

Political Thought in Contemporary Iran: Ayatollah Javadi Amoli's Theory of Guardianship

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Though the idea of an "Islamic state," and the way it compares to or can accommodate features of the liberal democratic state, has often been a preoccupation of scholars in Western academia, very few studies have focused on how scholars who are native to societies that are governed by Islamic constitutions have conceptualized and debated the nature and form of the Islamic state. This is true of the Iranian case; in part because of language boundaries and travel restrictions, there has been an unfortunate lack of academic exchange between Iranian and Western scholars. What follows is a study of a prominent Iranian political theorist and academic, Ayatollah Abdullah Javadi Amoli, who is often characterized as a conservative scholar, a defender of the institutions of the Islamic government that exist now in Iran. This paper examines his thought with attention to how it diverges and overlaps with the political thought of the founding father of the Islamic government in Iran, Ayatollah Ruhollah Khomeini, the most prominent leader of the 1979 Islamic Revolution in Iran and theoretician of the political role of the jurisprudent in an Islamic government. While in his book, *The Guardianship of the Jurisprudent: The Guardianship of Jurisprudence and Justice*, Javadi Amoli draws directly from and reiterates key tenets of Khomeini's political theory, his theory differs from Khomeini's in one crucial way: he holds that the Islamic government's Council of Experts, a popularly-elected body charged with selecting, overseeing, and dismissing the guardian, as well as the guardian himself, do not represent the opinions, beliefs, and desires of the people but instead function and act independently of the people to implement the divine will. This article focuses on Javadi Amoli's argument for how both the Council of Experts and the guardian serve neither their own aims nor the aims of the public, but instead the will of God. Khomeini, on the other hand, holds that the members of the Council of Experts act as representatives of citizens and does not go so far as to claim that either the Council of Experts or the guardian implement the divine will, emphasizing instead the conventionality of the particular form of Islamic government—and therefore the conventional origins of the powers granted to institutions and officeholders in this government—established after the Islamic Revolution in 1979. Still, both scholars believe that the guardian may be criticized by citizens—although Javadi Amoli prefers that experts, more than ordinary citizens, criticize him—and both scholars believe that the public must have

consented, at the founding moment of an Islamic government, to be governed by an Islamic constitution and by a form of government that includes the guardian.

Khomeini's Theory of Guardianship

Contrary to much of the literature produced in English on Khomeini's political thought,¹ I have argued² that Khomeini seeks to provide support for a theory of limited, and not absolute, guardianship. In his speeches, statements, and correspondence from after the Islamic Revolution in 1979, Khomeini argues that the guardian's decisions may be criticized or condemned, the very possibility of his guardianship is contingent upon public consent, and the laws that define and circumscribe his power are nothing more than conventional. In addition, in his most widely-read 1970 work, *Islamic Government*, a transcription of a series of lectures he delivered to seminary students in Najaf in 1970, he recognizes the fallibility of the guardian and therefore his capacity to act tyrannically, as well as the desirability of public consent to an Islamic government. Because the guardian is a fallible human being, his actions cannot always be presumed to be correct, though he occupies a powerful and religiously-significant position as the successor to the last of the twelve imams. (The imams, in turn, according to Shi'a belief, succeeded the Prophet

