



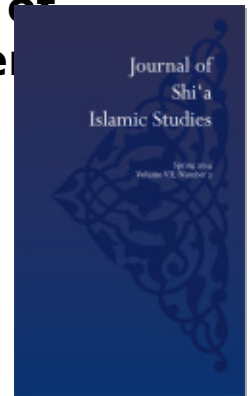
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Ruhollah Khomeini's Political Thought: Elements of Guardianship, Consent, and Representative Government

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ABSTRACT: Ayatollah Ruhollah Khomeini is often described in secondary literature as a political actor who advocated religious absolutism. This paper argues that Khomeini's theory can best be characterized not simply as a theory of guardianship by the Islamic jurisprudent but instead as a theory of *limited guardianship*. In the public speeches and statements that he delivered during the drafting of the Islamic Republic's first constitution in 1979, Khomeini is clear that the necessary conditions of political legitimacy are, firstly, popular consent to government, secondly, public approval of the guardian, and finally, popular representation in a legislative assembly. These public statements are consonant with Khomeini's description of Islamic government in Najaf in 1970, where he recognizes that the guardian is fallible, that the fallibility of human reason may lead people to establish inadequate political conventions, and that there is a certain injustice in imposing government upon a public that does not consent to it. His 1970 lectures do not contradict his post-revolutionary thought also because Khomeini in 1970 gives no indication that he disapproves of – though he makes no explicit statement that he approves of – representative, parliamentary government.

KEYWORDS: Khomeini, political theory, *Islamic Government*, guardianship, consent, representative government

While Iran is commonly perceived by political actors to be a threatening force in world politics, the theoretical discussions that have influenced the formation and the evolution of the institutions of the Iranian government since the Islamic Revolution in 1979 have received little attention by political theorists. This paper is an exploration of the political thought of a scholar and politician, Ayatollah Ruhollah Khomeini, whose discussions of the nature of religious government set off a debate on political legitimacy which continues today in Iran. Specifically, it argues that many scholars have too quickly characterized Khomeini's thought as a theory of guardianship supporting a religious absolutism, and the complexity of his thought is often left unaddressed and unengaged.¹ To be sure, one aspect of political legitimacy, in Khomeini's view, is the religious doctrine that prescribes the political leadership of a qualified guardian. However, a study not only of the lectures he delivered in Najaf in 1970 (later published in book form under the title *Hukumat-i Islami* (*Islamic Government*), hereafter referred to as *Islamic Government*)² but of the writings he produced after the Islamic Revolution, reveals elements of his political thought that move us to understand his political theory as a theory of *limited guardianship*.

What evidence supports this interpretation of Khomeini's works? When discussing his political thought, scholars often focus on *Islamic Government*, though this text is only one of his many writings on politics. Moreover, as Hamid Algar argues in the introduction to his translation of *Islamic Government*, 'the book does not purport to offer either a complete scheme of Islamic political philosophy or a detailed plan for the establishment and function of an Islamic state.'³ His purpose is more general; it is to urge seminary students to recognize the political nature of Islam and the political role of jurists⁴ of Islamic law and to struggle for an Islamic revolution. Khomeini expresses his political thought in more detail in writings other than *Islamic Government*, including, importantly, in his public speeches, statements, and written correspondences, which are compiled in a 21-volume series, only recently (and roughly) translated into English. The material found in these volumes often receives less attention by scholars who discuss Khomeini's political thought. Khomeini also presented his views on government in a work he wrote in 1943, *Kashf-i Asrar* (*The Unveiling of Secrets*), where he supports parliamentary government, where parliament is composed of elected representatives but supervised by jurists.⁵

To facilitate a better understanding of Khomeini's political thought, this paper focuses on two sets of writings: first, *Islamic Government*, and second, those speeches and statements composed by Khomeini during the time of the drafting of the Islamic Republic's first constitution from August to November of 1979. During the constitutional drafting, Khomeini shows himself to be emphatically insistent on the need for government to have been consented to when it is initially formed, for this consent to persist, for there to be some form of ongoing public assessment of the guardian's credentials to maintain office, and for government to include a parliament. More specifically, he emphasizes the importance of popular consent and popular representation in two separate contexts; first, when he reflects on the role of the public in drafting the constitution – arguing that people must have consented to an Islamic constitution, and must participate in the drafting process – and second, when he reflects on the structure and function of Islamic government more generally, and he emphasizes that people must, in an Islamic political system, judge the guardian to be worthy of the power he holds and elect representatives to a parliament that must play a crucial role in government. In *Islamic Government*, as in his public speeches and statements, Khomeini contends that the guardian is a fallible human being, the process of appointing the guardian is merely conventional and never foolproof, and popular consent to a government is, at the very least, a desirable, if not necessary, prerequisite to the legitimacy of that government. He stops short, however, of explaining how the fallible jurisprudent is to be constrained and who is to constrain him when he errs or when it becomes clear that he is not suited for his position. Contrary to some scholars,⁶ this paper argues that *Islamic Government* is consonant with Khomeini's 1979 speeches, and therefore it cannot be concluded that Khomeini was either insincere in 1979 or had changed his views. Also contrary to these scholars, this paper argues that because in *Islamic Government* Khomeini does not reject popular representation in parliament but simply does not issue an opinion on the matter, these lectures cannot be considered, on this key point, incompatible with his later views. In *Islamic Government*, Khomeini calls for the formation of a 'planning body' which he does not explicitly say is popularly-elected (though it may be) but which may function similarly to a parliament, legislating within a realm circumscribed by but yet distinct from God's law.

