The May 1997 election of Mohammed Khatami, a relative moderate among Iran’s ruling clergy, to the Presidency of Iran raised the question of whether the United States should continue its current containment policy towards Iran, or take advantage of the opportunity presented by Khatami’s election to reestablish its ties with Iran. Khatami’s victory was seen as indicative of growing Iranian dissatisfaction with the conservative Islamic regime established by Ayatollah Ruhollah Khomeini in 1979. That regime was based upon Khomeini’s teachings as embodied in his work, *Velayat-e Faqih*, a work that was incorporated into the Iranian Constitutions of 1979 and 1989.

The objective of this paper is to provide the reader with an understanding of the theocratic underpinnings of the Iranian Constitution. Also addressed will be recent events in Iran that appear to indicate growing discontent with the current system of government, raising the possibility that the concepts contained in Khomeini’s *Velayat-e Faqih* cannot survive his death.

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3 See *SHAUL BAKHASH, THE REIGN OF THE AYATOLLAHS: IRAN AND THE ISLAMIC REVOLUTION* 38 (1984) (“*Velayat-e Faqih* is a blueprint for the reorganization of society. It is a handbook for revolution.”). But see *HOMA OMID, ISLAM AND THE POST-REVOLUTIONARY STATE OF IRAN* 40 (1994) (“Although Khomeini had described it as a blueprint for an Islamic government, *Velayat-e Faqih* (Rule by a Wise Religious Male Leader) in 1971, in fact it was little more than a criticism of the *status quo* and promises of a better form of government under the guidance of the clergy.”).


5 The 1989 Constitution that revised the 1979 Constitution is based on *Velayat-e Faqih*, but contains many tenets that critics have seen as inconsistent with the concepts in *Velayat-e Faqih*. See OMID, supra note 3, at 148-51.
I. THE CONSTITUTIONAL REVOLUTION: 1906

A. Islam and the State

Shia Islam, the official religion of Iran, envisions a government where religion is preeminent and God serves as the only legitimate source for the legislation of laws. Temporal rulers merely implement the laws of Islam as dictated by God.

Shi’ites recognize as legitimate rulers only the twelve Imams beginning with Ali, Mohammed’s son-in-law and the fourth caliph of the Muslim world, and ending with the twelfth Imam, Mohamad al-Mahdi, who is believed to have gone into a state of hiding in 874 C.E. These leaders were recognized as legitimate because they were considered “divinely inspired and, like Mohamad... [were] masoum, protected against sin.”

After the disappearance of the twelfth Imam, the Shi’ites were forced to reach an accommodation with the secular rulers under whose authority they lived. Although they did not accept the legitimacy of these various rulers, the Shi’ites opted against open rebellion so long as these rulers actively protected Islamic law, and so long as justice played an “integral part of the exercise of power.” It was in large part because the regime in Iran was seen as acting unjustly that many Iranians rose up in the early years of the twentieth century, demanding a constitution and political reforms.

B. The Constitution of 1906

Until the twentieth century, Iran lacked a constitution. However, beginning in 1905, several factors coalesced to provide an impetus to create a constitution. Chief among these factors was a desire to eradicate the influence of foreign powers within Iran, coupled with

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6 See id. at 3 (explaining the limited role of political rulers within Shia Islam).
7 See id.
8 See id. at 4-5.
9 Id. at 5 (explaining that Shi’ites have both tacitly and expressly accepted secular government as a social necessity).
10 See id. (stating that Shi’ites believe that secular rulers had no right to legislate but, rather, had only the right to “issue decrees ... to meet [the] administrative and judicial needs of the day.”).
11 Omid, supra note 3, at 5.
12 See Farvaz Daneshvar, Revolution in Iran 3-5, 5 (1996) (“The intellectuals ... blamed the country’s waning fortunes on despotism and a lack of democratic institutions, which could provide checks and balances against the Qajars [the dynasty that ruled Iran from 1796-1925].”).
13 See M. Reza Ghods, Iran in the Twentieth Century: A Political History 30 (1989).
14 See Mohsen Milani, Shi’ism and the State in the Constitution of the Islamic Republic of Iran, in Iran: Political Culture in the Islamic 139, 135 (Samih K. Farsoun & Mehrdad Mashayekhi eds., 1992) (describing the constitutional revolution’s extensive roots in both international and internal affairs).
a strong desire to reform the political system.\textsuperscript{15} Two of the major groups demanding these changes were philosophical antagonists: the intellectuals and the \textit{ulema}, or clergy.\textsuperscript{16} The intellectuals sought an end to the political corruption that had become entrenched in Iran and to separation of religion and state.\textsuperscript{17} The \textit{ulema}, as might be expected, sought a more expansive role for religion within both government and society.\textsuperscript{18} To reach their goals these two groups were forced to reach a \textit{rapprochement}.\textsuperscript{19}

On August 5, 1906, the Shah,\textsuperscript{20} bowing to popular pressure, agreed to the establishment of a committee to draft a constitution.\textsuperscript{21} The resulting constitution, signed by the Shah on December 30, 1906,\textsuperscript{22} was based heavily on the Belgian constitution of 1831,\textsuperscript{23} and provided for the establishment of a Parliament, or \textit{Majles}, which was first convened in October 1906.\textsuperscript{24}

The constitution, and the supplementary laws added to it by the Parliament, sought to appease the \textit{ulema} by giving Islam a broad role in the new government.\textsuperscript{25} Article 1 declared Shi'ism to be the state religion.\textsuperscript{26} Article 2 provided for the creation of an ecclesiastical committee, which sought to ensure that all legislation conformed to Islam.\textsuperscript{27} Articles 20 and 21 banned all publications and associations that were detrimental to Islam.\textsuperscript{28} Lastly, Article 27 established a two-

\textsuperscript{15} See Ghods, supra note 13, at 17.
\textsuperscript{16} See Ghods, supra note 13, at 17.
\textsuperscript{17} See Milani, supra note 14, at 135 (placing the impetus for this reform in a “new element, the people’s power”). See also Said Amir Arjomand, \textit{The Turban for the Crown: The Islamic Revolution in Iran} 36 (1988) (describing the political system in Iran prior to the 1906 Constitutional Revolution as one marked by “[m]isgovernment, tyranny, and injustice”).
\textsuperscript{18} See Omid, supra note 3, at 252.
\textsuperscript{19} See Mohammed Amjad, \textit{Iran: From Royal Dictatorship to Theocracy} 38 (1989) (describing the breakdown of revolutionary leadership into distinct groups).
\textsuperscript{20} See id. at 14 (discussing various interests motivating the \textit{ulema}).
\textsuperscript{21} See id. at 14 (elaborating on the uneasy alliance formed between intellectuals and the \textit{ulema}).
\textsuperscript{22} “Shah” is the generic term for the hereditary leader of Iran. Through the first quarter of the twentieth century, this position was held by members of the Qajar line. In 1925, Reza Shah Pahlavi, the commander of the armed forces of Iran, declared himself Shah. The Pahlavi’s retained control until 1979 when they were ousted by the Islamic Revolution. See Ervand Abrahamian, \textit{Radical Islam: The Iranian Mojahedin} 11 (Society and Culture in the Modern Middle East Series) (Michael Gilsenan ed. 1989).
\textsuperscript{23} See Amir, supra note 15, at 37 (describing agitation that culminated in the committee’s establishment).
\textsuperscript{24} See id. at 38.
\textsuperscript{25} See Milani, supra note 14, at 135 (discussing the structure of the 1906 Constitution). Because of the need for a quickly-written constitution, European-educated secular reformers relied heavily on the Belgian Constitution as a model. See Ghods, supra note 13, at 31.
\textsuperscript{26} See Ghods, supra note 13, at 31.
\textsuperscript{27} See Milani, supra note 14, at 135.
\textsuperscript{28} See id. at 136.
tiered judicial system consisting of: a clergy-administered court to
deal with religious issues and a government-administered civil court
to deal with secular issues.  