¹ See, for example, scholars who argue that Khomeini envisioned the ruling religious cleric to have both jurisprudential and philosophical knowledge, and to have all-comprehensive and unquestionable authority. See, for example, Hamid Dabashi, who argues that Khomeini's political leader was the "philosopher king in the platonic understanding of the term...Khomeini maintained that people do not know what is good for them" (H. Dabashi, *Theology of Discontent: The Ideological Foundations of the Islamic Revolution in Iran* [New York: New York University Press, 1993], p. 41). See, also, Vanessa Martin, who says that in Khomeini's thought "ideally it is the philosopher-jurist who understands both the *shari'a* and its hidden meanings and is thus most qualified to rule" (V. Martin, "A Comparison between Khomeini's Government of the Jurist and the Commentary on Plato's Republic of Ibn Rushd," *Journal of Islamic Studies*, 7 [1996] p. 18), although she says in a different work that Khomeini's theory was a "juxtaposed and interactive" merging of rule by Islamic law and rule by a guardian" (V. Martin, *Creating an Islamic State: Khomeini and the Making of a New Iran* [London: I.B. Tauris, 2000], p. 162). Other scholars do not claim that Khomeini required the ruling religious cleric to have philosophical knowledge, but they claim that Khomeini envisioned the jurist, on account of his knowledge of the law, to have absolute political power. See, for example, Said Amir Arjomand, who says that "there is reason to believe that Khomeini considered the Islamic republic to be the appropriate form of government only for the period of transition to the truly Islamic government," a government in which a hierarchy of religious clerics rule single-handedly "on behalf of God" (S. Arjomand, *The Turban for the Crown: the Islamic Revolution in Iran* [New York: Oxford University Press, 1988], p. 149). See, also, Gregory Rose, who says that "the jurist is positioned to guarantee institutional conformity to the agenda for restructuring consciousness" (G. Rose, "Velayat-e faqih and the Recovery of Islamic Identity in the Thought of Ayatollah Khomeini," in *Religion and Politics in Iran: Shi'ism from Quietism to Revolution*, ed. Nikki R. Keddie [New Haven, 1983], p. 187).

² See my article, "Ruhollah Khomeini's Political Thought: Elements of Guardianship, Consent, and Representative Government," *Journal of Shi'a Islamic Studies*, 7 (2014).

Mohammad in their religious and political leadership.) In a speech after the Revolution, Khomeini says that because the guardian is fallible, he is subject to the criticisms of ordinary citizens and experts alike. Moreover, Khomeini holds that the guardian's political position has been granted to him by citizens; more explicitly after the Revolution in his speeches and statements than in *Islamic Government*, Khomeini says that it is necessary that citizens consent to an Islamic government. Finally, Khomeini is clear after the Revolution that the Council of Experts produced a constitution by means of debate and reflection, where members of the Council, elected by the public, represented their constituents, and where ordinary citizens could participate in the drafting by voicing their opinions as the constitutional debates progressed. Khomeini makes no claim that the Council of Experts becomes an instrument of the divine will, either as it drafted the constitution or as it functions as part of the Islamic government.

In *Islamic Government*, his 1970 work, Khomeini reminds his reader that the jurisprudent, once in office, may make mistakes, implying that his guardianship cannot be absolute and immune from criticism. Unlike the imams who he succeeds, and despite his powerful position as successor to the imam, Khomeini says that the ruling jurisprudent does not have the spiritual status of the imams. Though the jurisprudent, in fact, has the same scope of political authority as the imams and the Prophet—he is charged with the same tasks and responsibilities—he warns us not to “imagine that the status of the *faqih* [jurisprudent] is identical to that of the imams and Prophet...[The responsibilities of the governing jurisprudent] constitute a serious, difficult duty but do not earn anyone extraordinary status or raise him above the level of common humanity.”³ Because the jurisprudent has the ability to err or even to sin, he may “usurp or abandon”⁴ his position.

Khomeini's theory of guardianship is qualified by a second factor in *Islamic Government*: he says that the guardian must have attained the consent of the public before assuming his position. Khomeini reserves disapproving words for any government—and, it is implied, Islamic governments included—that imposes its rule without public consent. He is critical of governments in which popularly-elected legislative bodies “approve anything they wish as law and impose it on the entire population.”⁵ Islamic governments, on the other hand, implement Islamic law, a law that is welcomed by citizens in Muslim countries; such political regimes, which implement a law that the people wish to see implemented, act much more fairly. Consent to being governed by Islamic law in Muslim countries, he says, “facilitates the task of government and makes it truly belong to the people.”⁶ While Khomeini stops short of saying that consent is a necessary, indispensable prerequisite to legitimate government, his language does

³ R. Khomeini, “Islamic Government,” in H. Algar (Ed.) *Islam and Revolution* (Berkeley: Mizan Press, 1981), p. 62.

⁴ Khomeini, p. 65.

⁵ Khomeini, p. 56.

⁶ *ibid.*

indicate that it would be highly desirable to attain this consent, and highly objectionable to govern without it. In addition, Khomeini presumes, in this statement, that citizens of Muslim countries want to be governed by Islamic law. He says nothing of the possibility that citizens of a Muslim country may not want to be governed by Islamic law; he neither recognizes nor denies this possibility.

