup>48</sup>Ibid., 898.

<sup>49</sup>Ibid., 902. It is pertinent to note that Montazeri does not refer here to the February text, which assigned a similar vetoing power to the clerical component of the Guardian Council, thereby giving the impression that he had not seen that text after its examination by Khomeini, Golpayegani and Shar-i'atmadari.

Other less prominent members of the clergy weighed in on the necessity of maintaining the presidency. In a strongly worded article published on 12 July, Seyyed Mohammad Khatami, later to become the president of the Islamic Republic, stated that “regrettably, there is little or no Islam in the present draft text of the Constitution” and defined the text published by the PRG as one which was in line with the ambitions of the deposed prime minister Shapur Bakhtiyar, who before his downfall was aspiring, according to Khatami, to replace the monarchy with a similarly structured republican state order.<sup>50</sup> While not explicitly calling for the implementation of the *velāyat-e faqih* principle, Khatami demanded the creation of a “presidency council” composed of eight *mojtaheds* entrusted with the task of “supervising” the presidency. The future president concluded by stating that, given the circumstances of the time, the Imam Khomeini was the only acceptable choice for first president of the Islamic Republic.

Other political groups aligned with Khomeini, such as the newly formed Sāzmān-e Mojāhedīn-e Enqelāb-e Eslāmi, produced their critiques in the form of alternative constitutions. This text called for the creation of a fourth branch of state, the “guardianship branch,” which, according to article 16 of the constitutional text published by the Sāzmān on 1 August, had the duty of “direct supervision” over the activities of the parliament and the presidency.<sup>51</sup> This proposal further stated that the president had to be a *mojtahed* aware of the exigencies of the contemporary era. In the absence of such a figure, the presidency could be assigned to any citizen of Iranian origin and Shi’i faith approved by the *mojtahed*, who would become in this case the head of the guardianship branch.

Notwithstanding the interventions of Montazeri and Golpayegani, the lack of clear indications by Khomeini on his preferred form of implementation of the *velāyat-e faqih* within the new state institutions led to the lack of uniformity in this process. This was evident when a group of religiously minded figures and associations close to Khomeini convened a five-day Congress of the Muslim Critics of the Constitution on the grounds of Tehran University in late July.<sup>52</sup> In the opening remarks, the main organizer of the Congress, Sadeghi stated that, according to Islamic precepts, the president was equivalent to the *vali-ye amr*, or guardian of state affairs, and commander of the Muslim faithful.<sup>53</sup> He also added to the lingering ambiguity on the issue of the *velāyat-e faqih* by stating that Iran was at the dawn of the era of *jomburiyat* which, unlike the era of *imāmat*, made the presence of the presidency mandatory. He then proceeded to add himself to those identifying Khomeini as the only suitable choice for this new state institution.<sup>54</sup>

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<sup>50</sup>*Ettela’āt*, 21 Tir 1358 [July 21, 1979].

<sup>51</sup>Sāzmān-e Mojāhedīn-e Enqelāb-e Eslāmi, *Matn-e Pishnahādi-ye Pish Nevis-e Qānun-e Asāsi* (Tehran, 1979).

<sup>52</sup>The more prominent organizers included Hasan Ayat and Ali Khamene’i of the IRP, Mohammad Taqi Shariati, the high-profile father of the late Islamic thinker Ali Shariati, and Ali Golzadeh-Ghaffuri, a popular maverick cleric.

<sup>53</sup>*Jomburi-ye Eslāmi*, 5 Tir 1358 [June 27, 1979]. He added that only Khomeini could have presently fulfilled that role.