Khomeini's writings during the negotiation of the Islamic Republic's first constitution

Khomeini's reflections on popular participation in the drafting of the constitution

That Khomeini does not simply recommend that society be governed by a guardian can be understood by examining his public speeches and statements delivered during the drafting of the Islamic Republic's first constitution by a directly-elected representative body, the Assembly of Experts, from 18 August to 15 November 1979. In these speeches and statements, Khomeini makes clear that a necessary and crucial ingredient for the legitimacy of Islamic government and guardianship is, firstly, a popular mandate that the constitutional drafters design a government that is Islamic; secondly, a popular mandate in favour of the particular form of Islamic government that they create; and finally, popular representation in the body which drafts a constitution and in a parliament which convenes thereafter.

In several of his public addresses, Khomeini points to the referendum held on 30 and 31 March 1979, in which voters were asked whether they would want to replace the monarchy with an 'Islamic Republic',⁷ and says that it stands as a source of legitimacy for the Assembly of Experts' enterprise – to draft a constitution that specifies the features of an Islamic republic. The results of the referendum indicated that approximately ninety-eight percent of Iranians who participated in the referendum favoured an Islamic Republic, after Khomeini and his supporters had succeeded in encouraging a massive turnout for the referendum.⁸

Khomeini points to this ninety-eight percent support for an Islamic republic repeatedly during the period that the proceedings for drafting the constitution were occurring. He viewed resistance by those who opposed the creation of an Islamic republic both inside and outside of the Assembly of Experts as the attempt of a small minority to override the will of the majority. 'Anyone who is aware of the situation of Iran – all of [these people] know, what this nation wants,' he told the representatives of the Assembly of Experts on 18 August 1979 (27 Murdad 1358), the day before the proceedings convened. 'What this nation wants is an Islamic republic.'⁹

Moreover, Khomeini emphasizes to his audience, in this speech, that they must act as 'representatives' of voters, and that as such they

have a duty to design, in the constitution, the political system approved by national referendum – an ‘Islamic republic.’ To respect the wishes expressed by the people in the referendum, members of the Assembly of Experts must draw up a constitution that stays ‘within a framework of Islamic law.’¹⁰ If a representative wants to include an article which violates Islamic law, he surpasses his prerogative as a representative. Instead of simply reiterating that the divine law must be implemented because it is divine, he emphasizes that Islamic law must be implemented because the nation, ‘by a majority which nears consensus,’ wills it.¹¹

The Assembly of Experts is capable of determining whether suggested provisions of the constitution conform to Islamic law because there are scholars in the Assembly, Khomeini argues, who have the capacity to advise it on this matter. In fact, fifty-five out of the seventy-three elected Assembly members were religious clerics. To determine the compatibility of constitutional law with Islamic law, he says, is the job of an expert – a scholar of Islam – and these scholars have the duty to protest if a proposed constitutional provision conflicts with Islamic law. But they must protest not simply by virtue of their capacity as scholars – not simply in fidelity to the idea that a constitution which is Islamic cannot conflict with Islamic law – but by virtue of their capacity as representatives who must fulfil a mandate given by the public to create a constitution for an Islamic republic.

While religious scholars must utilize their expertise in the constitutional proceedings, Khomeini encourages experts in other fields to utilize their expertise as well. Experts in law, administration, politics – all representatives must act firstly as representatives but secondarily as experts in their respective fields, channelling their expertise to act in a way that their constituents, as non-experts, may not be able to understand in its details but which broadly meets their constituents’ objectives. The representatives in the Assembly of Experts, as they are portrayed here by Khomeini, act as trustees of their constituents, to the extent that constituents are not experts in the law and other fields pertinent to drafting a constitution.

This form of representation is premised upon the idea that the participation of experts in Islamic law and other fields is crucial to the task of determining how and why the constitution being drafted conforms to Islamic law, and how and why Islamic government should take a particular form. However, non-experts were never entirely excluded

from writing the constitution; just as the final draft of the constitution would place the guardian (or council of jurisprudents – there need not have been only one guardian) under the supervision of a popularly-elected body called the Assembly of Experts,¹² it was also significant that during the drafting of the constitution, Khomeini encouraged members of the public to submit their opinions on the constitution. He says to a group of university students in Isfahan, for example, on 13 September (22 Shahrivar), that circumstances necessitate focusing on appropriate political issues, and that then was the time to focus on the constitution; not, for example, on Iran's educational system. Individuals should submit their recommendations on the constitution to a body in charge of compiling these opinions.¹³ On other occasions, as well, Khomeini encouraged members of the public to articulate their opinions, including in newspapers, on the constitution. Since the proceedings were being published in the daily newspaper *Inqilab-i Islami*, the public was aware of the debates occurring in the Assembly of Experts.

