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The Judiciary of the Islamic Republic of Iran
Karim Lahidji

The first draft of the constitution of the Islamic republic emphasized that in the Islamic republic, which is based on "democratic foundations," "national sovereignty belongs to the Iranian people and can not be appropriated by any individual or group of individuals." In the final version, however, there were no references to the "democratic foundations." Furthermore, the concept of national sovereignty has been replaced by "divine right of the people." According to the constitution the responsibilities of the judiciary branch "shall be administered by the courts which will be established according to Islamic criteria and which will dispense "Islamic justice and enforce "God's retribution." The overall responsibility of the judiciary branch is vested in a competent and well informed Mujtahed (high ranking cleric) to be appointed by the supreme leader for a term of five years. Clearly, in this hierarchical and centrally controlled judicial structure there is no trace of the independence of the judiciary branch or its courts.

Thus, soon after the establishment of the Islamic republic, not only the executive branch of the government but the legislative and judiciary branches were dominated by the ruling clergy and their laic proxies. The newly empowered and inexperienced clergy who began to run the courts had scant, if any, familiarity with the structure, regulations and functions of Iran's pre-revolutionary justice system which had, in the preceding decades, developed into a fairly modern institution. The result was a chaotic and dysfunctional judicial system in which arbitrary and often contradictory decisions were made by prosecutors and judges in defiance of internationally accepted norms of due process of law.

Today, the judiciary of the Islamic republic of Iran is under the paramount control of the supreme leader, as are its legislative and executive powers. Lack of independence is, however, the least of
the problems of Iran’s Islamic Judiciary. It’s most serious flaw lies in the antiquated nature of the legal codes that it has diligently tried to apply in the last three decades. At the top of these codes stands the Islamic penal code which has few if any parallels in its generous prescription of death penalty to a slew of crimes and political “misdemeanors.” There is no possibility of reforming such a judicial system without substantial overhaul of Iran’s civil and criminal codes on the basis of the principles of human rights that could only be realized within a democratic political system that is characterized by a genuine separation of powers.

Islam and Democracy in Iran
Said Amir Arjomand

In daring attempts to find an alternative to the official theocracy enshrined in the Constitution of the Islamic Republic of Iran, a number of dissident clerics have been striving for a different kind of constitutional democracy consistent with the shari’a. Politically the most consequential of these was the radical modification of the Mandate of the Jurist into a purely supervisory one by one of its chief architects in 1979, Ayatollah Hasan-‘Ali Montazeri, Khomeini’s successor-designate until 1988 who had published a treatise in Islamic jurisprudence justifying the Mandate of the Jurist. The young jurist who followed Montazeri’s hint and developed a full-fledged critique of Khomeini’s constitutionally enshrined theory of Mandate of the Jurist was one of his students, Mohsen Kadivar. This critique unfolded in two stages. The first was implicit, and consisted of the relativization of Khomeini’s theory by presenting it as one among many recognized Shi‘ite views of the state. Kadivar took the second and final step a year later with the publication of *Hokumat-e velā‘i* (Mandate-based government), or government based on the “absolute appointive mandate of the jurists.” He now offered an explicit critique of Khomeini’s theory and a refutation of the legal arguments for the validity of the
official doctrine of theocratic government.

Kadivar’s theory remains strictly within the bounds of Shi’ite jurisprudence, and offers no hermeneutic questioning of the Shi’ite jurisprudence itself as a historically contingent discipline. The more radical epistemic break with Khomeini’s theocratic theory was made in a series of lectures and articles which were later published as two books by Mohammad Mojtehed-Shabestari. Undermining the premises of the constitution and official ideology of the Islamic Republic of Iran, he forcefully denied the key premise of the ideological era—namely that the shari’a should be the basis of an Islamic constitution. He argues that no political regime was ever founded on the basis of the science of Islamic jurisprudence (fiqh) in the past, and none could be so founded in the future. ‘Abdol-Karim Sorush, a leading reformist religious intellectual, too, in a major departure from his earlier purely instrumental, “managerial” view of democracy as a rational method of management of society, now offers a normative definition of democracy as resting on three pillars: rationality, pluralism, and human rights.

Today, the pendulum has globally swung back from ideology to the rule of law and there are signs of an incipient new phase of post-ideological Islamic constitutionalism in the Muslim world. We are witnessing a return to the idea of limited government—this time as the rule of law according to a constitution not based on but inclusive of the principles of Islam as the established religion. The notion of Islamic democracy put forward by Kadivar, Sorush and Khâtami may well be part of the global wave of post-ideological constitutionalism. It remains to be seen, however, when and if they become embodied in constitutional law of Iran.