<sup>54</sup>*Ibid.*

Other points raised during the Congress were of importance in future political confrontations. One of the ideologues of the IRP, Hasan Ayat, noted that the clause limiting the presidency to citizens of proven Iranian origin had to be removed, due to the need of ensuring a pan-Islamic form to the nascent state system.<sup>55</sup> When asked if the Ayatollah had accepted a text which was subject to the repeated criticism of himself and the other participants to the Muslim Critics' Congress he also stated that Khomeini had seen the June version but had not approved it.<sup>56</sup>

Another organizer of the congress was a little-known cleric, Seyyed Ali Khamene'i, who was one of the co-founders of the IRP and would later become president and Supreme Leader of the Islamic Republic. In his own address, Khamene'i raised several points of concern with regard to the June text, which were mostly concerned with what he considered to be the excessive powers accorded to the executive branch. Khamene'i warned that the presidency could emerge as a locus of "dictatorship" if some of its powers were not devolved to the legislative branch, was opposed to the president's ability to dissolve parliament and was critical of the proposed balance of power within the executive branch. The future leading statesman declared that there was a "lack of sufficient" powers for the premiership in the June text, and consequently called for the transfer of some of the powers of the presidency to the prime ministerial position. Khamene'i justified his stance by remarking that the prime minister would not be able to impose his will on the people, due to the Majles' supervision over the post.<sup>57</sup>

The concluding statement of the Congress lambasted what it defined as the "western slant" of the PRG's constitution and claimed that the same had to be modified and accorded an Islamic imprint. It then proceeded to declare the Guardian Council defined in the June text as "useless" and called for the creation of a body led by *marāḡe'* tasked with ensuring the primacy of the *shari'a* in lawmaking.<sup>58</sup> The final declaration also partially reflected Montazeri's assertions regarding the relationship between the president and the *faqih*.<sup>59</sup>

The wording of Montazeri's communiqué and the subsequent critiques of Khatami and the participants in the Congress suggest that doubts remained among clerics over the relative positioning of the new *faqih* position and the presidency. In the latter half of 1979, a variety of political groups and personalities repeatedly called for Ayatollah

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<sup>55</sup> *Āyāndegān*, 14 Tir 1358 [July 5, 1979]. The preferred candidate of the IRP for the first presidential elections, Jala'eddin Farsi, would be excluded in the following months from the contest after a clerical ally of Abolhasan Bani-Sadr, Shaykh Ali Tehrani, successfully claimed that Farsi's ancestors were of Afghan origin.

<sup>56</sup> *Jomburi-ye Eslāmi*, 16 Tir 1358 [July 7, 1979]. Ayat therefore confirms the essence of Yadollah Sahabi's remarks on the lack of a clear reaction by Khomeini to the PRG's text.

<sup>57</sup> *Jomburi-ye Eslāmi*, 12 Tir 1358 [July 3, 1979]. Khamene'i would reverse his stance once he became president himself and would frequently complain about the lack of powers of the presidency during his re-election campaign in 1985.

<sup>58</sup> *Jomburi-ye Eslāmi*, 25 Tir 1358 [July 16, 1979].

<sup>59</sup> *Ibid.*

Khomeini himself to become the first president of the Islamic Republic.<sup>60</sup> While this appeal was frequently dispelled by Montazeri, who claimed that his mentor remained opposed to the direct involvement of the clergy in the executive sphere of state affairs,<sup>61</sup> the final resolution of these ambiguities would occur during the debates of the Assembly of Experts in autumn 1979.

*The critiques of the non-Khomeinist groups.* The PRG's appeal for the production of critiques and comments on its official text did not go unnoticed. According to a statistic compiled by the National Front, no fewer than 3,250 individual critiques and 62 alternative constitutions were sent by a plethora of political groups and associations to Bazargan's cabinet during the summer of 1979.<sup>62</sup>

The first non-clerical formation to publish concrete alternative proposals was the Tudeh Party, which released an open letter to the PRG on 23 June. The communist party was generally satisfied with the outlook of the charter, which it defined as reflective of the demands and needs of the Iranian people, but raised several points of concern. It stated that the proposed economic framework, which divided the national economy into the state-owned, cooperative and private sectors, had to be redressed in favor of the first two. According to the Tudeh, popular sovereignty was to be exercised mainly through the national parliament and the local councils. In a request for the modification of article 48 of the June text, which generically stated that the Majles would be elected through a majority vote of the population, the Tudeh proposed that the parliamentary seats be filled according to the number of votes received by each political party on a national scale.<sup>63</sup> With regards to foreign policy, the Tudeh called for the establishment of friendly non-aggression ties with neighboring countries and the active support of movements and peoples who had risen against colonialism and neo-colonialism, imperialism, Zionism, fascism and racism.<sup>64</sup> The party concluded its proposals by requesting the inclusion of constitutional norms safeguarding the equality between the sexes and the formal banning