Khomeini insisted during the constitutional drafting that members of the Assembly of Experts act as representatives of the people as they determine, in particular, the constitutional powers of the guardian. This became clear when a handful of members of the Assembly opposed the kind of guardianship described in Articles 107-112,¹⁴ and efforts were made to prevent the Assembly from adopting these articles, which detailed the powers of the guardian. As the Assembly was debating these articles, Prime Minister Bazargan's personal aide Abbas Amir-Entezam and a group of his associates 'agreed to seek the support of the prime minister and the cabinet for an appeal to Khomeini to halt the work of the assembly altogether. They argued that the assembly had exceeded its mandate by revising the constitution beyond recognition and by extending its deliberations beyond the originally agreed one-month time limit.'¹⁵ Prime Minister Bazargan agreed reluctantly, as well as a sufficient number of cabinet members, but Khomeini rejected the proposal.¹⁶

In several of his public addresses, Khomeini discusses these attempts to curtail the deliberations of the Assembly to prevent the adoption of these articles, characterizing them as attempts to undermine a popularly-elected body, composed of representatives of the people who are delivering on a promise made to their constituents. He criticizes some members of the Assembly of Experts for not considering whether their propositions – and particularly, their opposition to guardianship –

conform to the propensities of their constituents. He says that a handful of people have gathered together to push for dissolving the Assembly of Experts to prevent the adoption of articles related to guardianship, and he insists that the people want a government which features this guardianship, since they elected representatives who chose to include this political institution in the constitution. If the nation had not been desirous of guardianship and Islamic government, Khomeini says in his 23 October address, the Assembly should not create such a government. Khomeini addresses Iranians who oppose Islamic government in this address, saying:

You can spread propaganda that one day the people will retreat from Islam, that all of the nation will retreat, and at that time, [advocates of Islamic government] will lose power. But as long as the people call out that we want Islam, [and] every day they are expressing that 'we want Islam and an Islamic government'—as long as this factor is present, we cannot change it. And it is unthinkable for a minority to impose itself on a majority; this is in contradiction with the democracy that you believe in, and in contradiction with freedom. It is inhumane for a small number – a minority – to impose itself upon a larger number. This was [the situation] during the time of [the Pahlavi king] Reza Khan [...].¹⁷

Finally, once the Assembly of Experts had finished drafting the constitution, it was to be approved by the public in a referendum. In a public address on 9 November (18 Aban), Khomeini encourages everyone to vote, and says that voters may accept or reject the constitution. 'If you reject it,' he says, 'a better version will be written.'¹⁸

Guardianship in the Islamic Republic's first constitution

Though the content of the Islamic Republic's first constitution does not necessarily reflect Khomeini's views on the ideal form of Islamic government, Khomeini appeared to accept this constitution in his speeches, including the form of guardianship provided for by the constitution, detailed in Articles 5 and 107-112. Article 5 stated that now, in this time of disconnection from the infallible guidance of the Prophet or the twelve infallible religious and political leaders (*imams*)

who, according to Shi'a religious doctrine, succeeded him, 'governance and leadership of the nation devolve upon the just and pious *faqih* [jurisprudent]' – or, it says, leadership by multiple jurisprudents who are part of a leadership council – and the leader or leadership council must be 'recognized and accepted as leader by the majority of the people.'¹⁹ Article 107 added that if a particular jurisprudent is not recognized and accepted by the majority of the people, then 'experts elected by the people' will decide who will be leader, or who will be on the leadership council. Thus, the guardian must be either directly chosen by a majority of the popular vote or must be chosen by representatives - who, significantly, are 'experts,' but experts elected by the people.

According to later articles, the political power of the guardian would be significant, yet it would also be limited. Though appointed for life, the guardian(s) could be dismissed, according to Article 111, by the popularly-elected Assembly of Experts (described in Article 108), when he/they 'become[s] incapable of fulfilling the legal duties of leadership, or lose[s] one of the qualifications mentioned in Article 109.'²⁰ According to Article 112, 'the leader or the members of the leadership council are equal before the law with all other citizens.'²¹

Still, the guardian had significant influence over legislative, executive, and judicial branches of government. Article 110 detailed the specific duties of the guardian, which included appointment of all six of the jurisprudents who sit on the Council of Guardians. These six jurisprudents, according to previous articles, would determine the compatibility of law passed by parliament with Islamic law and would, along with the other six legal experts on the Council (who were appointed by parliament), determine the compatibility of law passed by parliament with the constitution. The Council as a whole (the six jurists appointed by the guardian plus the six legal experts) would determine the suitability of candidates for president with respect to qualifications listed in the constitution.²² Also according to Article 110, the guardian (or leadership council) would appoint other high-ranking officials in government such as in the judicial branch and in the armed forces.

Khomeini's reflections on popular participation in an Islamic Government

According to the Constitution's Article 111, the guardian was dismissible by the Assembly of Experts, but Khomeini believed that the guardian's

character may be judged directly by the citizens. In a public address on 7 November (16 Aban), he says that the guardian's ethics, his belief in religion, his devotion to the nation, his knowledge and his action must be acceptable to the nation.²³ Khomeini does not prescribe a specific manner in which the nation can give or withdraw their consent to the guardian, but it is clear that he is theoretically committed to this principle.

Citizens also played an important role in government by electing representatives to a parliament, a body that would undertake tasks that it is clear Khomeini believes it is uniquely qualified to undertake – this is a realm of power not belonging to the guardian. Khomeini emphasized the crucial role that would be played by a parliament in government, and he says to the Assembly of Experts and the Islamic Republican Party (*Hizb-i Jumhuri-yi Islami*) in a speech on 14 September (23 Shahrivar), that this parliament will take the lead in addressing challenges which face the nation in the particular context of the immediate aftermath of the revolution. Iranians must be patient and wait for this parliament to be convened, he says, since representatives in parliament will be responsible for resolving, in a systematic way, issues facing the nation. When a parliament is formed, problems can be shifted onto the shoulders of the nation, he says. These representatives must be, 'God willing, Islamic, [concerned with] national [needs], and thinking individuals – all these dimensions should be combined into one in these individuals, and God-willing, with [the effort of] these [members of parliament], problems will be solved.'²⁴ Though Khomeini believes that the parliament, a body of representatives chosen by the people, will be crucial to a functioning government, he also does not hesitate to himself recommend – albeit in general terms – characteristics of those individuals who the people should choose to represent them, including their fidelity to the popular mandate which, at the nation's founding, had dictated that the country would be governed in an Islamic manner.