In Khomeini's speeches, statements, and correspondence from 1979 to 1989, Khomeini continues to hold, as he had in *Islamic Government*, that the jurisprudent is fallible, and he says that ordinary citizens, and not just experts, must observe him closely to be sure that as long as he is in office, he commits no sin. While in *Islamic Government*, he had said that the ruling jurisprudent held no extraordinary spiritual status, after the Revolution, he is hopeful that the jurisprudent may go for a significant period of time without sinning. By insisting that the guardian must not sin while he is in office, he raises the expectation that the nation is to have of the guardian. If and when the guardian does sin—sinning remains, therefore, a possibility—he must be deposed from office.⁷

Not only should citizens participate widely in elections for the Council of Experts to ensure that individuals are chosen who effectively oversee the guardian (and dismiss him and choose a new guardian, if need be), but Khomeini also says in a public address that citizens themselves can and should directly judge the ruling jurisprudent's character throughout his office. His ethics, his belief in religion, his knowledge, and his actions—all of these must be of an acceptable quality to them,⁸ he says, though the constitution does not give them the institutional means to vote to dismiss him (instead, they may vote in and out of office the members of the Council of Experts who do have this power.) In an interview with several reporters on December 3, 1979, he says that when the guardian “commits even a minor sin, he is deposed from guardianship.”⁹

In Khomeini's speeches, statements, and correspondence from during the drafting of Iran's first constitution by the Council of Experts immediately after the Revolution, Khomeini states that the constitution is a human convention, not indisputably Islamic or divine, and it is a product of the debate that had occurred between members of the Council of Experts, who acted not just as experts but as representatives to those who voted them onto the Council. Experts on the Council, he emphasizes, are representatives of citizens, designing a constitution that they believe would meet their approval.¹⁰ Citizens can also participate directly in the constitutional drafting, he had

⁷ Ruhollah Khomeini, *Sahifa-yi Imam*, Vol. 10, p. 482, (www.sahifeh.net, Markaz-I Asnad-I Inqilab-I Islami). Accessed 11 November 2014, my translation. All translations of excerpts from *Sahifa-yi Imam* are my own.

⁸ *ibid.*

⁹ Khomeini, *Sahifa-yi Imam*, op. cit. Ref. 7, Vol. 11, p. 306.

¹⁰ Khomeini, *Sahifa-yi Imam*, Vol. 14, p. 377.

stated in one public speech, so that the outcome is representative of public opinion.¹¹ The deliberations of the Council of Experts, in the end, can and should do nothing more than design a human convention that aspires to operate within the limits of and serve the divine law.¹²

Finally, Khomeini is clear in his post-revolutionary speeches, statements, and correspondence, unlike he was in *Islamic Government*, that an Islamic government must have secured the consent of the public if it is to govern legitimately; the guardian holds no unconditional right to rule. He says that Islamic law can be implemented in Iran only because the vast majority of citizens voted in the nation-wide referendum of March 30 and 31, 1979, prior to the drafting of the constitution, that they would like to replace the monarchy with an “Islamic Republic.”¹³ After the Council of Experts had finished drafting the constitution, the public approved it in another nation-wide referendum, and Khomeini had encouraged all citizens to vote, even if they wished to reject the constitution, since he believed that for the constitution legitimately to be adopted, the people must have approved of it.¹⁴

Javadi Amoli’s Theory of Guardianship

In his book, *Guardianship of the Jurisprudent*, Abdullah Javadi Amoli prescribes a stronger form of guardianship than Khomeini does in either *Islamic Government* or in his post-revolutionary speeches, statements, and correspondence. Centrally, Javadi Amoli insists that the guardian cannot be considered a representative of citizens; one must be sure, he says, to maintain the distinction between guardianship and representation, he says, not allowing the concept of guardianship to be blended with features of the concept of representation. The guardian has not been put in his position by citizens but instead by God, who works through the Council of Experts who appoint him, and he is the vehicle through which God exercises his guardianship over mankind.¹⁵ Khomeini, on the other hand, during the drafting of the constitution by the Council of Experts, had emphasized that the Council does not enact the divine will but instead represents the citizens who have elected its members to produce a conventional set of laws. Unlike Javadi Amoli, Khomeini does not say that God acts through the Council of Experts or even the guardian himself.