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<sup>60</sup>Besides the aforementioned remarks at the Muslim Critics' Congress, other supporters of this proposal included, amongst other, the Mojāhedīn-e Khalq organization, which first attempted to persuade Khomeini to stand for the presidency in late 1979 before launching the failed campaign in favor of its own leader, Masoud Rajavi. See in this regard the Mojāhedīn-e Khalq communique announcing Khomeini as the organization's candidate, published on *Ettela'āt*, 1 Dey 1358 [December 22, 1979].

<sup>61</sup>See for example *Ettela'āt* 26 Khordād 1358 [June 16, 1979]. Khomeini would confirm this impression in a long conversation with the scholar Hamid Algar in late December 1979, which is reproduced in Ruhallah Khomeini, *Sahifeh-ye Imam* (Tehran, 1999), 11: 447–68, and would only relent only after the bombings of summer 1981, which decimated the early leadership of the Islamic Republic.

<sup>62</sup>Jebbeh-ye Melli Iran, *Nāmeb-ye Sargoshādeh: Jebbeh-ye Melli Iran be Mellat-e Iran* (Tehran, 1979), 6.

<sup>63</sup>*Nāmeb-ye Mardom*, 2 Tir 1358 [June 23, 1979]. The Tudeh therefore effectively made a unique call for proportional representation, from which it ostensibly sought to benefit as the sole political party capable at the time of creating an extensive national campaign.

<sup>64</sup>Pro-Moscow communism, which was tacitly espoused by the Tudeh, was notably lacking from this list. The party also called for adding to the constitution the prohibition of membership in any "military alliance"—an implicit reference to the moribund CENTO organization, of which Iran was a prominent member prior to 1979.

of torture and a formal definition of any confession extracted under duress as legally void.<sup>65</sup>

Another leftist organization, the National Democratic Front (NDF), presented its own proposals after an open meeting held at Tehran University. The organization urged Khomeini to avoid scrapping the plans for the *Majles-e Mo'assesān* due to lack of time or the exigencies of the period and called the decision tantamount to paving the way for “the suffocation of people’s rights” and “the start of repression.” It also challenged the PRG and the Islamist forces by calling for a number of secular measures, such as the enshrinement of full legal equivalence between men and women in the constitution, the right to free state education for all, the mandatory adherence to the Universal Declaration of Human Rights and other international conventions and the right to self-determination for all ethnic minorities.<sup>66</sup> It also criticized the Gaullist framework of the state as described in the June text and called for a wholly independent judiciary and the overarching supervision of the parliament over the other state institutions.

In contrast to the succinct analyses of the Tudeh and the NDF, the National Front published an extensive “Corrective Proposal” within which several key amendments were made in the form of alternative constitutional articles aimed at strengthening the parliament and limiting the powers of the presidency.<sup>67</sup> The *Majles* was given the right to alter the constitution and to subject each minister, the entire cabinet or the prime minister to a confidence vote.<sup>68</sup> The prerogatives of the Guardian Council, including its crucial role in the administration of the presidential elections and the referendums, were left unmodified, thereby giving salience to the impression that its leaders were instrumental in the transition from the Guardian Council, as introduced in the February text, to the final one. The Mosaddeqist formation had also previously argued that the presidency should have a more ceremonial role, with actual executive power being delegated to the prime minister and his cabinet.<sup>69</sup>

The seminar of the People’s Desires for the Constitution, which was convened by the Jurists’ Association and 48 other civil society organizations, came to an end on 9 July. Its concluding remarks carried the request to enhance both “freedom-seeking and equality-seeking” forms of democracy through the constitution and defined the recent

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<sup>65</sup>Ibid. Such a request was grounded in the long tradition of torture and coerced confessions to which a considerable amount of Tudeh members and sympathizers were subject during the Pahlavi era. Ironically, the top leadership of the party would succumb to such a treatment less than four years after the production of this open letter.