Khomeini's Islamic Government

The Issue of Consent

Many of the political ideas Khomeini expressed in his public speeches during the constitutional proceedings of 1979 can also be found in *Islamic Government*. In this text, he argues that the guardian is a fallible

individual, that the process by which a community appoints a guardian is devised by fallible human reason, and that attaining popular consent is morally preferable to coercion. He is not clear on whether there is to be a parliament of popularly-elected representatives in government, and thus we can only remain doubtful about his views in 1970 on representative government. However, he does say that Islamic law must be the central criterion for legislation, and that Islamic law itself is malleable enough to, at times, itself serve as the material, rather than the inalterable standards for, legislation in government. In short, his seminary lectures either explicitly support or allow room for ideas he came to express during the constitutional debates.

In his seminary lectures, Khomeini argues that in secular republics or constitutional monarchies, 'most of those claiming to be representatives of the majority of the people will approve anything they wish as law and impose it on the entire population.'²⁵ In other words, these representatives do not act as representatives should because they create law that is inattentive to the wishes of their constituencies. But if Islamic law has been accepted by the people, then a government which enacts and is limited by Islamic law is more closely reflective of the desires of the people than republics or constitutional monarchies. 'The body of Islamic laws that exists in the Quran and the *Sunnah* [prophetic tradition],' he says, 'has been accepted by the Muslims and recognized by them as worthy of obedience;' this consent and acceptance, he says, 'facilitates the task of government and makes it truly belong to the people.'²⁶ This argument implies that it is desirable that governors act according to, and not contrary to, the wishes of their constituents, and that governors in an Islamic government that implements Islamic law can best represent the wishes of their constituents – but only if its constituents have understood the worthiness of Islamic law and consented to be governed by it first.

However, if a people did not consent to an Islamic government, in Khomeini's view, would establishing it anyway be unjust? Khomeini stops short, here, of saying that public consent is an indispensable condition for a just government, that if a government was Islamic but if the public did not consent to it that it could not, nonetheless, be imposed upon them. Conversely, he stops short of saying that a government that is not Islamic but that people have consented to is fully legitimate. Certainly, as already discussed, in his speeches during the constitutional debates, he is

clear that all governments – Islamic or not – cannot impose themselves on the public.

Islamic law and its limitations on the popular will

To what extent does fidelity to Islamic law limit possibilities for representatives to act independently and diversely in Khomeini's theory? Though Khomeini calls for the implementation of a system of Islamic law, he takes no steps to define that system and thereby leaves intact the flexibility which characterizes Islamic jurisprudence. In fact, his argument in *Islamic Government* recognizes a degree of legal plurality by criticizing legal scholars for not paying sufficient attention to social issues in their legal treatises – each treatise standing independently as a potential source of legal guidance for a practicing Muslim.

In *Islamic Government*, however, Khomeini does make arguments in defence of certain ordinances of Islamic law, revealing at least one aspect of a legal philosophy that he does not articulate fully in this text – that an Islamic law cannot be abandoned simply because we feel it is too harsh. It is inconsistent to claim, he says, that a sentence of one hundred lashes for one who has sex out of wedlock (in the presence of four witnesses) is too harsh and yet accept a law which prescribes that the possession of heroin should be punishable by death.²⁷ At the same time, he recognizes that 'Islamic law is a progressive, evolving, and comprehensive system of law.'²⁸ Thus, even when Khomeini is most concrete and particular in his description of what Islamic government must entail, he recognizes its malleability and leaves open significant room for the shaping of law by particular societies in particular circumstances. Because of the interpretive variability of Islamic law, and because of the factoring in of time and place into the interpretive methodology of Islamic law, 'the rule of divine law over men' and 'God's legislation' may take many different forms. In fact, Khomeini responded to increasing public opposition to corporal punishments implemented in the immediate years after the revolution by introducing 'innovations [in criminal law that] were unprecedented among Shiite jurists'²⁹ that were designed to increase the scope of state-determined punishments (*ta'zirat*, or punishments said not to be specified in the shari'ah) and establish the permissibility of non-corporal state-determined punishments. He also '[encouraged] young Muslim scholars to pursue these innovations.'³⁰

The form of Islamic government

While Khomeini is clear, in *Islamic Government*, that a government should implement Islamic law, he is not clear about what institutions comprise this government. Institutions of government established in the constitution drafted by the Assembly of Experts just after the Revolution are not mentioned in Khomeini's *Islamic Government*. In a rare moment of discussing his ideal government in concrete terms, Khomeini discusses the legislative branch in a way that may make us question the extent of his interest in the popular will. He argues that parliament cannot make law but can only administer it; it would be not a law-making body but a 'planning' body, since 'the Sacred Legislator of Islam is the sole legislative power.'³¹ He says that the 'fundamental difference' between an Islamic government and a constitutional monarchy or a republic lies in whether the monarch, or representatives in parliament, creates law, or whether the legislative power and the prerogative to make law are reserved to God.³² There is no law besides God's law, he argues, and therefore, the legislative parliament becomes a planning body, and this institution 'draws up programs for the different ministries in light of the ordinances of Islam and thereby determines how public services are to be provided across the country.'³³ Thus, Khomeini is clear in *Islamic Government* that because a divine law already exists there cannot legitimately exist a body in government which legislates in the same sense that God has legislated.