Khomeini, in the years after the revolution, encourages citizens to vote in all public elections, including elections for the Council of Experts, which, just after the Revolution, would draft the constitution, and after the drafting, would oversee, and occasionally select and perhaps dismiss,

¹¹ Khomeini, *Sahifa-yi Imam*, Vol. 9, p. 173.

¹² Khomeini, *Sahifa-yi Imam*, Vol. 10, p. 322.

¹³ S. Bakash, *Reign of the Ayatollahs*, (New York: Basic Books, Inc., 1984), p. 73.

¹⁴ Khomeini, *Sahifa-yi Imam*, Vol. 11, p. 23.

¹⁵ A. Javadi Amoli, *Vilayat-i Faqih: Vilayat-i Fiqahat va Idalat*, (Qom: Markaz-i Nashr-i Asra’, 1379 [2000-2001]), p. 208. My translation. All translations from this book are my own.

the guardian. Javadi Amoli, however, adds a significance to this democratic act that Khomeini had not explicitly given it. Javadi Amoli argues that through and by means of the people and the Council of Experts, God implements his plan; it is God who acts through the elections for the Council of Experts and deliberations of the Council to put the guardian in his rightful position. There exists at least one jurisprudent, says Javadi Amoli, who “has a right to guardianship, [given to him] by God, even before the people appoint him...”¹⁶ A guardian’s right to his position, therefore, exists independently of any desire on the part of the people to make him their guardian, while on the other hand, for a representative, this right is contingent upon the votes of the people.¹⁷ Because the guardian always had a right to hold this position, and he does not acquire this right after having been chosen by the Council of Experts, he cannot be a representative; in fact, according to Javadi Amoli, he is a representative not of the people, but of the last Imam, and in turn, the Prophet and God himself.¹⁸

Javadi Amoli is very careful about the language he uses to describe the Council’s selection of the guardian; only when there are two or more jurisprudents who are equally qualified for office, and the Council must choose between them, does the Council exercise any form of choice; otherwise, they “identify”¹⁹ the most qualified jurisprudent out of all the contenders. Drawing on their expert knowledge of Islam—its ethics, its law, its theology, for example—members of the Council of experts “can identify the jurisprudent who is most qualified for leadership.”²⁰ This method of choosing the guardian he calls “*entesab*,”²¹ or appointment. Whatever decision the Council comes to make, Javadi Amoli argues, has attained “the signature of the sacred Lawgiver.”²²

In fact, he says, though the constitution uses the word “choice” when describing the process by which the guardian is selected, this must be understood not in the literal way—the way the word would normally be understood in Farsi—but instead as “acceptance.”²³ This is because the nation does not choose its guardian; instead, God is working through the Council of Experts and through the people as they elect members of the Council of Experts. A jurisprudent can be “chosen” to be a representative and not a guardian, since the word “choice” implies that a selection is made on the basis of opinions that may or may not be true or desires that may or

¹⁶ Javadi Amoli, p. 210.

¹⁷ *ibid.*

¹⁸ Javadi Amoli, p. 209.

¹⁹ Javadi Amoli, p. 448.

²⁰ *ibid.*

²¹ Javadi Amoli, 230-232.

²² Javadi Amoli, p. 445.

²³ Javadi Amoli, p. 404.

may not be legitimate. Opinions or desires, however, cannot create a religiously-legitimate government. Instead of choosing the guardian, the Council must determine, in its judgment, which jurisprudent has a divinely-mandated right to rule. If, on the other hand, we understand the word “choice” to imply an acceptance, rather than an active choice based on our own considerations and desires, then the term may be used. The Council may accept, and not choose, the guardian.²⁴

While the Arabic word for choice, “*entekhab*,”²⁵ would be appropriate to use to describe the appointment by the Council of Experts of the guardian, the Farsi word, also *entekhab*, but which has different connotations, is not. The Arabic word can be used to accurately describe the process by which a jurisprudent is selected to be guardian—one may “choose” a guardian, in Arabic terms, without implying that by doing so, one causes, by himself, the guardian to deserve his position, regardless of whether God wishes for him to be guardian. In Farsi, it is more accurate to use the term “*entesab*,” or “appointment,” instead of “choice,” because this term implies guardian’s right to rule existed before the Council made the decision to appoint him as guardian.²⁶