Although Islam had an expansive role in the new government, in-
ternal debate raged within the ulema over the legitimacy of the constitu-
tion. An analysis of the opposing positions is instructive, not only
in understanding events surrounding the 1906 Constitution, but also
because these issues, debated and left unresolved in 1906, resurfaced
in 1979, and are still contentiously debated in Iran today.

The two main issues of debate within the ulema were, first, what
role, if any, a secular constitution should play in an Islamic society,
and second, what role, if any, the people should play in the govern-
ment. On one side of the debate was the relatively moderate Mirza
Muhammad-Hossein Gharavi-Na’ini, who gave limited support to the
constitution. On the other side was the more conservative Ayatollah
Fazlollah Nuri, who opposed it. Na’ini granted limited support to
the constitution because he saw the constitutional system of govern-
ment as compatible with Islam, which was itself “essentially constitu-
tional because of its reliance on religious and civil laws.” Although
no government outside that of the twelve imams was truly legitimate, a
constitutional government at least served to “limit[] the rulers’ arbit-
rary power and grant[ed] people limited sovereignty,” and was
therefore “less abhorrent than other forms” of government. Na’ini
seemed to be arguing that lay-people should therefore play a role in
government.

Ayatollah Nuri argued that the various freedoms given to the peo-
ple by the constitution were antithetical to Islam, because “sover-
eignty belonged to God, the prophet, and the Ulema . . . . [T]he
masses had no right to exercise sovereignty.” He further stated, as
Khomeini would several decades later, that “God alone is the law-
maker in Islam” and His laws are to be “understood and disseminated
by the learned clergy.” As such, there was no room for the people in
government. In the end, this debate proved inconsequential. The
constitution was passed despite the objections of the conservative fac-
tion of the ulema. Its passage, however, proved to be a hollow victory
for the more moderate clergy because the constitution and the rights

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29 See Milani, supra note 14, at 136.
30 See id. at 135-36 (describing the rift within the ulema).
31 See id. at 136.
32 See id.
33 Id.
34 Milani, supra note 14, at 136 (quoting A. HAIRI, SHI'ISM AND CONSTITUTIONALISM IN IRAN
165-97 (1977), and ENAYAT op. cit., 160-74).
35 AMJAD, supra note 17, at 38 (quoting S. AKHAVI, RELIGION AND POLITICS IN CONTEMPORARY
IRAN: CLERGY-STATE RELATIONS IN THE PAHLAVI PERIOD 26-35 (1980)).
36 OMID, supra note 5, at 15.
it provided were ignored by a succession of ruling secular monarchs.  

Under the reign of the Pahlavi family, the ulema were silenced, the promised ecclesiastical committees never met, popular participation was non-existent, and the parliament was made subservient to the Shah. The intelligentsia and the ulema, moderates and conservatives alike, had failed in their attempts to reform the political system. These groups would have to wait until 1979 for their next chance to effect change.

II. CAUSES OF THE 1979 REVOLUTION

Both economic and political factors led to the 1979 revolution that brought theocracy to Iran. Mismanagement and reckless spending by the Shah had weakened the economy, while political rights and expression were curtailed by the Shah, who abrogated all political parties in favor of a single party controlled by the monarch himself.

A. Mismanagement of the Economy

As a result of the Arab oil embargo of the early 1970's, Iranian revenues from oil sales rose dramatically, quadrupling from $5 billion to $20 billion per year. With this infusion of capital, the Shah undertook a campaign of massive spending aimed at turning Iran into a major military and industrial power. To implement this program, Iran began to import a tremendous amount of goods from the West. The Iranian infrastructure, however, proved incapable of handling this influx of goods. For example, “[b]y mid-1975, ships had to wait 160 days to unload their goods—and when goods were unloaded, there was nowhere to house them.”

The agricultural sector provides another illustration of the mismanagement and lack of planning that undermined the Shah's efforts. In an attempt to modernize the countryside, the Shah ordered that small farms be consolidated into giant ones. However,

57 See Milani, supra note 14, at 137-38.
58 See ABRAHAMIAN, supra note 20, at 11.
59 See generally BAKHASH, supra note 3, at 10-18.
60 See id. (explaining that “economic, social, and political dislocations in Iran created a fertile ground for Khomeini’s radical ideas”).
61 See id. at 11.
62 See id. at 12.
63 See GHODS, supra note 13, at 199.
64 See id.
65 See id.
66 Id. (observing that the Shah’s programs were undertaken primarily to “foster Iran’s international prestige rather than economic independence or cost effectiveness”).
67 See id. at 200.
68 See GHODS, supra note 13, at 200.
the resulting farms were “too large for maximum efficiency and suffered from a lack of planning (in crop choices and budget forecasts) and skilled management.”\textsuperscript{49} Therefore, while food production did increase initially, it “did not keep pace with Iran’s three percent annual population growth.”\textsuperscript{50}

The Shah’s desire that Iran become a regional military power further drained the country of its resources. Benefiting from the implementation of the Nixon Doctrine, which sought to lessen reliance on American forces by providing countries like Iran with advanced weaponry, and using his new-found oil-generated wealth, the Shah went on a military spending spree.\textsuperscript{51} Between 1972 and 1976, Iran purchased $10 billion in American arms.\textsuperscript{52}

The Shah’s poorly planned and mismanaged policies had negative consequences for the Iranian economy. Inflation rose from “9.9 per cent in 1975 to 16.6 per cent in 1976 and then to 25.1 per cent in 1977.”\textsuperscript{53} Meanwhile, oil revenues dropped from “$21.8 billion in 1976/77 to $21.3 billion in 1977/78.”\textsuperscript{54}

\section*{B. Suppression of Political Rights}

The other major cause of popular dissatisfaction with the Shah concerned his extreme political policies. To further consolidate his control, the Shah announced, in 1975, the abolishment of all political parties in favor of a single party—the Rastakhiz party—created by him.\textsuperscript{55} All citizens were forced to join the new party and those who resisted were told by the Shah that they were “free to get their passports and leave the country.”\textsuperscript{56} The new party was viewed by many Iranians as an infringement on their political rights and as a further means for those loyal to the Shah to enrich themselves.\textsuperscript{57}

The \textit{ulema}, whose representation in the legislature had significantly declined by the 1970’s,\textsuperscript{58} were particularly upset with the Shah, who in addition to cutting state subsidies to the \textit{ulema},\textsuperscript{59} attempted to

\textsuperscript{49} \textit{Id.}
\textsuperscript{50} \textit{Id.}
\textsuperscript{51} \textit{See id. at 201-03. The Nixon Doctrine was implemented to “strengthen smaller allies’ defenses, so they would remain pro-Western but would not have to rely on U.S. troops.” Id.}
\textsuperscript{52} \textit{See id.}
\textsuperscript{53} \textit{DANESHVAR, supra note 12, at 95 (quoting, Thomas Walton, \textit{Economic Development and Revolutionary Upheavals in Iran}, 4 \textit{CAMBRIDGEJ. OF ECON.} 271-92 (1980)).}
\textsuperscript{54} \textit{GHODS, supra note 13, at 204.}
\textsuperscript{55} \textit{See DANESHVAR, supra note 12, at 72.}
\textsuperscript{56} \textit{Id. (quoting the Shah’s Speech, March 1975 in \textit{Iran Almanac} (1977)).}
\textsuperscript{57} \textit{See id. at 73. (“The party was used by many groups for rapid promotions and fast career tracks to positions of power, by showing intense loyalty to its principles.”).}
\textsuperscript{58} \textit{See GHODS, supra note 13, at 206 ("Only 1 percent of deputies to the Twenty-first Majlis were clergy").}
\textsuperscript{59} \textit{See id. at 206 (showing that the \textit{ulema} were dependent on the State as a source of revenue, but in 1977, “the government drastically cut its subsidies to the \textit{ul[e]ma}”).}
gain legitimacy for his throne in 1975 by replacing the Islamic calendar with a secular one that dated back to the time of Cyrus the Great. The intellectuals and the clergy, outraged by the Shah’s autocratic rule; angered by his disregard for the constitution; and convinced that Iran was under the control of foreign governments, particularly the United States, once again united, as they had done in 1906.