Some authors have argued that because Khomeini recommends in 1970 that the legislative branch should not legislate but merely 'plan,' he must have either changed his mind in 1979, when he expressed support of an elected parliament, or else his 1979 politics were not reflective of his honest political convictions (see footnote 5). Indeed, that he is careful to point out, in *Islamic Government*, that his ideal government does not include an assembly that legislates, but instead an assembly that plans, might make us sceptical of whether he thought that there was room for democratic debate in a government in which jurisprudents see to it that Islamic law is implemented. It seems a mechanical rather than creative process, to plan in 'light of' ordinances, rather than to create law. Khomeini's use of the term 'planning body' also could mean that Khomeini did not see the need for representative government, since planning the implementation of the divine law seems an administrative matter, where what is at stake may not be contentious enough, in moral or practical terms, to warrant the election by citizens of representatives.

However, one cannot assume that Khomeini believed that popular representation in a parliament is necessarily in tension with the divine law, or, more specifically, in tension with guardianship by a jurisprudent or group of jurisprudents who have the right to interpret this law. It is here that the political theorist must take care to examine the way in which Khomeini understands the concept of legislation and determine whether his understanding of the concept overlaps entirely with our own. It is clear that his purpose, in *Islamic Government*, in differentiating between a parliament which creates law and a body which merely plans programs in light of Islamic law, is to argue that legislation passed by parliament must not be viewed as independent of and thus potentially contradictory to Islamic strictures. To prohibit humans from legislation, in other words, is not such a severe sentence – it is merely to emphasize that humans must not be indifferent to Islamic law as they engage in law-making; they must derive their laws from the principles, or base them on explicit ordinances, found in the authoritative traditional texts. To legislate unlawfully would be to make law-making a strictly human endeavour, centred not on an attempt to determine the course of action that seems most true to Islamic sources. To plan, on the other hand, would be to orient oneself towards serving the sacred religious truth.

Thus, Khomeini's application of the word 'law-making' is here used very carefully – strictly in reference to divine law. 'Law' created by parliament must be inspired by or written within the limits of divine law and therefore should be considered merely 'programs' for the implementation of a broader set of law. Khomeini's concept of planning is not as foreign to our concept of parliamentary legislation as we may at first perceive, insofar as 'planning' cannot be a mechanical implementation of a divine law that is never ambiguous, or inapplicable to certain circumstances, or silent on certain matters. There is a realm of governing, which Khomeini, for purposes of conceptual distinction between divine and human legislation, calls 'planning,' in which governors have sovereignty. In his speeches to his seminary students, where he is working to create a fundamentally Islamic revolutionary movement, Khomeini emphasizes the importance of being concerned with implementing Islamic law – or more accurately, law that is 'Islamic' – but this does not mean that Khomeini denies the human aspect of law-making.

Moreover, Khomeini does not say that the 'planning body' that should take the place of the legislative assembly should be elected, but he does not demand that this planning body not be elected, either. Interestingly, at one point in *Islamic Government*, when Khomeini is describing 'the forms of government that have emerged in recent centuries,' he says that there are three branches of power: executive, judicial, and the third branch is the 'legislative or planning body,' which, he clarifies in parentheses, is 'the assembly or parliament.'³⁴ Evidently, planning, as opposed to legislating, is not an activity that occurs exclusively in Islamic governments, and a planning body may also be referred to as an assembly or parliament. If Khomeini is content to call parliaments 'planning bodies,' perhaps Khomeini presumed that his planning body, like other planning bodies he observed, would be constituted by representatives elected by the people. The planning body cannot simply be assumed to be a merely administrative apparatus of the jurist's government.

True, members of the planning body must still act within the limitation of God's law, but Khomeini would here respond that since the public would have previously consented to Islamic government (the government would not have been set up in the first place without this consent), then members of the planning body have, in fact, a popular mandate to act only within limits prescribed by divine law. If members of the planning body acted as independent law-makers, unhindered by any consideration of God's will, they not only would be violating a religious obligation to respect God's law, but they would also be violating the trust they have established with a public which has asked to be governed by Islamic law. These are two conceptually distinct but equally important concepts.

Additional evidence that Khomeini may have envisioned popular participation in government can be found in his discussion of the political thought of the important 20th century constitutionalist scholar Mirza Muhammad Husayn Na'ini (d. 1936),³⁵ whom he mentions twice in *Islamic Government*. In both instances, he invokes Na'ini's writings on constitutionalism as support for his own theory, calling Na'ini's constitutionalist theory of parliamentary democracy – where a popularly-elected parliament was overseen by a council of jurisprudents – a theory of guardianship, and claiming that Na'ini regarded 'all the extrinsic functions and tasks of the imams as devolving upon the *faqih* [jurisprudent].'³⁶ In Na'ini's view, a view that Khomeini compares to his

own, even when the jurisprudent succeeds the imam politically, there is still room for – there must be room for – parliamentary democracy.