Similarly, when the Council decides that it must dismiss the guardian, it does not “choose” to dismiss him; instead, it simply “announces that the governing jurisprudent has abdicated, on account of his inability to fulfill his duties, or because he has lost one of the essential qualities for leadership, or because the [the Council] discovers that he always had this deficiency...the fundamental task of the Council of Experts is to determine whether the guardian-jurisprudent is appointed or abdicated, not to appoint or dismiss him.”²⁷ The moment that the guardian acts against God’s law, he is no longer guardian, for it would be impossible to be both a guardian, in the true, Godly sense, and to act against God’s law. When this happens, the Council of Experts should dismiss him from office. Javadi Amoli emphasizes that it is not the Council of Experts who has made him no longer a guardian—no human decision can change a metaphysical truth. As long as he deserves to be guardian, he is guardian, and when he loses the required characteristics, he is no longer, on a metaphysical level. The Council may be said to deprive him of his institutional position, but it never deprived him of his metaphysical status.²⁸

On a rare occasion, he says, the people may directly select the guardian in nation-wide elections in place of the Council of Experts; however, this is only possible when “a people recognizes their

²⁴ Javadi Amoli, p. 403.

²⁵ *ibid.*

²⁶ Javadi Amoli, p. 403-404.

²⁷ Javadi Amoli, p. 231.

²⁸ Javadi Amoli, p. 211.

leader”²⁹ in an outstanding individual like Imam Khomeini. History rarely produces these outstanding figures, however; normally, it is not so clear who is most qualified to lead, and it becomes the task of experts, not the public at large, to appoint the leader. Again, Javadi Amoli’s language is very specific when he describes the scenario in which the leader is granted office by means of nation-wide elections. The people do not “choose” a leader but instead “recognize” him; he was their leader even before they went to the ballot box because he was uniquely qualified for, and divinely appointed to, this position.³⁰ This option—for the people to directly elect the guardian—was taken out of the constitution in the 1988 revision because it is rare that an individual stands so apart in his morality and knowledge from others that common citizens can recognize him, Javadi Amoli says.³¹

If the people do not choose the guardian, and instead the guardian had been chosen long before the people went to the ballot boxes to vote for representatives to serve on the Council of Experts, or, on the rare occasion, voted directly for the guardian themselves, why, then, does Javadi Amoli maintain that the voting should be done in the first place? Why couldn’t the experts who appoint the guardian have been selected by some other, non-democratic means? Javadi Amoli does not seek to erase the role of the people in the political process; in fact, he continues to assume that they will be involved. Like Khomeini, he recommends their political involvement both during and after elections. The democratic process that leads to the selection of the guardian is a perfectly suitable means to seeing to it that the jurisprudent with the divinely-granted right to guardianship is awarded his position. Javadi Amoli does not bemoan the people’s participation in this process, nor does he argue that it is vital to the selection of the deserving guardian; he seems content to remain faithful to the process stipulated in the constitution, and he does not mention whether a different, non-democratic process would be better or even equivalent.

After elections, however, he says that people should be involved in overseeing the guardian and may become aware that the guardian is not acting as he should. Though after elections, citizens must wait until the next election to unseat their representatives from the Council of Experts, they retain the right to “oversee and criticize” the guardian, though not to exert pressure upon or dismiss him by legal means. Though this right is held by all citizens, it is “especially preserved for political, legal and *fiqhi*³² experts.”³³ It is worth noting, however, that Khomeini, unlike Javadi Amoli, does not make this distinction between experts and laypeople; instead, Khomeini says that all citizens, including non-experts, have the right to criticize the guardian.

²⁹ Javadi Amoli, p. 448.

³⁰ *ibid.*

³¹ Javadi Amoli, p. 449.

³² That is, experts in *fiqh*, or Islamic jurisprudence. When Javadi Amoli uses the term “legal,” he refers to the secular legal science, a science centered on the study of law that is not derived from authoritative Islamic sources.

³³ Javadi Amoli, p. 446.