C. Growing Dissent

As a result of their dissatisfaction with the Shah’s policies, many people began to turn toward Islam. Demonstrations sprang up across the country against the Shah, who responded by sending his secret police force—SAVAK—to attack the protestors. In January 1978, violence escalated further in response to the appearance of an article in the newspaper Ittilaat that attacked both the clergy and Ayatollah Ruhollah Khomeini, one of the leaders of the opposition. The article was believed to have been placed there by the Shah. The article touched off mass demonstrations that began in the religious city of Qom and spread throughout the country. Government workers contributed to this movement against the Shah by going on strike, thereby paralyzing the bureaucracy.

The spreading violence allowed Ayatollah Khomeini to assume leadership of the movement against the Shah. These protests cul-

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60 See id. (explaining the Shah’s decision was “clearly an attempt to attain political legitimacy for the monarchy at the clergy’s expense”).
61 See DANESHVAR, supra note 12, at 82 (“The Shah was seen as a dictator rather than a monarch, and his failure to observe the law and establish a credible parliamentary system had brought the legitimacy of the monarchy itself into question.”).
62 See id. (explaining how the Shah’s close ties with the West had “become synonymous with the import of decadence from the West”). The term ‘Westoxification,’ was used by some Iranians to describe Iran which, according to the Shah’s critics, “had become a nation of imitators who only copied the superficial aspects of modern living without any regard[ ] to substance or acceptability.” Id.
63 See id. at 5 (“The 1906 constitutional revolution was a direct consequence of a period of ‘awakening of the intellectuals to the problems of the country and the expansionist policies of the superpowers, [that] . . . forged an alliance between the intellectuals and some segments of the clerical establishment.’”). See also OMID, supra note 3, at 14.
64 See DANESHVAR, supra note 12, at 82 (stating that the Shah had “established his power and authority by suppressing all opposition forces who were critical of his authoritarian rule”).
65 SAVAK is an abbreviation of Sazman-e Ittilaat va Amniat-e Keshvar, Iran’s intelligence and security organization. See id. at 41.
66 See id. at 102.
67 See id. The article accused the clergy of being allied with the communists in an attempt to overthrow the government. Additionally, it accused Khomeini of having written erotic poetry and of having “homosexual tendencies”.
68 See id. at 101 (“According to a number of sources, the article was instigated by the Shah himself, who had become concerned over the rise in Khomeini’s popularity.”).
69 See GHODS, supra note 13, at 217.
70 See id. at 218.
71 See DANESHVAR, supra note 12, at 102 (“[Khomeini] directly accused the Shah of under-
minated in September 1978 when government forces and demonstra-
tors engaged in a bloody clash in Jaleh Square, in Tehran. Shortly
after this clash, the Shah left Iran, and Khomeini and his followers
took control of the country.

III. KHOMENEI'S VELAYAT-E FAQIH

The theoretical foundation for the government established by
Ayatollah Khomeini in 1979 was his view of the relationship between
Islam and the state as codified in his work *Velayat-e Faqih*. Translated
as "[G]overnment of the Islamic [J]urists," this work is a compen-
dium of lectures delivered by Khomeini to his students in the city of
Najaf, Iraq in 1969, six years after he had been exiled by the Shah
for his criticism of the regime. In *Velayat-e Faqih*, Khomeini pro-
pounded the view that there should be no distinction between reli-
gion and government in an Islamic state. Like Ayatollah Nuri,
Khomeini believed that modern government should closely resemble
the theocratic Muslim community of the early years of Islam in which
the only legitimate rulers are the clergy, who have assumed the man-
tle of leadership directly from Mohamad through the *Imams*. The
principle that "the *faqaha*, religious leaders, are the trustees of the
Prophet," means that all tasks entrusted to the Prophet must also be
fulfilled by the *faqaha*... as a matter of duty. There is no doubt,
according to Khomeini, that "the *imam*... designated the *faqaha*...
to exercise the functions of both government and judgeship."

Khomeini based his concept of rule by the clergy on the Koran:
"O you believers, obey God, obey the prophet and obey those in
charge among you." According to Khomeini, those in charge after

72 See GHODS, supra note 13, at 218 ("The massacre, called Black Friday, ended any hope that
the [S]hah had ever had of reaching a compromise with reformist elements among the religious
opposition.").
73 See id. at 219.
74 See BAKHASH, supra note 3, at 38 (discussing Khomeini's "basically revolutionary concept
of the Islamic state").
75 *Id. But see OMD, supra note 3, at 40 (translating *Velayat-e Faqih* as "Rule by a wise religious
leader.").
76 See BAKHASH, supra note 3 at 38.
77 See OMD, supra note 3, at 31, 38 (stating that upon his exile in 1963, Khomeini went first
to Turkey, then Iraq, and finally to Paris).
78 See id. at 62 ("[I]n *Velayat-e Faqih*, Khomeini postulates a future government by a group
of like-minded, and high-minded, clergy, who submit themselves to the will of God and merely
prescribe the Islamic dictum for the population to follow.").
79 See id. at 5 ("[U]niversal authority rests with the Imam.").
80 OMD, supra note 3, at 59 (quoting IMAM KHOMEINI, ISLAM AND REVOLUTION: WRITINGS
81 *Id. at 60.
82 AYATOLLAH RUHOLLAH KHOEYNI, ISLAMIC GOVERNMENT 9 (Joint Publications Research
the prophet, the Imams, had “been entrusted with explaining the Islamic laws and rules and with disseminating them among the Moslems.” In the absence of the Imams, “[t]he just jurisprudents have been required to carry out these tasks.”

Khomeini believed that this system of government would be divinely inspired because God has given this government “the same powers that he gave the prophet . . . In regard to ruling, justice and the settlement of disputes . . . [and] the collection of taxes and the development of the country.” In addition, Islamic government differed from secular forms of government in that “the power of legislation is confined to God . . . and nobody else has the right to legislate.”

Khomeini envisioned a government led either by a single member of the clergy, faqih, or by a group of clergy, foqaha. “If competence for this task is confined to one person, then this would be his duty to do so corporeally, otherwise the duty is shared equally.” Two important qualifications a ruler must possess are knowledge of Islamic law and the “faculty” of justice. “You can see that whoever governs or dispenses justice among the people must be an imam knowledgeable in the laws and the rules and must be just.” Such a ruler, when found, “will have as much control over running the people’s administration, welfare and policy as the prophet . . .” Khomeini saw this ruler in paternalistic terms, in that “[t]he task of a trustee over an entire people is not different from that of the trustee over minors, except quantitatively.” A strong leader is needed because the people are, generally, “devout, simple-minded and intellectually docile.”