<sup>66</sup>*Āzādi*, 6 Tir 1358 [June 27, 1979]. The NDF had previously lamented the reduction of the role of women in society to a “solely motherly” one in the June text.

<sup>67</sup>The National Front’s proposal was published in full on *Āyāndegān*, 11 Mordād 1358 [August 2, 1979].

<sup>68</sup>Only the entire cabinet could be summoned according to the original text. The proposal of the National Front made it through to the final text and has been frequently used in the past decade, especially during the presidential administrations of Mohammad Khatami and Mahmoud Ahmadinejad.

<sup>69</sup>See the statements to this effect of Reza Shayegan, a leader of the National Front, on *Āyāndegān*, 18 Tir 1358 [July 9, 1979]. This balance of power within the executive branch was confirmed by the Assembly of Experts, and held sway until the abolition of the prime ministerial institution in 1989.

revolution as being a progression of the *mashruteh* one. It also heralded the recent rebellion as one which had combating dictatorship at its heart and called for the “economic” democracy in the form of the re-distribution of wealth, and stated its preference for a ceremonial president, whose role was limited to that of proposing the cabinet to parliament, which was considered the most powerful state body. The seminar’s final deliberations also called for the replacement of the Guardian Council with an entirely secular body and a dilution of its role vis-à-vis the PRG’s text.<sup>70</sup>

The radical groups presented reactions to the draft text which were in tune with their own political leanings. The Fadāiyān-e Khalq organization lambasted the text published by the PRG as one which upheld the capitalist economic system and did little to uphold the rights of the working class.<sup>71</sup> The Mojāhedīn-e Khalq also refrained from presenting an alternative constitution or preparing an article-by-article critique but chose instead to lambast the PRG’s constitution as one containing a “western capitalist” slant and listed several concepts which it considered to be mandatory for inclusion within the finalized text, such the establishment of a *nezām-e showrāhi*, or “council-based” political structure, which it considered to be the only truly Islamic form of governance, the attribution of land ownership solely to those who cultivated it, the complete legal equivalence of men and women and a foreign policy strictly oriented towards the non-aligned bloc of nations.<sup>72</sup>

Not all the critiques put through by the non-Khomeinist forces had the goal of enforcing the non-clerical elements of the June text. The Hezb-e Zahmatkeshān, or Toilers’ Party, led by the veteran politician Mozaffar Baqa’i, published a detailed 76-page critique of the PRG’s draft text on 21 July in which it lamented the lack of any provision designed to guarantee Khomeini’s direct involvement in state affairs. The draft text was taken to task for granting fewer powers to the clergy than the previous *mashruteh* charter. The communiqué of the Toilers’ Party further called upon the clergy to adjust the draft text in any way deemed necessary to ensure its leading guidance within society, ensure the supervision of the *vali-ye faqih* over the president and allow the latter to lead proceedings against the president in case of the violation of constitutional duties.<sup>73</sup> According to Ezatollah Sahabi, the Toilers’ Party critique was carefully examined by clerical members of the RC, such as Ayatollah Musavi Ardabili, and was disseminated within Islamic circles by Hasan Ayat, who had been an erstwhile associate of Baqa’i prior to the Revolution.<sup>74</sup>

*The confrontation over the Majles-e Mo’assesān and the creation of the Majles-e Khobregān.* As noted previously, Khomeini had tasked Bazargan, prior to the fall of the shah’s

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<sup>70</sup> *Āyāndegān*, 18 Tir 1358 [July 9, 1979].

<sup>71</sup> Interview with the Fadāiyān candidates for the Assembly of Experts, *Āyāndegān*, 6 Mordād 1358 [July 28, 1979].

<sup>72</sup> *Mojāhed*, 5 Mordād 1358 [July 27, 1979].