Since it is possible that the guardian may be criticized by his subjects and dismissed by the Council of Experts, it is evident that Javadi Amoli, like Khomeini, does not believe that the jurisprudent is infallible and incapable of sin. However, he does believe that the ruling jurisprudent may hold his position for a certain period of time—long enough, it is presumed, to have the opportunity to exercise effective leadership—without sinning. The jurisprudent must fulfill three conditions, according to Javadi Amoli, to qualify for guardianship: first, he must be capable of *ijtihad*—he must flawlessly be able to deductively derive legal injunctions from the divine law; second, he must be perfectly just—he must unfailingly act upon the principles of the divine law that he understands so well; and finally, he must have sufficient administrative abilities and leadership skills. The second quality, “*idalat-i mutlaq*,” or perfect justice, means that the guardian will never sin as long as he is guardian; as soon as he does, he loses his status as guardian.³⁴ This conception of the guardian’s spiritual capacity, however, stands in tension with Khomeini’s statement in *Islamic Government* that assuming the post of guardian does not give the jurisprudent “extraordinary status,”³⁵ though it is reminiscent of Khomeini’s post-revolutionary position, when he said that the guardian is deposed from guardianship even if he commits a “minor sin.”³⁶

Though the guardian may be criticized by citizens, he may not be said to be in office to represent either their wishes or their interests. When Javadi Amoli speaks of government more broadly, and not just the Council of Experts, he says that while the objective of a democratic government is to fulfill the wishes of the majority, the objective of an Islamic government is “to discover the truth.”³⁷ Insofar as the majority rule is the standard for decisions in Islamic governments, it is with the aim of discerning the truth and not establishing it. In particular, majority rule decides who will sit on the Council of Experts and who is elected to parliament, a body which implements the *shari’a* and formulates law that a Guardian Council (composed of six experts in Islamic law and six experts in secular legal science) deems is compatible with or furthers the aims of the *shari’a* and the constitution. Institutions composed of experts operate by majority rule; majority rule is the standard by which the Guardian Council and the Council of Experts come to decisions. Even among experts, however, majority rule does not establish what truth is but only discovers what God has made the truth to be.³⁸

It is significant that Javadi Amoli seeks to retain the sacred in the political process. While Khomeini says simply that a guardian is chosen as a result of a political process designed by and

³⁴ Javadi Amoli, p. 136-137.

³⁵ *Islamic Government*, 62.

³⁶ Khomeini, *Sahifa-yi Imam*, Vol. 11, p. 306.

³⁷ Javadi Amoli, p. 90-91.

³⁸ Javadi Amoli, p. 80.

participated in by ordinary citizens,³⁹ Javadi Amoli does not wish to lose politics to the mundane. A guardian cannot be considered a representative of the people, in office to serve their wishes and susceptible to their criticisms and decision to dismiss him from office. When a guardian acts justly and in accordance with God's law—a state of affairs that ordinary citizens, but more likely, experts, can discern—he is none other than God's representative on earth. He is not merely a creation of human convention, or a good approximation of a just rule—he, in actual fact, governs in a divine manner. Javadi Amoli thus imbues the guardian's actions and decisions with divine sanctity while holding that the political realm is one in which humans do not have sovereignty. While Khomeini stops short of depicting government in a world without an infallible Imam as divine, Javadi Amoli is willing—and indeed, finds it necessary—to take this bold step.

Still, at one point in the text, Javadi Amoli says that Islamic government was established by contract, the national constitution, and it is this contract which gives it legitimacy.⁴⁰ At first glance, this idea does not seem to comport with Javadi Amoli's contention that only the divine will, and not a human contract, can legitimate government, and seems to bring Javadi Amoli's view of government closer to Khomeini's. When Javadi Amoli describes the article of the constitution that created the Council of Experts, for example, he says that members of the nation made “a covenant with one another that [stipulated that] the right to govern over them...would only be granted through the Council of Experts; experts that they had chosen, who would, after recognizing the jurisprudent with all the requisite qualities, appoint [him to his position]...”⁴¹

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

However, Javadi Amoli also holds that an Islamic government must have been consented to by the public, which they did when they voted in the referendum on the constitution.⁴² In arguing that Islamic government cannot be forced on the people, Javadi Amoli follows Khomeini's unambiguous position in his post-revolutionary speeches that public consent is a necessary

³⁹ Khomeini, *Sahifa-yi Imam*, Vol. 14, p. 377.

⁴⁰ Javadi Amoli, p. 447.

⁴¹ Javadi Amoli, p. 445.