Khomeini also envisioned a modern Islamic government as one in which “[r]eligious taxes meet all the state’s expenditure and religious courts dish out justice on an immediate and satisfactory basis . . . . There is no need for elections and representative government, because the laws are prescribed by Islam and the clergy have emerged as the best guides and have reluctantly accepted the burden of government.”

Although, Khomeini offered an alternative form of government,
in his lectures, he spoke in theoretical terms. Nowhere did he set out specifics for the implementation of such a system. Also problematic was Khomeini's assumption that a system of government from the seventh century would be adequate to meet all of the needs of a modern state. Almost as soon as he gained power, Khomeini was forced to adjust his theoretical model to conform with reality.

IV. THE ISLAMIC REVOLUTION: 1979

In January 1979, ten years after the delivery of his lectures on the subject of Velayat-e Faqih, Khomeini returned from exile to Iran. Upon returning, he ordered the implementation of a “dual” system of government in which a Provisional Government, “dominated by secular . . . liberals,” and a Revolutionary Council “dominated by clerics and Khomeini himself,” would share power. From the outset, however, real power was exercised by the Revolutionary Council. The Provisional Government was merely a “front” for the clergy, who tolerated the government's existence while they consolidated their clerical power. What developed was a system of government wherein the Revolutionary Council “provided guidelines and rulings for changes, which the Provisional Government enacted in the daily running of the state.”

On March 30 and 31, 1979, a referendum was held in which the people were asked whether they supported the Islamic Republic imposed by Khomeini and his followers. The people approved of the government. Khomeini, claiming a ninety-eight percent approval rating by the people, “instructed the provisional government to draw up an Islamic constitution.”

The draft constitution, which was secular in nature, was prepared by the Provisional Government and based upon the Iranian Constitution of 1906 and the constitution of France's Fifth Republic. The constitution created a strong presidency while omitting any reference

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95 See id.
96 See id.
97 See id.
98 See id.
99 See DANESHVAR, supra note 12, at 136; OMID, supra note 3, at 130.
100 See OMID, supra note 3, at 63.
102 See DANESHVAR, supra note 12, at 131.
105 See OMID, supra note 3, at 65-66.
106 Id. at 66.
107 See BAKHASH, supra note 3, at 74 (noting that the constitution was an extension of a partial draft which had been prepared in Paris by Khomeini's followers during his exile).
to the position of *Faqih*. In addition, while a Council of Guardians was established to review all laws, ensuring their compliance with Islam, it was given only "limited veto powers" and the majority of its members were "lay judges, not Islamic jurists."

The draft was approved by the cabinet of the Provisional Government and by the Revolutionary Council. Khomeini agreed to the draft with the understanding that provisions allowing women the right to hold the presidency and judgeships were to be removed. The initial draft was so acceptable to Khomeini that he was willing to bypass the remaining steps in the drafting process and submit it directly to the people in a referendum. This suggestion, however, sparked protest from a number of groups.

The more conservative elements within the *ulema* were upset with the draft constitution's omission of the role of the *Faqih* and the negligible role it offered them in the new government. These clergy realized that "without constitutional assurances," as to their role in the new government, "and upon Ayatollah Khomeini's death," their newly acquired positions of power would be placed in great jeopardy. The *ulema*, therefore, supported a revision of the constitution. Khomeini, too, came to realize that unless he became more active in promoting the role of Islam and the clergy in the new constitution and government, the revolution would turn "towards a democratic system, with little room for the religious institutions to dictate policies." Khomeini therefore agreed to the establishment of an elected Assembly of Experts, which would be "empowered to amend and redraft the constitution."

During the ensuing campaign for seats in the Assembly of Experts, Khomeini's Islamic Republican Party (IRP) presented the largest slate of candidates. While its secular opposition "remained fragmented," and without a "coherent agenda," the IRP skillfully utilized

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107 See id.
108 Id.
109 See id.
110 See Omid, supra note 3, at 66 (suggesting that Khomeini supported the constitution, despite its omission of any reference to the *Faqih*, because he felt that the position of *Faqih* would "emerge as a matter of course" and that the people of Iran would, nevertheless, "obey his every command.").
111 See id. at 66.
112 See Bakhsh, supra note 3, at 74.
113 See id.
114 See Saffari, supra note 4, at 67.
115 See id.
116 See id.
117 Omid, supra note 3, at 66. Khomeini reacted by "publicly criticizing the draft constitution for being insufficiently Islamic." Id. His supporters came to his aid by "stressing the requirement of adhering to the rule by *Faqih* as the *sine qua non*" of the new Islamic society. Id.
118 Bakhsh, supra note 3, at 75.
119 See Saffari, supra note 4, at 64, 67 (quoting *Engelab-e Eslami*, 15 Mordad 1358 (August 6, 1979)).
mosques and successfully publicized the endorsements it had received from the clergy and Ayatollah Khomeini. As a result, the IRP won a landslide victory, securing more than two-thirds of the 73 seats up for election.21

Khomeini addressed the Assembly of Experts at its inaugural meeting, warning the delegates that the constitution must be “one hundred percent Islamic,” and that “discussion of proposals contrary to Islam lies outside the scope of [the Assembly’s] mandate.”22 To ensure that the proposals were of an Islamic nature, the delegates elected two staunch supporters of Khomeini: Ayatollah Montazeri, who was elected chairman, and Ayatollah Beheshti, who was elected vice-chairman.23 The Assembly was divided into seven committees, each of which was assigned a portion of the draft constitution on which to work.24 The articles revised by the various committees were to be presented to the full house for a vote.25

One committee within the Assembly of Experts was called the Goals of the Constitution Committee (GOCC). The suggestions of this committee aroused some of the strongest debate over the role of the faqih.26 The GOCC was chaired by Beheshti and filled with his IRP colleagues, all of whom were ardent supporters of rule by a faqih.27 One of the first articles brought to the full house was Article 5, which had been written by Beheshti himself.28 This article proposed the constitution’s adoption of rule by a single faqih. Article 5 stated that, “[t]he governance and leadership of the nation devolve upon the just and pious faqih who is acquainted with the circumstances of his age; courageous, resourceful, and possessed of administrative ability.”29

That the GOCC took less than two weeks to pass Article 5, demonstrates the lack of “substantive debate and opposition in the Goals of the Constitution Committee.”30 Once it reached the full house of the Assembly, however, it did encounter some opposition.31 Several delegates had reservations about, or were completely opposed to, the

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120 See id.
121 See id. at 68. The IRP thereafter “paralyzed” the provisional government by “forming a peripheral government and constantly challeng[ing] [its] policies.” Id.
122 BAKHASH, supra note 3, at 81 (quoting Engdabe Eslami, 28 MORDAD 1358 (August 19, 1979)).
123 See Saffari, supra note 4, at 68.
124 See id. at 68.
125 See id.
126 See id.
127 See id.
128 See id.
129 See Saffari, supra note 4, at 69 (quoting 1 Surate Mashruhe Mozarhe Matr-e Baramis-e Neha’ye Qanun-e Asasiye Iran [The Complete Collection of Final Debates of the Assembly on the Constitution of Iran] 376 (Tehran, 1985)).
130 Id. at 69 (quoting THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN 29 (Hamid Algar trans., Berkeley, 1980)).
131 See id. at 71.
incorporation of the position of *Faqih* into the constitution. One such critic was Ezzatollah Sahabi, who argued that "*Velayat-e faqih* does not mean that the *faqih* should be involved in day-to-day politics . . . . The *faqih* has certain qualities which are needed, but not enough for a political leader in today's society." Sahabi also criticized the notion of *Velayat-e faqih* on religious grounds, adopting the same position that Ayatollah Na'ini had taken during the 1906 debates. Sahabi argued that "absolute rule belongs only to God and the infallible Imams; human beings cannot be under the absolute rule and subjection of anyone except them."