Everyday Modernity and Religious Inoculation
Mohamad Tavakoli

Iranian modernity was not an abstract philosophical attitude or mindless imitation of the West; it was a life-changing search for
solutions to unavoidable everyday problems. During its inaugural phase, through an effort to combat contagious diseases the Qajar state, that was largely confined to the court in the early nineteenth century, was forced to take up the vital task of promoting public welfare (malsihat-i 'ammah) and public health (hifz al-sihahah). Viewing contagious diseases as products of miasmas ('ufunat-i hava), the state sought to eradicate these diseases by building public toilets, sweeping streets, collecting garbage, and paving roads. Cemeteries (qabristan), slaughter houses (qasabkhanah), and tanning and finishing houses (dabbaqkhanah) were moved out of urban living quarters. These state-initiated measures for freshening the air of public spaces concurred with the fundamental juridical concepts of "purity" (taharat) and "filth" (nijasat).

The Pasteurian paradigm challenged the efficacy of the clerical knowledge that regulated the everyday conducts of practicing Shi'i Muslims. Concern with hygiene prompted the desacralization and rapid transformation of practices of private life, a process that is fully manifesting itself in contemporary Iran.

The failure to reconceptualize the notion of taharat in light of spreading national epidemics made the Shi'i clergy the target of sustained public ridicule and criticism. "Over-sexed clerics" were only interested issues "below-the-naval" (zir-i naf).

Invigorated by the efforts of the intelligentsia who had asserted Islam's full concord with reason and science, the Iranian mujtahids in the 1940s began a campaign for the assertion of religious values in the public sphere. With a radical transformation of the concept of religious revolution as articulated by the intelligentsia in the 1920, the clerics began to view themselves as the vanguards of a "spiritual revolution" (inqilab-i rawhani) in a morally and spiritually diseased society. This medicalization of social problems was best captured by the popular concept of Occidentosis (gharbzadigi), which was defined by Jalal Al-Ahmad as a plague emanating from the West. In the emerging Pasteurian Islamic discourse, "sin" (gunah) was transformed into a social illness that could be cured only through religious inoculation and revolution. It was this dynamic that guaranteed the establishment of the Islamic Republic and the institutionalization of vali-yi faqih as the guardian of a religiously and spiritually "minor" nation.
This article is a review of the nature of the monarchical political system in pre-Islamic Iran as depicted in Ferdowsi’s Shahnameh, and particularly in a letter written by Rostam Farrokhzad, the commander of the Persian army confronting the Muslim Arab invaders in 6th century. Indeed, Ferdowsi’s epic book of Iranian kings ends with vivid references to the fall of the fabled Iranian empire and the advent of another and wholly different period in the life of the inhabitants of the Iranian plateau. The verses if the letter forewarn of the impending disaster awaiting the Iranian people with the fall of the old monarchical order by the invading hordes of primitive Arab thrives. The warning is obviously not based on the actual events but on the foreboding shared by many Iranians about the impending fall of the Sassanid dynasty and the subsequent reversal of their fortunes.

The content of the letter may not have been penned by Rostam Farrokhzad himself but the gist of it could have well been transmitted to him by the collective pathos of those whose life had been deeply, and disastrously, affected by the onslaught of the bearers of a totally alien culture. It is suggested, therefore, that the letter, far from being forged, is characterized by an exceptional originality. In fact, it is the will and testament of Rostam Farrokhzad for his brother. It is the true and faithful will of someone in the throes of absolute despair and in a deadly confrontation with the forces of evil and hence, its historical validity.

The author’s despair emanates from the knowledge that the confrontation is not an ordinary one. It is, rather, a battle waged by an enemy with no other goal but the total repudiation of the concept of “royal” rule and replacing it with the unfettered supremacy of a totalitarian religion. In the new order, the “pulpit” would usurp the authority of the “throne,” and more. It is in such a transformation that Rostam Farrokhzad sees the seeds of all the ills calamities that would befall the land of Arians. Who else but the present generation of Iranians, who has witnessed a similar
tragedy and suffered the same reversal of fortune, can appreciate the great spirit and lofty logic of a poet who has so eloquently described an eternal truth in such vivid, ever-lasting and heart wrenching verses?

Shahyad: A Multi Faceted Symbol
Faryar Javaherian

The article is an analysis of the most iconic architectural monument of the Islamic Republic of Iran, which ironically also happens to have been the symbol of 2500 years of Imperial Rule, Representing the “Gateway into the Great Civilization” of the Pahlavi Dynasty.

It gives a cursory review of the historical background of the time the monument was built, especially in all other artistic domains in order to set the political mood in which these events happened – i.e. heightened Nationalism, a brief history of the competition and a profile of its winner, young Hossein Amanat, freshly out of Tehran University’s Architectural School, before delving into more details about the concept, the design and the construction of the building.

The architectural precedents for this quite unique a monument are to be found in Sassanid architecture as well as various Islamic periods of Iranian architecture, so that it already was a double-edged icon before the Islamic Revolution, and has now become even more so.