⁴² *ibid.*

prerequisite for legitimate government, and adopts a stronger position than Khomeini's ambiguous position in Islamic government (when Khomeini had said that public consent is a desirable prerequisite for government but had stopped short of saying that it was necessary). "Islamic government," Javadi Amoli says, "is not a government of tyranny and imposition; if it was tyranny and force, it would become [like] the illegitimate government[s] of the Umayyids and Marwanids,⁴³ which after awhile, passed from existence."⁴⁴

What is it about political tyranny that elicits Javadi Amoli's condemnation? His concern is not simply that governments that have not gained public approval are unstable and soon to "pass from existence." Instead, his concern is a moral and religious one. It is not in the nature of things for religion to be imposed on individuals; God did not will for it to be this way. While there eternally exists a religious truth, never has this truth been forced on human beings. There certainly exists a metaphysical truth, and with it, an individual who deserves to be the political leader of a given society; this truth, this nature of things, is eternal and can never be compromised. However, for this truth to be manifested materially and to have an effect on human society, it must be embraced by human beings. This is how God has willed it to be; a truth cannot simply pass into the human realm without the presence of an active human will for it to be manifested.⁴⁵ "If the country needs to be governed," says Javadi Amoli, "as long as the people do not want it and are not present [as advocates for it in the political sphere], neither prophethood, nor imamate, nor the specific deputyship [of those named by the last imam to be his representatives during the Lesser Occultation], nor general deputyship [of jurisprudents

⁴³ Here, Javadi Amoli refers to the Marwanid branch of the Umayyad dynasty, which prevailed over the Sufiyanid branch—who were the descendants of Abu Sufiyan—in 684, reigning until 750, when the Umayyad dynasty, destabilized by internal dissension and suffering setbacks in its wars of expansion, was overthrown, and later, in 756, would establish a caliphate in Cordoba, Spain (Umayyad dynasty. (2015). In *Encyclopædia Britannica*. Retrieved from <http://www.britannica.com/EBchecked/topic/613719/Umayyad-dynasty>). It was under the Marwanid Umayyids, between 736 and 740, that Shi'as began to mobilize against the caliphate, claiming, as they had since the founding of the Umayyad dynasty in 661, that the descendants of Ali were the rightful rulers of the Muslim community because of their knowledge of religion and their spirituality. In 740, Zayd b. Ali, the grandson of the third imam, Hossein, led a rebellion against the dynasty but was soon defeated. (I. Lapidus, *A History of Islamic Societies* [Cambridge: Cambridge University Press, 2002], p. 47-54).

⁴⁴ Javadi Amoli, p. 402.

⁴⁵ Javadi Amoli, p. 402.

during the Greater Occultation]⁴⁶—none of these will be manifested externally...⁴⁷ For the uniquely-qualified jurispudent to assume his role in practice exists “in potential,” but for this potential to be fulfilled, and for the jurispudent to actually assume his deserved role, is dependent on the acceptance of the guardian by the people.⁴⁸

Javadi Amoli does not condemn government without consent using the language of rights; it is not that political tyranny is reprehensible because the tyrant deprives individuals, and a nation, of the right to determine their political futures and have a voice in the way in which they are governed. Instead, he uses the language of Islamic philosophy. God never imposes his wishes on human society and therefore neither should small numbers of human beings. Islamic government, as a metaphysical “good,” cannot be imposed on an unwilling society; instead, there must a democratic act prior to its establishment, a widespread expression of acceptance of this government and the values that it would exist to promote and that have shaped its design. Whether people come to this acceptance does not affect whether Islamic government is legitimate on deeper, metaphysical level; whether or not it is legitimate in the opinions of humans does not affect whether it is legitimate in God’s eyes. Javadi Amoli holds, in fact, that because a popular vote does not make a particular government more legitimate, in any true, divine sense, than it was before the people consented to it, and because lack of popular support does not deprive a government that is good on a metaphysical plane of a true, divine legitimacy, then we must refrain from saying that popular consent makes a government legitimate; instead, it gives it “power; because without the people, there would be no power for the guardian, and his ability to engage in any kind of action [in the political realm] is taken from him; though at the level of metaphysical reality, he has divine legitimacy.”⁴⁹ This “power,” to Javadi Amoli, is not a form of raw, physical power, but instead a capacity that he gains because of the metaphysical nature of the world, a power that God wills him to have, and therefore that he will acquire, when the people have come to accept his rule. This power is dependent not upon tanks, guns, and all the physical force of the state, but instead it emerges from an act of belief on the part of the people.