Another critic, Hojjati Kermani, argued that in today's complex world, a religious leader does not possess the requisite knowledge to lead the people: "It is no longer enough for a *faqih* to know the details of his province, or even possess enough knowledge about the Iranian revolution. The concerns of Iran are insignificant compared to those of the international community . . . ." Kermani also stated that the *faqih* is ill equipped to deal with modern society without "knowledge and understanding of social, economic, and legal matters."

However, these moderate clerics were not only out-numbered, but out-maneuvered procedurally by Beheshti's "deft handling of the Assembly." Beheshti "used his position [as chairman] to cut off debate when necessary, to interpret the gist of the discussions as he saw fit, and to present the 'official' view of critical articles of the constitution." As a result, Article 5, providing for rule by a single *faqih*, was passed.

In addition to Article 5, the Assembly approved several other articles pertaining to the role of the *Faqih*. Article 107 established an additional Assembly of Experts whose job it would be to select a replacement for Khomeini. This Assembly would "[r]eview and consult among themselves concerning all persons qualified to act as

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132 See id.
133 Id. at 71 (quoting *Enqelab-e Eslami*, 30 MORDAD 1358 (August 21, 1979)). The opposition wanted a leader with "knowledge and understanding of social, economic and legal matters" and they felt that Khomeini was only expert in religious matters. See id. This religious opposition to Khomeini should not be misunderstood as a rejection of theocracy or a government based on Islam but, rather, of Khomeini's assumption of total control. See id.
134 See Saffari, supra note 4, at 72.
135 Id. (quoting *Surate Mashruhe Mozakerat-e Majles-e Barring-e Neha'ye Qanun-e Asasi-ye Iran* 89 (1985)).
136 Id. at 71 (quoting *Enqelab-e Eslami*, 10 SHAHRIVAR 1358 (September 1, 1979)).
137 Id.
138 While Beheshti "did not always have his way," he focused on the "essentials and kept the discussions in a chamber of prickly and senior clerics," sympathetic to his views. See BAKHASH, supra note 3, at 82.
139 Id. at 82-83.
140 See id. at 83.
141 See Saffari, supra note 4, at 73.
142 See id.
and leader. If they discern outstanding capacity for leadership in a certain marja, they will present him to the people as their leader; if not, they will appoint either three or five marjas, until a single leader could be found. Article 107 is also significant for what it omitted. The article failed to provide any means for removing Khomeini as Faqih should a need arise. This lack of reference to removal demonstrated just how powerful Khomeini had become.

The composition of the additional Assembly of Experts was delegated, by Article 108, to a twelve member Guardianship Council which was also “granted the authority to examine all legislation for compliance with the Shari’a (law of God) and the Constitution.” Of the twelve members, six were to be appointed by Khomeini and six by the Supreme Judicial Council and the Majles.

A ‘Leadership Council’ was designated by Article 109 “to be elected if the future Assembly of Experts failed to agree on a single faqih for leadership.” If no suitable replacement was present, the Republic would function under “collegial leadership.” This situation never presented itself, however, because six years later, in 1985, the Assembly, with Khomeini’s approval, selected Ayatollah Montazeri to succeed Khomeini upon his death.

Article 110 specified the powers held by the Faqih, which included the power to select and remove the heads of the armed forces, as well as judicial officials. The Faqih could also remove political candidates who were not sufficiently religious. The Faqih also had the power to “appoint members of the Supreme Defense Council and declare peace or war, based on the recommendations of this Council.” In addition to the powers of the Faqih, the constitution set out and established the qualifications for the offices of President, Prime Minister, Parliament, and the Judiciary.

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143 Omid translates marja as the “highest ranking religious leader,” and a “source of emulation.” OMD, supra note 3, at 250.
144 Saffari, supra note 4 at 73 (quoting THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN 66 (Hamid Algar trans., 1980)).
145 See generally OMD, supra note 13, at 67. When writing Velayat-e Faqih, Khomeini had “assumed that the Islamic ruler would be . . . de-selected if he failed to be just.” Id.
146 Saffari, supra note 4, at 74.
147 See OMD, supra note 3, at 131.
148 Saffari, supra note 4, at 75 (“The members of the Leadership Council were required to have the same religious standing and qualifications as the faqih.”).
149 See OMD, supra note 13, at 135.
150 See id. at 136.
151 See Saffari, supra note 4, at 75.
152 See id.
153 Id. (“Interestingly, opposition to this article came almost exclusively from the ‘moderate’ faction, which had voted for the initial article establishing the faqih’s role, but now disagreed on the extent of his power.” One criticism of this article was that it infringed upon the power of the President.)
The Assembly finished its revisions by November 1979. These changes, in line with Khomeini's wishes, had "laid the foundation for a theocratic state." The revised constitution provided a central role in the new government for the Faqih and the clergy. In addition, it "entrenched Islamic jurisprudence as the foundation of the country's laws and legal system, and limited individual freedoms to what was considered permissible under Islam." The constitution was approved in a plebiscite in December 1979.

A. Problems of Implementation: Velayat-e Faqih in Action

1. Taxation

The theocratic government established by the revised constitution soon found that implementing its own rhetoric in terms of "practical day-to-day politics posed a problem that had no obvious solution." Several problems, unforeseen by Khomeini when formulating his notion of the Faqih, emerged. One such issue was taxation. In Velayat-e Faqih, Khomeini had asked rhetorically whether there was "a difference between what the prophet and the imam collected and what the present-day jurisprudent should collect?" Under that system, the people were required only to pay taxes to support the poor, not the state. Khomeini had mistakenly believed that the people would voluntarily pay additional taxes to support the state, therefore, this same system of taxation would suffice for present day Iran; he was wrong. The people refused to voluntarily pay additional taxes. The result was that the government was not able to generate enough capital to support both its domestic needs and the ongoing war with Iraq. Khomeini was placed in a bind. On one hand, Iran needed to generate revenue to survive. On the other hand, if Khomeini were to call for an increase in taxation, he would effectively derogate from the system implemented by the Prophet, the very system Khomeini

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155 See BAKHASH, supra note 3, at 83.
156 Id.
157 See id.
158 Id.
159 See Milani, supra note 14, at 150.
160 OMID, supra note 3, at 140-41.
161 See id.
162 KHOMEINI, supra note 82, at 9.
163 See OMID, supra note 3, at 141 ("The Shias are are expected to part willingly with one-fourth of their surplus worldly goods, zakat, and one-fifth of their surplus liquid cash, khoms, each year, to meet the needs of the poor and the needy; not those of the state and government.").
164 See id.
165 See OMID, supra note 3, at 141.
166 See id. ("The government needed an ever-larger income to fund the war and the state, but...[t]wentieth-century Iranians were not quite as forthcoming as they should have been, and the ulama saw no reason to pass what they obtained to the government.").
had tried to imitate. Khomeini solved this dilemma by invoking the principle of \textit{ejtehad}, or “interpretation by a religious leader, to extend the religious duties of believers to the domain of payment of secular taxes.”