<sup>73</sup> Vara’i, *Mabāni*, 87, 1175–1178. The PRG’s text did not include any provision for the impeachment of the president. The Toilers’ Party’s request was accommodated in the final text and provided the basis for the dismissal of Bani-Sadr in 1981.

<sup>74</sup> Interview with Sahabi, in Ahmadi-Amui, *Eqtēsād*, 51.

regime, with the creation of a Provisional Revolutionary Government which had the duty of organizing a Constituent Assembly, called at the time *Majles-e Mo'assesān*, for the final approval of the post-revolutionary constitutional text. The body's denomination was reminiscent of the identically named institution which was convened three times during the Pahlavi era to amend the *mashruteh* constitution in line with the demands of the two kings.<sup>75</sup> In an open letter published in September 1979, the National Front noted that the PRG had devised an internal procedural code for the Assembly and stipulated that it was to have one member for every 100,000 citizens—thereby comprising approximately 350 members—shortly after the March referendum for the Islamic Republic.<sup>76</sup> Between February and March 1979, a steady stream of commentary and requests on the structure and scope of the *Majles* appeared in the press, giving the impression that the political scene was progressively readying itself for a heterogeneous and lively body.

The fate of the *Majles-e Mo'assesān* was sealed during a crucial high-level meeting at Khomeini's residence in Qom on 22 May. Ayatollah Taleqani, who stated that members of the RC and the PRG held a six-hour session with Khomeini on the most pressing issues concerning the state, first revealed this date.<sup>77</sup> Based on what has been stated since by the LMI and Bazargan, the participants were divided into two camps. The first one, which included Khomeini and the clerical members of the RC, were apprehensive of the extended drafting process then under way within the two temporary bodies of state and were of the view that the constitution was to be submitted directly to popular approval via a referendum.<sup>78</sup> Khomeini and his clerical allies within the RC, such as the future statesmen Ali Akbar Hashemi Rafsanjani, Mohammad-Reza Mahdavi Kani, Mohammad-Hosseini Beheshti and Ali Khamene'i, were also not in favor of the intended size of the constitutional assembly and firmly claimed that such a large chamber would bring about delays and stalemate in the creation of the final version of the constitution of the Islamic Republic and therefore plunge the country into turmoil.<sup>79</sup> Bazargan and other lay figures such as Yadollah Sahabi, Ebrahim Yazdi and Abolhasan Bani-Sadr demanded on the other hand the election of a full Constituent Assembly, as stated in the 3 February decree.

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<sup>75</sup>The *Majles-e Mo'assesān* was convened to approve the change of dynasty from Qajar to Pahlavi in 1925, to attribute to the shah the power to dissolve the two houses of parliament in 1948 and finally to appoint the Empress Farah as vice-regent while Crown Prince Reza Pahlavi was reaching adulthood in 1970.

<sup>76</sup>*Jebbeh-ye Melli Iran, Nāmeḥ*, 2. The Front also stated here that these decisions were handed over to the RC for final deliberations around the same time.

<sup>77</sup>*Keyhān*, 2 Khordād 1358 [May 23, 1979].

<sup>78</sup>*Nehzat-e Āzādi-ye Iran, Barkhord bā Nehzat-e Āzādi va Pāsokh-e Mā* (Tehran, 1983), 22; Abbas Amir-Entezam, *Ān Suḡe Ettehām* (Tehran, 2002), 2: 24–25. This source states that the constitution had been submitted by that time to the attention of Khomeini and other senior *marāje'*, who had all expressed their opinions on it.

<sup>79</sup>*Ibid.* Khomeini would frequently focus on this point in his public speeches following the publication of the June text.