The article concludes by stressing the Modernity of Shahyad, not only in terms of design but in so far as its construction techniques are concerned, making this tower at least two decades ahead of its time.
The Confessions of Dolgoruki: Story Writing and Identity Scripting
Mina Yazdani

The Confessions of Dolgoruki was a 1930s political-spy fiction that was taken as history. It was the purported memoirs or political confessions of Dimitriy Ivanovich Dolgorukov (d. 1867), the Russian minister in Iran from 1845 to 1854. According to these confessions, Dolgoruki was commissioned as a translator to the Russian embassy Iran in the 1830s with a secret mission. He converted to Islam, and disguised in the garb of a cleric, employed a number of people as spies, not least of whom was the future founder of the Bahai religion. He then set off for the 'atabat where he persuaded a young seminary student from Shiraz to launch the Babi movement. Dolgorukov subsequently returned to Iran as the Russian ambassador and brought about the Bahai religion. The goal of each of these measures was to destroy the national unity that Islam had created among Iranians in order to serve the interests of his own country.

The Confessions of Dolgoruki was a product of its time. An apprehension about the perceived superiority of contemporary Europe, and preoccupation with the threat of imperialism characterized much of the socio-political discourse in the decades that immediately followed the Iranian Constitutional Revolution. These concerns gave rise to two divergent responses among Iranians: one idealized ancient pre-Islamic Iran, while the other advocated a return to pristine Islam as a means of achieving unity in the Islamic world. These responses led to the construction of two inconsonant modes of identity: one race-based and nationalistic, with strong Arianist and anti-Arab overtones, and the other religion-based with Islam at its core.

In such a socio-political milieu three texts, each characterized by a certain mode of thought, provided the context for the creation of The Confessions of Dolgoruki. The first one, consisting of an imaginary conversation, was Siyasat-i Talebi. It reflected an apprehension and preoccupation with imperialist designs for
Iran. The other two, both forgeries, were *The Testament of Peter the Great*, which represented Russophobia, and *The Protocols of the Elders of Zion*, which exploited ethno-religious prejudice. *The Confessions of Dolgoruki* reflected a crisis of identity between the Islamist and Arianist modes of identity. It sought to negotiate the crisis through casting Baha'is as an internal ‘Other’ engaged in a clandestine conspiracy with the external ‘Other.’ By Othering Baha'is, *The Confessions* fused the two inconsonant modes of national identity.

**The Changing Concept of the “intellectual” in Iran**

*Ramin Jahanbegloo*

Iranian intellectuals entered the modern era in an odd and paradoxical way. For more than four generations they had shared an epistemological confidence in Western rationality coupled with a general political mistrust toward Western societies. As such, the very unity of the West was not considered as a given. For over 100 years they embraced and appropriated Western political and cultural values while at the same time keeping a critical distance from it. The initial romantic “fascination with the West” which took shape among the Iranian intellectuals in late 19th century was replaced after the Second World War with a broader romantic “revolt against the West”. Surprisingly, the Iranian traditional belief in the universal otherness of modernity became a common denominator in both right-wing, romantic nationalism and in Marxist, anti-imperialist nationalism in Iran.

More than 15 years after the creation of the Islamic Republic, the religious intellectuals became the architects of the reform movement in the Iranian presidential elections of 1997. The key question is: why did most of the Iranian intellectuals align themselves with the forces of the Revolution while others remained either indifferent or at least cautiously opposed to them? The
reasons may be found in the rejection of “ethical responsibility” by those that came to be known as the “revolutionary intellectuals” in Iran. They joined and supported the revolution simply on the basis of their fascination with the concept of “revolution” and what it implied. Their ideological preoccupation with the cultural and political dimensions of the Iranian reality had prevented them from attempting a coherent and systematic analysis of the Iranian history and of the Western philosophical heritage.

With the gradual disappearance of secular individuals from the scene, post-revolutionary Iran witnessed the emergence of «religious intellectuals» who were, in various degrees, supporters and at times ideologues of the Islamic revolution. The major difference between the so-called «religious intellectuals» or «post-Islamist intellectuals» and their predecessors, such as Ali Shariati, Mehdi Bazargan and Morteza Motahari, was their attachment to the idea of civil society. By refusing to legitimize the inseparable nature of religion and politics, some among the new generation of intellectuals, such as Abdolkarim Soroush, Mojtaheh Shabestari, Yousefi Eshkevari and Mohsen Kadivar, formulated the ambiguous notion of «religious civil society» and underlined their opposition to the absolute supremacy of the Vali Faqih. The readiness of the new generation of Iranian intellectuals to move away from master ideologies is reflected in their mistrust of any metaphysically valorized form of monist thinking. Indeed, the critical thinking of modernity has taught the dialogical generation to be, unlike their older counterparts, conceptually skeptical about “fundamentalist politics” as well as “utopian rationalities.”
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