Khomeini justified this extension of the state’s ability to tax by asserting that “[p]ayment of such taxation is a religious duty. Just as the Muslims have an obligation to pay their religious dues, so they must also pay their national taxes to the Islamic government.”

Khomeini’s act of extending taxes beyond what Islam had called for caused many to question whether his “support for the secular state apparatus amount[ed] to a denial of his earlier teachings.”

Khomeini’s supporters came to his aid. Ayatollah Khatami, distinguishing between the ‘basic’ and ‘temporal’ laws, stated that “[t]here are some absolute immovable laws of God that are eternal and never changing; but the laws which govern the day-to-day administration of the land may well change over time .... [D]ifferent historical periods demand different regulations.”

In further defense of Khomeini’s use of \textit{ejtehad}, Hojatoleslam Hassan Marashi, a member of the High Council of the Judiciary, stated that “[w]here there are legal shortfalls, our constitution permits the jurists to pass a judgment based on religious texts and principles .... In Shi’ism \textit{ejtehad} is a basic and invaluable principle which enables the jurists to remedy all legal shortfalls and fill up all the legislative gaps.”

2. The Delegation of Authority

Another ambiguity created by the constitution was whether the absolute rule of the \textit{Faqih} left any room for the “delegation of powers and responsibilities” to other members of the government. The constitution had placed responsibility with many, but had left real power in the hands of the \textit{Faqih}. This question was raised in an editorial in the pro-government daily \textit{Kayhan}: “[t]he question arises as to whether the honourable representatives of the \textit{Valiye Faqih} have any right to make independent decisions or must they always turn to the \textit{Faqih}?"
Khomeini’s response to these questions came in the form of an answer that he provided, in December 1979, to a question posed to him by the Ministry of Labor and Social Affairs. The question dealt with the ministry’s ability to impose maternity leave on private employers. Khomeini responded that the ministry did have such power, thereby clarifying the question of whether members of the government were empowered to act independently of the Faqih. In addition, Khomeini used this opportunity to increase his own power. He stated that citizens of an Islamic state must obey the orders of the State. In a letter to Khamanei, then the President of Iran, Khomeini stated that “if the government can exercise its authority only within the bounds of the peripheral divine laws, then the bestowal of the divine ordinances through absolute deputyship upon the Prophet . . . would be hollow and meaningless.” Akhavi interprets Khomeini to mean that “divine laws by themselves will not suffice to ensure the well-being of the Muslims,” the people need a Faqih to lead them. Akhavi further states that “The logic behind the absolute empowerment notion is that the establishment of an Islamic state supervenes in its importance every other facet of Islam, because without such a state, the very existence of Islam itself is in question.”

3. Internal Religious Dissention

Another source of challenge to Khomeini came from several other religious leaders who took exception to the fact that Khomeini had elevated himself above the other clergy. Traditionally, Shi’ite religious leaders, marjas, had led their followers with “little interference from their colleagues.” Now a single leader, the Faqih was “endowed with powers to overrule the religious decrees and authority of other marjas.” Khomeini had made himself into a singular leader who had the “prerogative to overrule his . . . colleagues if the [other] marjas rulings hampered the ultimate objectives of the na-

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175 See Shahrough Akhavi, Contending Discourses in Shi’i Law on the Doctrine of Wilayat al-Faqih, 29 Nos. 3-4 IRANIAN STUDIES 229, 262 (Summer/Fall 1996).
176 Id.
177 Id. (quoting letters sent by Khomeini to Khamanei on January 8, 1988).
178 Id. at 267. Khomeini’s views were not supported by all. Critics argued that the authority to suspend religious practices “such as prayer and pilgrimage, can come only at the hands of Allah, acting through the Prophet and/or the Imams.” Id.
179 See Saffari, supra note 4, at 77 (“A number of high-ranking [ulema] publicly declared their opposition to the faqih articles and viewed them essentially as lacking a proper Islamic basis.”).
180 See OMID, supra note 3, at 250 (defining marja as the “highest ranking religious leader; source of emulation.”).
181 Saffari, supra note 4, at 77.
182 The ability to overrule other religious leaders was extended not just to the single Faqih but also to the group of 3 to 5 religious leaders to be established, according to the constitution, in the absence of a single leader capable of assuming power. See id.
A leading critic of the notion of absolute leadership by a single religious leader was Ayatollah Shari'atmadari, who felt that the *Faqih* should merely be an adviser, and should enter politics “only under emergency conditions.” Shari'atmadari wrote that the people should be the ones to lead, for the “foundation of the dissolution of the former regime was a popular referendum; [thus] the will of the people should also be the foundation of the new government.” In defense of the constitution, Ayatollah Beheshti responded that “*Velayat-e Faqih* does not repudiate popular voting because the people must ‘recognize and accept the faqih.’”

4. Problems of Succession

The continuity of the government initially appeared to be ensured by the designation of Ayatollah Montazeri as Khomeini’s eventual successor. Montazeri proved to be a member of the dissident clergy, however, who, like Ayatollah Shari'atmadari, believed that the *Faqih* should not be a single all-powerful leader but, rather, one who, “in making important decisions . . . consults with experts and the learned to ensure that his decisions are beneficial to society as a whole and do not incur irreparable damage to the social fabric of Muslim nations.” He also charged that the government had been guilty of “injustice [and] denial of people’s rights.”

Montazeri’s criticisms of the regime were seized upon by President Ali Khamanei and Speaker of the House Hashemi Rafsanjani, “both favourite disciples of the *Faqih*, [who] felt themselves vulnerable should Montazeri come to power.” Both realized that Montazeri was more learned than they were, and if it was “knowledge of Islamic law that was to determine who was to run the country” both “had much to lose.” Both were, therefore, influential in convincing Khomeini to dismiss Montazeri. Even after Montazeri was removed

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183 Id.
184 Id., supra note 23, at 149.
185 Id. (quoting Etela’at, Mehr 19, 1358 (October 11, 1979)) (emphasis added).
186 Id. at 142; see also Ahmad Kazemi Moussavi, *A New Interpretation of the Theory of Vilayat-I Faqih*, 28 MIDDLE EASTERN STUDIES 101 (January 1992) (discussing a new approach to the legitimation of the concept of Faqih, namely that of a dual layer of legitimacy bestowed both by God and the people).
187 Omid, supra note 3, (quoting Kayhan (January 25, 1988)).
188 BAKHASH, supra note 3, at 283 (quoting Kayhan Havai (February 8, 1989)) (emphasis added).
189 Id., supra note 3, at 146.
190 Id.
191 See id. at 147 (“Rafsanjani . . . convince[d] Khomeini that the chosen heir . . . should never become the nation’s leader.”). Although Khomeini dismissed Montazeri as his successor, he did allow him to “continue functioning as a religious leader.” Id.
as a threat, however, succession problems remained. According to Article 107 of the constitution, should no suitable candidate be found to replace Khomeini, a "council of three or five religious leaders would take charge of the leadership." The problem for Khamanei and Rafsanjani was that membership in such a group would consist of the "leading ulema selected on the basis of knowledge and learning, [and] would [therefore] not have included either." As a result, both men encouraged Khomeini to revise the succession provisions of the constitution.

There was also a need to clarify the power structure in Iran and delineate the powers of the President. This need, combined with the campaign to revise the criterion for determining a successor, compelled Khomeini to order, on April 25, 1989, the creation of a twenty member "Council of Reconsideration to revise the constitution."