The limitations of Khomeini's guardian

How may the guardian, according to *Islamic Government*, exercise control over government? Khomeini's justification for guardianship extends back to the political role of the Prophet Mohammad. One of the Prophet's duties was to be an executor of the law, and the Prophet, according to the Shi'a perspective, had to appoint a successor for that purpose. Shi'a doctrine entails the continuity of religious and political leadership and guidance after the Prophet's death and extending through the leadership of the twelve imams; a key component of Shi'a belief is that the Prophet appointed, in no ambiguous terms, a successor to his religious and political leadership ('Ali ibn Abu Talib), but the community failed to accept him. Khomeini argues that this religious and political leadership must extend even further, though after the Occultation³⁷ of the twelfth infallible imam the leader will necessarily be one who, or a group of individuals who, while superior to any other candidate for this position, cannot be comparable in their spiritual qualities to any of the infallible imams or the Prophet.

In *Islamic Government*, Khomeini is concerned with convincing his audience that even during the absence of any appointed, infallible successor to the Prophet, Islamic law continues to be a subject of relevance, since it is not simply a private concern, but a social and political concern. 'In just the same way that there are laws setting forth the duties of worship for man,' he says, 'so too there are laws, practices, and norms for the affairs of society and government.'³⁸ That peace must be maintained in society and its wealth fairly distributed, that people must be free from imperial domination, that there is specific law that instructs us not only on individual matters such as how to perform the daily prayers, but social matters such as how to tax, how to punish, and how to conduct foreign relations and war – these are all Islamic principles that Khomeini says would be disregarded or misunderstood if one were to claim that Islam is not concerned with government.

Khomeini's guardian must, in the place of the imams, continue to promulgate the religion – a religion whose potential remains unrealized if its law is not implemented. In addition, there are times in the text when Khomeini says that the guardian must have a concern for, in the

capacity of a guide but not an enforcer, the private beliefs of citizens. At one point, he says that the guardian will be one who 'guides men to the teachings, doctrines, laws, and institutions of Islam.'³⁹ In other words, the guardian is not one who simply sets down laws, but he helps men to understand them, along with Islam's 'teachings' and 'doctrines.' A guardian is, on the one hand, an enforcer of the law; he '*prevents* cruelty, oppression, and violation of the rights of others,' he is 'a trustworthy and vigilant guardian of God's creatures,' and he '*prevents* the undesirable changes that atheists and the enemies of religion wish to introduce to the laws and institutions of Islam.'⁴⁰ But he is also entitled to speak with a microphone, to guide those who wish to develop their understanding of Islam, and thereby to help them to attain happiness. Here, again, we see an additional dimension of government's involvement in promoting a vision of the good, but in a way that does not involve legal sanction. The emphasis, however, in *Islamic Government*, is not on the leader as a source of intellectual and moral guidance but as an implementer of the law.

Still, despite his formidable power, the guardian must always be remembered for who he is – a fallible human being, not like the imam whom he succeeds, who can never provide perfect guidance or be an unerring implementer of Islamic law. In Khomeini's words,

when we say that after the Occultation, the just *faqih* [jurisprudent] has the same authority that the Most Noble Messenger and the Imams [...] [peace be upon them] had, do not imagine that the status of the *faqih* is identical to that of the Imams and the Prophet...[peace be upon them]. For here we are not speaking of status, but rather of function. By 'authority' we mean government, the administration of the country, and the implementation of the sacred laws of the *shari'a*. These constitute a serious, difficult duty but do not earn anyone extraordinary status or raise him above the level of common humanity.⁴¹

Moreover, government cannot be a spiritual station, Khomeini argues, because if it were, 'nobody would be able to either usurp it or abandon it.'⁴² Because the jurisprudent is fallible, once he takes office, he is not immune from criticism. The political leader may wrong those he governs – and the potential for him to do this exists because, firstly, he

was judged worthy of his office by fallible individuals who established a convention for his appointment using their 'reason,'⁴³ and, secondly, he is himself a fallible individual. Thus, while on the one hand, we may be able to name someone who we think best for exercising political rule – who has the requisite intellectual and moral qualities, the most important of which, Khomeini says, are knowledge of the law and justice – after this individual takes office, his post may be 'usurped' or 'abandoned'; he may not live up to his important position. In successfully attaining a position in government, one does nothing to prove a real and actual spiritual capacity. Judgment by others, then, of the jurispudent's virtues remains simply that – a judgment – which may prove to be wrong once the jurispudent assumes office and usurps or even abandons his position. His recognition of the fact that the guardian's political position may be usurped or abandoned, however, does not lead him to propose how these events may be prevented, or who is to determine whether the position has been usurped.

Khomeini makes an analogy between political guardianship and the guardianship of a minor to demonstrate the conventionality of political guardianship, saying that the guardianship of the jurispudent 'exists only as a type of appointment, like the appointment of a guardian for a minor.'⁴⁴ Just as the guardian of a minor can be anyone who his appointers judge to possess the requisite qualifications which would enable him to fulfil his duties towards that minor, so can the guardian be anyone who has the requisite qualifications for political guardianship – though this judgment can later prove to be mistaken, in either case, when the guardian does not live up to his duties. However, this analogy cannot be used to illuminate all aspects of political guardianship. While a minor would, as Hamid Enayat argues, be unable to define his interest in a way other than which is 'defined by, or enjoy[s] the approval of,'⁴⁵ his guardian, a nation would certainly not be so constrained by its guardian. Certainly, a minor would not be expected to understand the benefits of and thus give prior consent to the law which governs him, nor be able to judge whether a candidate for guardianship has the requisite qualities for guardianship, nor, finally, would a minor be governed by a law which is often hollow in its specifics and frequently subject to change. Khomeini's comparison of Islamic government to the guardianship of a minor cannot be meant to assert identity, but, instead, partial similarity, between the two relationships of power.