⁴⁶ According to Shi’a belief, the Lesser Occultation began when the eleventh Imam died in 874 C.E., whereupon the twelfth Imam immediately went into concealment and communicated with the Muslim community through four intermediaries. The Lesser Occultation ended when, in 941 C.E., the Imam ceased all communication with the Muslim community. This began the period called the Greater Occultation, which continues today (S. Arjomand, “Ġayba,” *Encyclopedia Iranica*, X (2012) <http://www.iranicaonline.org/articles/gayba>). According to Shi’a doctrine, during the Greater Occultation, the twelfth imam is absent from the physical plane, anticipated to return to earth as a messianic figure just before the end of time (H. Algar, “Islam in Iran,” Course taught at UC Berkeley, Berkeley, CA, 2009, www.al-islam.org).

⁴⁷ *ibid.*

⁴⁸ Javadi Amoli, p. 390.

⁴⁹ Javadi Amoli, p. 405.

Conclusion

While Javadi Amoli writes in support of a theory of guardianship, he does not accept, in full, Khomeini's theory of guardianship, a theory that I have argued can be more accurately characterized as a theory of limited guardianship. Both in Khomeini's 1970 book, *Islamic Government*, and in his speeches, statements, and correspondence from 1979—after the Islamic Revolution—and until his death in 1989, Khomeini is clear that Islamic government is ultimately human government; the guardian may sin, he says—though after the Revolution he is more optimistic about the guardian's ability to remain free of sin while in office—and Islamic government itself has been designed by a council of popularly-elected representatives. The Council of Experts, and the guardian himself, should be viewed as nothing more than human beings who strive to act in a way that is godly and, in the case of the Council of Experts, representative of those who elected them into office. In addition, he states more clearly after the Revolution than before that an Islamic government is one that has been consented to freely by the public.

Javadi Amoli's theory of guardianship, in many ways, overlaps with Khomeini's. He, too, accepts that the guardian is fallible, though he says that experts, more than ordinary citizens, have the capacity to recognize when the guardian errs or to discover a flaw in his character. Like Khomeini, he argues that an Islamic government cannot be imposed on citizens; consent is a necessary condition for political legitimacy, even if it is the Prophet himself who wishes to govern.

However, Javadi Amoli modifies, and does simply inherit, Khomeini's theory of guardianship. He does so, in broad terms, by arguing that the guardian should not be considered, in any way, a representative of citizens. To be a guardian of, as distinguished from a representative of, the people, he cannot have been selected by the people themselves; instead, God works through the Council of Experts, the popularly-elected body that chooses and oversees him, to appoint him. Khomeini never makes an equivalent argument, depicting the Council of Experts as a body of knowledgeable, though fallible, experts who make very human decisions. Likewise, if and when the Council decides to dismiss the guardian, this, again, is a divine act, and not simply a potentially-mistaken choice made by members of the Council.

Though the guardian may be criticized by citizens, as long as the Council of Experts has not dismissed him, he must be considered a representative of God, not of the people. He is not in office to implement either his own wishes or the wishes of citizens, but instead only the divine will. Though Islamic government was initially established by a contract, as Javadi Amoli recognizes, and this contract—this constitution—was approved of by the vast majority of citizens in a national referendum, key institutions and individuals in government—namely, the Council of Experts, the guardian, and even the Guardian Council—become instruments of the divine will. The popular will allows Islamic government to come into being, but these institutions of government must function independently of the popular will.

Still, according to Javadi Amoli, even divine government cannot be imposed on a people; popular consent is a necessary prerequisite for political legitimacy. This is not because individuals have a right to choose how they are governed, but because in the particular world of causes and effects that God has designed, people must desire to be governed justly in order for just government be established. While Khomeini maintains that even an Islamic government must be recognized for what it is—human in both its origins and in its day-to-day function—Javadi Amoli finds it important to have a different perspective; Islamic government cannot simply be considered a human government, whose decisions and actions, therefore, are always circumspect, but instead a government that—often, but perhaps not always—may perfectly emulate the divine.