V. REVISION OF THE CONSTITUTION: 1989

The Reconsideration Council, dominated by Khomeini's followers, abolished the post of prime minister, strengthened the position of the presidency, and dealt with the leadership problem by amending the succession provisions of the constitution. Originally, the constitution had required the Faqih to enjoy the "support of the decisive majority of the people." When no individual enjoyed "massive popular support, the Assembly of Experts, whose members are elected, should appoint three or five recognized faqihs to the Leadership Council which then becomes the country's supreme authority."

In contrast, Article 111 of the amended constitution stated that if the previous leader has died, resigned, or been removed, a "council, consisting of the President, the Head of the Judiciary, and one of the foqaha of the Assembly of Experts, will perform the leader's responsibilities. This council, which must be controlled by the ul[e]ma, will

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192 See id. ("Montazeri's departure precipitated a constitutional crisis; there was no other suitable candidate to fulfill the functions of the Faqih.").
193 Id.
194 Id. ("Neither [Rafsanjani nor Khamenei] was likely to command public, let alone religious, backing.").
195 See id. ("It was imperative, in their interest . . . to change the constitution.").
196 See id. at 148 ("The council was to disentangle the proliferation of command, [and] delineate the limits of power and responsibilities of the President . . .").
197 Omid, supra note 3, at 148.
198 Milani, supra note 14, at 150. Of the 20 members of the Council, Khomeini appointed 15. The remaining 5 were appointed by the Parliament or Majles. See id.
199 See Milani, supra note 14, at 151 ("The updated version . . . centralizes political power by strengthening the presidency and demolishing the post of prime minister . . .").
200 See Omid, supra note 3, at 148 ("The council was to . . . sort out the problem of the succession.").
201 Milani, supra note 14, at 151.
202 Id.
lead the country until the Assembly of Experts selects a new leader.  

This elimination of the Leadership Council moved the country "away from collective to single leadership."  

The major change to the constitution, however, was to the office of the Faqih. The qualifications for the position were diminished while its powers were expanded. According to Article 109 of the 1989 constitution, the leader need no longer "be a marja (a source of imitation with a considerable following who renders independent judgment over a variety of issues) or enjoy the support of the majority" of the people. Now "he need only be well-informed about fiqh, or about socio-political problems, or have popular legitimacy (art. 107), and must be just and pious."  

The Reconsideration Council increased the institutional powers of the Faqih beyond even those that Ayatollah Khomeini had enjoyed, for fear that lessening the Faqih's religious credentials would have a concomitant deleterious effect on the way in which the Faqih was perceived and obeyed by the people. For example, Article 110 gives to the ruler the power to determine the "general policies of the Islamic Republic." This power is exercised in conjunction with a Council of Determination of the Interests of the Republic, "which was designed to resolve the outstanding differences between the Majles and the Council of Guardians." Article 112, however, declares that the leader "will single-handedly determine the composition of this new council."  

Other powers given to Khomeini's successor were the ability to "order referenda, delegate some of his duties and responsibilities to others, and decide when to revise the Constitution." The unmodified constitution only granted the Faqih power to appoint six mem-

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203 Milani, supra note 14, at 151.

204 Id. (explaining that just as Khomeini had consolidated power in his own hands to the detriment of the other members of the ulama, so too here, the revised constitution provides for the consolidation of power in the hands of fewer people).

205 See id. at 151-52 ("Nor do the qualifications of the faqih remain the same.").

206 See id.

207 Id. at 152.

208 See id. at 152 ("[T]he leader['s] ... powers were extended beyond those of Ayatollah Khomeini's.").

209 Milani, supra note 14, at152.

210 Id.

211 Id. As Milani explains;

This provision reduces the power of the Majles, and seems incompatible with articles 6 and 56, which respectively make voting the basis of the administration of the country's affairs ... grants legislative power to the Council for the Determination of the Interests of the Republic, all of whose members are non-elected. Therefore, the power of the Majles, an important symbol of the people's power, is restrained by two non-elected bodies, the Council of Guardians and the Council for Determination of the Interests of the Republic.

212 Id.

213 Id.
bers of the Council of Guardians.\textsuperscript{213} Now Khomeini’s successors can both appoint and dismiss its members.\textsuperscript{214} The revised constitution also contains a new chapter, which gives the leader the power to re-convene the Reconsideration Council.\textsuperscript{215} To do so, he is only required to consult with the Council of the Determination of the Interests of the Republic to “determine what must be revised or amended.”\textsuperscript{216}

The changes to the position of the Faqih did not go without criticism. As to the lessened religious qualifications for the Faqih, critics claimed that “[t]he demotion of the leader to the ranks of mere mortals posed a serious problem of legitimacy for a state which is run on the basis of absolute obedience to the laws of God and to the decrees of his shadow on earth, the Valayateh Faqih.”\textsuperscript{217} The Faqih was supposed to be infallible, yet the “revised constitution was going to appoint a mere human being, without sanctity, without superior religious learning . . . to rule over the country . . . the people were still expected to obey this ruler as if he were a Valiye Faqih.”\textsuperscript{218} In defense of the revised constitution, Khomeini’s supporters among the ulema argued that as long as the government “relies entirely on the laws of Islam . . . it will have the full support of the Muslims and the religious leaders . . . Should [the government] ever, God forbid, fail to do so, then the religious leaders and the people of Islam will rise as one and defeat it.”\textsuperscript{219}

The members of the government defended revision of the constitution by criticizing the newly-omitted notion of collegial rule.\textsuperscript{220} Public Prosecutor Hojatoleslam Mousavi Khoyniha argued that “consultation was unnecessary and collegiality merely an obstacle to efficiency: ‘Collective leadership simply cannot work . . . [I]t certainly has no place in the judiciary. Our decision-making is not a consultative process, it is a matter of personal interpretation of the laws of God.’”\textsuperscript{221}

Despite the criticism leveled against it, the revised constitution was approved in a national referendum on July 28, 1989 and remains the constitution currently in effect.\textsuperscript{222} Khomeini’s death earlier that

\textsuperscript{213} See id. at 152 (“Ayatollah Khomeini could only appoint the members of the Council of Guardians . . . ”).
\textsuperscript{214} See id. (“[T]he leader can now appoint and dismiss them [Council members].”).
\textsuperscript{215} See Milani, supra note 28, at 153 (“[T]he leader is given the power . . . to order the convening of the Reconsideration Council.”)
\textsuperscript{216} Id.
\textsuperscript{217} Id. supra note 3, at 149. Critics asked, “[i]f the Faqih, the highest source of emulation, is not one and the same as the Vali, the ruler, then who has absolute authority and the right to rule in the name of God?” Id.
\textsuperscript{218} Id. at 150.
\textsuperscript{219} Id. (quoting Interview with Public Prosecutor Mousavi Khoyniha in Kayhan, April 20, 1989).
\textsuperscript{220} See id. (citing examples of government figures defending the revised constitution).
\textsuperscript{221} Id. at 150-151.
\textsuperscript{222} See BAKHASH, supra note 3, at 286.
summer led the Assembly of Experts to convene and name President Ali Khamenei as the new *Faqih.*

VI. THE DECLINE OF *VELAYAT-E FAQIH*

Despite these constitutional efforts to strengthen the powers of the *Faqih*, Khomeini's death signaled the beginning of the decline of the position in the eyes of many Iranians. A major reason for this negative perception is the fact that Khomeini's successor Ali Khamenei, who was "not even an Ayatollah at the time of his designation," lacks the religious credentials for the position.