Conclusion

In his speeches and statements during the drafting of the constitution, Khomeini makes clear that several elements are essential to establishing and maintaining the legitimacy of an Islamic government. On the one hand, Khomeini expresses that a guardian with expertise in jurisprudence should oversee government to ensure that it acts within the bounds of Islamic law. On the other hand, Khomeini says that government exists not merely for the sake of promoting a conception of the good but for representing the will of the people by securing their initial consent and allowing them to scrutinize members of government, not only representatives in parliament, but the guardian himself. Khomeini indicates that he believes that the masses have the capacity, even as non-experts, to consent to a particular system of government, to contribute their opinions as a new constitution is being drafted, and to assess the quality of the political service performed by members of that government, including the guardian. These ideas were materialized in a particular way in the Islamic Republic's first constitution, which says that the guardian (or council of guardians) must be elected by the people directly or indirectly through the popularly-elected Assembly of Experts and that the guardian can be dismissed by the Assembly of Experts.

Khomeini's *Islamic Government* is in agreement with his 1979 speeches on a number of points which are crucial to the view that Khomeini favours a political system that features a limited guardianship. In *Islamic Government*, he says that when Islamic law has been accepted and recognized as 'worthy of obedience' by the people, it is just to establish an Islamic government, and furthermore, it is objectionable when so-called representatives in secular regimes fail in their duty to truly represent the wishes of the people; however, Khomeini stops short of saying that consent is an indispensable precondition of legitimate government, since he limits his discussion to a situation in which citizens desire to be governed by Islamic law and does not consider whether consent is necessary when they do not. In addition, he stops short of explicitly calling for the popular election of representatives to a parliament in *Islamic Government*. However, he reveals a perspective on Shi'a juristic methodology which entails that government must be engaged in more than simply the implementation of a pre-existing set of law but a legislative moulding of Islamic law. Furthermore, though the

guardian must see to it that Islamic law is implemented – or at least state law does not transgress the bounds of Islamic law –and he must provide doctrinal, intellectual and spiritual guidance to the people, the guardian is recognized to be fallible, capable of ‘usurping’ or ‘abandoning’ his position, and his appointment is the outcome of a human convention and not divine decree. Still, Khomeini does not recommend an institutional method of determining when the guardian is to be dismissed nor states whether the people can participate in this determination. According to this interpretation of *Islamic Government*, Khomeini’s thought in this text is continuous with – and at times, less strongly, not contradictory with – the political ideas he expressed during the drafting of the Islamic Republic’s first constitution.

What are potential payoffs of the arguments of this article? First, it demonstrates that a complete understanding of Khomeini’s political thought involves a study of more than just *Islamic Government*; in particular, political theorists would do well to study the many volumes of Khomeini’s writings, speeches, and statements from after the revolution, examining how he responds to the relentless stream of political questions that arose in first near-decade of the existence of the Islamic Republic. Second, while Khomeini’s political theory cannot be called liberal, there are spaces in Khomeini’s thought where liberal democrats might be able to find opportunity for dialogue. Finally, studying Khomeini’s political thought may lead us to discover that the father of the Islamic Revolution himself offers the theoretical resources, at least in those writings that are explored in this article, to develop an Islamic political theory that entails a notion of popular consent, popular representation, legal flexibility, and political accountability.

Notes

¹ See, for example, Said Amir Arjomand, who says in his book, *The Turban for the Crown*, that there is ‘no room for sovereignty of the people’ in Khomeini’s Najaf lectures. *The Turban for the Crown* (New York: Basic Books Inc., 1984), 149. See also Norman Calder, ‘Accommodation and Revolution in Imami Shi’i Jurisprudence’ (1982) who says that Khomeini rejected the centuries-old Shi’a notion that the authority of the jurists was ‘qualified by acknowledgement of the difficulty of revealed sources and recognition of conflicting views’ (in *Middle Eastern Studies* XVIII, no. 1, 16); Hamid Dabashi, who says

in his *Theology of Discontent* that Khomeini's guardian was ultimately 'the idea of philosopher king in the Platonic understanding of the term [...] Khomeini maintained that people do not know what is good for them' (New York: New York University Press, 1983, 41); and Gregory Rose, who says that 'the jurisprudent is positioned to guarantee institutional conformity to the agenda for restructuring consciousness' ('*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: Yale University Press, 1983, 187). Other scholars, such as Ervand Abrahamian, Hamid Enayat, and Vanessa Martin, have been more careful to acknowledge the disparate elements of Khomeini's thought.

² For an account of the transcription and publication of his Najaf lectures, see Hamid Ruhani, *Nihzat-i Imam Khomeini II* (Tehran: Institute for the Compilation and Publication of Imam's Works, 1384), 712 & 730.

³ Ruhollah Khomeini, 'Islamic Government', in *Islam and Revolution*, ed. & trans. Hamid Algar (Berkeley: Mizan Press, 1981), 25.