The deadlock was eventually defused by Ayatollah Taleqani, a *mojtahed* respected by all sides who brokered a deal that led to elections being convened for the creation of an Assembly for the Final Examination of the Constitution, alternatively called the Assembly of Experts, or *Majles-e Khobregān*. Under conditions grudgingly accepted by Bazargan's government, the Assembly of Experts was to be formed by a much smaller number of delegates. Its mandate was, however, circumscribed to bringing about minor amendments to the existing draft within a period of one month.<sup>80</sup>

This arrangement was formally confirmed in a decree by Khomeini addressed to Bazargan on 25 May. The Ayatollah called upon the PRG to complete the drafting of the constitution swiftly and present the same for consideration to the public, who would then have a limited period of time for voicing comments and concerns. Subsequently, the decree explained, the *majles*, or assembly, having the size prescribed by the PRG and the RC would convene to finalize the charter and submit this definitive version to final popular approval via referendum.<sup>81</sup> The timing of the decree confirms that Khomeini had formally discarded the option of submitting the constitution directly to referendum more than two weeks before its formal unveiling by the Bazargan administration. The wording of this declaration also suggests that the Ayatollah had not yet seen a finalized version of the PRG's text and had therefore not given it his approval.

Alarmed by the increasingly evident dismissal, by Khomeini and the temporary state bodies, of the original plans for a broader *Majles-e Mo'assesān*, a wide-ranging front that included both radical organizations such as the *Mojāhedīn-e Khalq* and the *Fadāīyān* and moderate elements such as Ayatollah Shari'atmadari and the National Front demanded the retention of the Constituent Assembly. Shari'atmadari claimed that swerving off the initial plans in this regard would represent a "grave error" in widely disseminated comments on 9 June.<sup>82</sup> The PRG did not, however, swerve from the essence of the deal struck in Qom and finally set the total number of Assembly members at 73.<sup>83</sup>

*The Assembly of Experts elections of August 1979.* At the beginning of August 1979, the Islamic Republic held its first competitive elections, which were convened for the selection of the 73-member Assembly of Experts. Despite documented irregularities and substantial accusations of widespread fraud and voter intimidation, the elections for the Assembly of Experts provide unique empirical information on the popularity of the various revolutionary groups through the analysis of the ballots

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<sup>80</sup>Taleqani was also confident that the Assembly of Experts would have a diverse composition, a small segment of it being formed by the clergy. Schirazi, *Constitution*, 29.

<sup>81</sup>Khomeini, *Sabīfeh-ye Imam*, 7: 482–3.

<sup>82</sup>Front pages of *Āyandegān* and *Keyhān*, 20 Khordād 1358 [10 June 1979].

<sup>83</sup>The Interior minister Hajj-Seyyed-Javadi explained that the decision was eventually made to allocate one Assembly member for every 500,000 citizens, a ratio which was five times lower than the one initially envisaged.

cast in electoral wards which were shielded from significant manipulation, such as the Tehran one.

Despite a late electoral boycott by groups such as the National Front and the NDF, a coalition of six radical and non-clerical Islamist groups which had previously advanced the cause of the Constituent Assembly, headed by the Mojāhedīn-e Khalq, decided to participate in the elections. The Fadāiyān did not repeat their previous refusal to take part in the referendum for the Islamic Republic and fielded two candidates, due to their aforementioned concern for the “anti-proletarian” provisions they saw enshrined within the draft text published by the PRG.<sup>84</sup>

Despite a lower turnout than the March referendum, the IRP-inspired candidates formed a consistent majority within the Assembly, gaining around 55 seats. While not receiving any direct endorsement from Khomeini, many of his followers announced to have been granted his support, thus implicitly benefiting from their mentor’s charismatic appeal.<sup>85</sup>

The Tehran electoral race, where most of the best known revolutionary leaders competed and rigging and voter intimidation had a lesser effect on the final tally, provided a valuable perspective on the popularity of the various parties and revolutionary personalities.<sup>86</sup> Ayatollah Taleqani led the ranking with approximately 2 million preferences, followed by Abolhasan Bani-Sadr, a former member of the National Front who had become one of Khomeini’s closest advisors in Paris. Several other high profile protégés of the Ayatollah obtained over a million votes each. None of the major non-clerical groups succeeded in winning any seats. The Mojāhedīn-e Khalq leader, Masoud Rajavi, obtained 297,000 preferences, while the entire Tudeh party central committee, which included prominent personalities such as Nureddin Kianuri, Ehsan Tabari and Maryam Firuz, could not muster more than 100,000 votes.<sup>87</sup> Some framers of the draft text, such as Naser Katuziyan and Abdolkarim Lahiji, were not elected either. Despite protests from the radical groups excluded from the Assembly of Experts,<sup>88</sup> and the start of a bold set of investigations on the irregularities by the independent media which led to the banning of *Ayāndegān* and dozens of other prominent publications, the results were ratified by the PRG and the Khomeini’s followers, who now used their control over the Assembly to push forward the definitive separation of the *velāyat-e faqīh* from both the presidency and the Guardian Council and ensured clerical supremacy in the final text of November 1979.