In addition to Khamenei's lack of religious standing, several other factors have led to a growing dissatisfaction with the *Faqih* in general and the *ulema* in particular; a dissatisfaction best expressed in May 1997's presidential victory by Mohammad Khatami over Speaker of the Parliament Ali Akbar Nategh-Nouri, who had been supported by Ayatollah Khamenei and had been the *ulemas'* candidate of choice.

The presidential election was significant for a number of reasons. First, as one opposition leader, former foreign minister Ibrahim Yazdi put it, "for the first time we have had a campaign that [was] not between two individuals but actually between two different... outlooks." In their campaigning, the two candidates clearly demonstrated these two opposing outlooks. Khatami pledged to "respect the privacy of citizens" and to protect their "civil rights and freedoms."] The cleric's choice, Nategh-Nouri, campaigned in favor of rule by the *ulema.*

The electoral victory of Khatami clearly demonstrated the people's dissatisfaction with the clergy. The clerics had made it very clear that they supported Mr. Nategh-Nouri. Yet, "[n]ot only did their support fail to propel him to victory, it was also one of the main factors leading people to vote for Mr. Khatami." In fact, Khatami won a resounding victory. He received sixty-nine percent of the 29.1 million votes cast, approximately 20.5 million votes, as compared to...
Nategh-Nouri, who received only twenty-five percent. Supporters of Khatami assert that his victory represents a "second revolution." This theme was echoed by Ayatollah Montazeri, who, in a letter to Khatami following Khatami's victory, stated that the election had been a "popular revolution against the existing conditions... and a clear message to all the authorities and officials of the country.

Khatami's support was not limited to any particular region or class, but cut across the Iranian political spectrum. "Mr. Khatami did well not only in cities and towns, where intellectuals are concentrated and where people are more resentful of the Government's social and economic policies, but also in villages and rural outposts." Supporters ranged from the young, who were upset with the regime's restrictive social policies, to women, who were angered by the regime's dress code. Exacerbating this dissatisfaction with social conditions was the general mismanagement displayed by the government. Unemployment had reached twenty percent, inflation had grown to twenty-five percent, and per-capita income had fallen from $1,200 at the time of the Revolution to a present-day $800.

The youth vote is particularly telling of the decline of the power of the clergy. Seventy percent of the population of Iran is said to be under 25 years of age, a constituency who do not "feel bound by the ideology that brought the revolutionary Government to power." All these young voters have seen of the Revolution are the intrusive social polices that pervade and restrict their everyday lives. For example, the clerical regime's police squads have routinely patroled the streets, enforcing conformity with Islamic law.

Khatami has been perceived as a moderate since 1992, when he was forced to resign his post as Minister of Culture and Islamic Guidance. He had come into conflict with the more conservative elements within the government when he allowed the distribution of certain books, magazines, and movies that were considered "subver-

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231 See Stephen Kinzer, Moderate Leader is Elected in Iran by a Wide Margin, N.Y. TIMES, May 25, 1997, at A1 [hereinafter Kinzer, Moderate Leader is elected in Iran by a Wide Margin].

232 See Stephen Fairbanks, Iran's Democratic Efforts, MIDDLE EAST POL'Y, September 1997, at 51 ("Unlike previous Iranian presidential elections where a prominent regime figure ran against one or more no-names, this was a real contest, and the winner was not the one selected by those holding the reins of power.").

233 Id.

234 Kinzer, Moderate Leader is elected by a Wide Margin, supra note 231, at A1; see also Bahman Baktiari, Iran's New President, in MIDDLE EAST INSIGHT, Nov. - Dec. 1997, at 16, 17 ("Not only did Khatami defeat Nategh-Nouri in the religious cities of Qum and Mashed, but also in Nategh-Nouri's home province of Mazandaran...").

235 See Macleod, supra note 229, at 50.

236 See id. at 51.

237 Kinzer, Moderate Leader is Elected in Iran by a Wide Margin, supra note 231, at A10.

238 See Kinzer, Beating the System, With Bribes and the Big Lie, supra note 228, at A4.

sive" by the more conservative clerics.\textsuperscript{249}

\section*{A. Prospects for Change}

While President Khatami is, by all accounts, more moderate than his predecessors, any analysis of his ability to effect change must consider the fact that he is very much a part of the system he is seeking to change. Mr. Khatami is not an outsider. To be allowed to run for the presidency, he had to swear allegiance to the regime.\textsuperscript{241} It should also be noted that Mr. Khatami may not have grasped the degree of frustration with the current regime expressed by the people in their vote for him. As Shaul Bakhash, an academic noted for his analysis on Iranian affairs, has observed, Khatami "has emerged in the public eye as a candidate of real change in a way he probably did not intend."\textsuperscript{242}

\subsection*{1. Conservative Backlash}

Clerical opposition to change in Iran is likely to be fierce, for the ruling clerics "increasingly have come to fear for the position of the clergy in government and even for the fundamental principle of the Islamic Republic, velayat-e faqih."\textsuperscript{243} These concerns are well-founded. While criticism of the position of \textit{Faqih} had in the past been relegated to "esoteric intellectual magazines,"\textsuperscript{244} the debate has now begun to "spread to the public."\textsuperscript{245} Ayatollah Montezari’s recent criticism of the \textit{Faqih} as being "too powerful"\textsuperscript{246} has simply added fuel to this debate. Another religious leader, Grand Ayatollah Nasser Makarem Shirazi, stated in an interview with \textit{The New York Times} that "he fully expected that the question of the clergy's role would become an enduring feature of the country's political debate, although he was "confident that most Iranians continued to support the system."

The \textit{ulema} have already begun to try to silence their critics, much as the Shah did in his last days on the throne. The government has stated its plans to charge Ayatollah Montazeri with treason for his criticisms of the regime.\textsuperscript{248} A key ally of Khatami, Tehran's mayor Gholamhossein Karabaschi, has been convicted on charges of corruption and mismanagement.\textsuperscript{249} This conviction has been seen as a vic-

\begin{footnotesize}
\begin{enumerate}
\item Id.
\item See Kinzer, \textit{Voice for Change Makes Iran Vote a Real Race}, supra note 227, at A10.
\item Erlanger, \textit{supra} note 1, at A4.
\item See Macleod, \textit{supra} note 229, at 54-55.
\item \textit{Id.}
\item Id.
\item \textit{Id.}
\item Id.
\item See id.
\end{enumerate}
\end{footnotesize}
tory for the conservatives, who had accused Karbaschi of supporting Khatami's reform efforts. In addition, the *ulema* have also struck at Khatami by closing down the daily *Jameyah*, a newspaper that had been critical of the conservatives. Also, the *ulema* successfully impeached Interior Minister Abdullah Nouri for allowing student organizations to conduct street demonstrations.

This conservative backlash, however, was not unexpected. As Stephen Fairbanks, an analyst with the United States State Department, has pointed out, while an initial "conservative backlash is inevitable," it will ultimately give way to reform and to a lessening role for the clergy. Fairbanks lists several reasons why he believes that Khatami will succeed over clerical objections including the substantial number of votes he received in his election, as well as the weakening of the conservative clergy in the *Majlis* which resulted from the defeat of its leader, Speaker Nategh-Nouri, in his bid for the presidency.

**VII. CONCLUSION**

A constitution is merely a document that reflects the values and objectives of those who framed it. To remain viable, it must be capable of adapting to the changing needs of the citizenry. The people of Iran have seen three constitutions this century, none of which has provided them with the reforms that they had been promised. As recent events in Iran indicate, the people are beginning to seriously question their constitution and the system of government it embodies.