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<sup>84</sup>*Kār*, 1 Mordād 1358 [23 July 1979].

<sup>85</sup>Ayatollah Montazeri issued a declaration to this effect on the day prior to the polling, *Keyhān*, 11 Mordād 1358 [August 2, 1979].

<sup>86</sup>The capital’s constituency was also the only electoral ward where all the political organizations that had stated their intention to take part in the contest, except the pro-Sharī’atmadari Hezb-e Khalq-e Mosalmān, had fielded candidates.

<sup>87</sup>These electoral statistics were published on *Keyhān*, 20 Mordād 1358 [August 11, 1979].

<sup>88</sup>A coalition of five radical groups including the Mojāhedīn and Jāmā sent an open letter to Khomeini citing widespread fraud, published in *Keyhān*, 18 Mordād 1358 [August 9, 1979].

## Conclusion

This study has striven to provide a new account of the circumstances surrounding the drafting and discussions centered upon the initial version of the Iranian post-revolutionary constitution of 1979. By relying upon newly released primary source material, this article has contributed and sought to expand the existing scholarship on the topic by attributing Ayatollah Khomeini's oft-mentioned reactions and decisions to the *pish nevis* to an earlier version which was hitherto not subject to stringent scholarly attention. By doing so, a different interpretation of the Ayatollah's attitude towards the creation of the post-revolutionary state order emerges, one which better explains his apparent early lack of interest for the direct inclusion of the *velāyat-e faqih* principle within the constitutional framework. According to the reading of events presented in this article, Khomeini did not formally endorse the PRG's official text, published in mid-June 1979, or specifically call for its direct ratification via referendum. Rather, the leading cleric initially appeared to be inclined towards the latter option but did not obstruct his associates' sustained initiative for the inclusion of an overt implementation of the *velāyat-e faqih* within the finalized constitutional text. As seen in this study, Khomeini had agreed to the creation of the Assembly of Experts prior to the completion of the PRG's June text, and appears to have devolved scant attention to a thorough analysis of its contents, an act which he had undertaken for a previous version which was submitted to him between February and March. While outwardly largely similar, the two drafts of the *pish nevis* contained a significant difference in the powers of the Guardian Council, the body which was entrusted with ensuring the adherence to the constitution and to Islamic principles of all laws approved by parliament. This dilution of the powers of the Guardian Council, which was not entitled by the PRG's text to annul a contravening bill, would form the basis of the sustained critiques of Islamist personalities and organizations to the June text which in turn paved the way for its considerable alteration by the Assembly of Experts.

The events surrounding the production of the PRG's text were also relevant to the widening of the political gap between the various components of the anti-shah front. Despite being marred by localized incidents of fraud and tampering, the elections for the Assembly of Experts yielded unique statistics for gauging the popular support enjoyed by the various parties. The results also encouraged the IRP and other organizations supportive of Khomeini to press ahead with their plans for the introduction of the *velāyat-e faqih* as the cardinal principle on which the new state order would be grounded. Furthermore, the previous charter devised in the period of the Constitutional Revolution did not envisage any institutions whose holders were to be chosen by the electorate at the national level. Rather, it included a parliament which was composed of locally selected deputies, which would in turn select a prime minister. The implications of the presidential innovation introduced since the early drafts of the *pish nevis* were far-reaching, as the presidency has featured prominently in the Islamic Republic's institutional crises of the past three decades and has been one of the more visible faces of the crowded post-revolutionary Iranian state order.