⁴ An account of who is a jurisprudent, at least to Khomeini, is here in order. In his Najaf lectures, Khomeini says that a jurisprudent is 'by definition, learned in matters pertaining to the function of judge, since the term *faqih* [jurisprudent] is applied to one who is learned not only in the laws and judicial procedure of Islam, but also in the doctrines, institutions, and ethics of the faith—the *faqih* is, in short, a religious expert in the full sense of the word' (Khomeini, 84).

⁵ See my dissertation chapter, 'Political Legitimacy in Khomeini's *Kashfi Asrar* (*The Unveiling of Secrets*)' (presented at the Western Political Science Association Annual Meeting, Portland, Oregon, 22-24 March 2012).

⁶ See Said Amir Arjomand, *The Turban for the Crown: The Islamic Revolution in Iran* (New York: Oxford University Press, 1988), 149; and Vanessa Martin, *Creating an Islamic State* (London and New York: I.B. Tauris, 2000), 122-3, 162. Arjomand argues that because Khomeini makes no mention of republican government in his Najaf lectures, Khomeini's plan all along was for autocratic government, and his opinions in the months immediately following the revolution were simply transitional (Arjomand 1988, 149). Martin, by contrast, argues that Khomeini's conception of the state in his Najaf lectures is composed of a 'juxtaposed and interactive' merging of, on the one hand, rule by Islamic law, and on the other, rule by a guardian (Martin 2000, 162). Unlike Arjomand, she does not claim that Khomeini was being deceptive after the revolution and in his Najaf lectures Khomeini aired openly his more sincere, anti-democratic views, but she does claim that Khomeini changed his mind after the revolution. She argues that there was no specific prescription for an elected assembly in the Najaf lectures perhaps because Khomeini believed, when he delivered the lectures, that the existence of such an assembly would

impinge on the sovereignty of God or the prerogative of the clergy to govern (Martin 2000, 122-3).

⁷ Shaul Bakhash, *The Reign of the Ayatollahs: Iran and the Islamic Revolution* (New York: Basic Books Inc., 1984), 73.

⁸ Ibid.

⁹ Ruhullah Khumayni, *Sahifah-yi Imam IX*, doc. 6 (*Bunyad-i Andishih-i Islami*: Ruhullah al-Musavi al-Khumayni). Accessed 11 November 2010, my translation. All translations of excerpts from *Sahifah-yi Imam* are my own.

¹⁰ Ibid.

¹¹ Ibid.

¹² The Assembly of Experts itself would draft the regulations concerning its members' own election. According to Article 108 of the constitution, 'The law setting out the number and qualifications of the experts [mentioned in the preceding article], the manner of their election, and the internal protocol regulating the sessions of their first term must be drawn up by the *fuqaha* [jurisprudents] on the first Council of Guardians, and be approved by a majority among them and then by the Leader of the Revolution. Any subsequent change or review of the law [in question] may be undertaken by the Assembly of Experts.'

¹³ Khomeini, *Sahifah-yi Imam IX*, doc. 10.

¹⁴ Bakhash, *The Reign of the Ayatollahs*, 84.

¹⁵ Ibid., 86.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Khomeini, *Sahifah-yi Imam XI*, doc. 1.

¹⁹ Hamid Algar, *Constitution of the Islamic Republic of Iran* (Berkeley: Mizan Press, 1980), 29.

²⁰ Algar, *Constitution of the Islamic Republic of Iran*, 69. According to Article 109, 'the leader or members of the Leadership Council' must exhibit two 'qualifications and attributes': first, 'suitability with respect to learning and piety, as required for the functions of *mufti* [jurist] and *marja'* [supreme jurist who, unlike the mufti, must have written a legal treatise]' and second, 'political and social perspicacity, courage, strength, and the necessary administrative abilities for leadership' (67).

²¹ Ibid.

²² Except in the case of the candidate's first term, in which case the leader of the leadership council approves this candidacy.

²³ Khomeini, *Sahifah-yi Imam X*, doc. 11.

²⁴ Ibid. IX, doc. 10.

²⁵ Khomeini, 'Islamic Government', 56.

²⁶ Ibid.

²⁷ See Algar, 'Islamic Government', footnote 14: 'A law promulgated in July 1969 provided the death penalty for anyone in possession of more than two kilograms of opium or ten grams of heroin, morphine, or cocaine. The first ten executions were carried out in December 1969, and by 1974, 236 people had been executed on charges under this law [...] It is probable that the law was also used to provide a cover for the execution of political prisoners who had no involvement with narcotics' (151).

²⁸ Khomeini, 'Islamic Government', 30.

²⁹ Mohsen Rahami, 'Development of Criminal Punishment in the Iranian Post Revolutionary Code', in *European Journal of Crime, Criminal Law, and Criminal Justice* XIII, no. 4 (2005), 598.

³⁰ Ibid.

³¹ Khomeini, 'Islamic Government', 55.

³² Ibid.

³³ Ibid., 56.

³⁴ Ibid., 64.

³⁵ Khomeini taught Na'ini's and Khurasani's works on jurisprudence in Qum.

³⁶ Khomeini, 'Islamic Government', 82, 125. The two mentions of Na'ini occur on each of these pages.

³⁷ During this Occultation, which began in 941 CE and will last, according to Shi'a belief, until the end of time, the Twelfth Imam is in a state of concealment and does not establish regular communication with the Muslim community, though hagiographic literature on the Twelfth Imam includes accounts of occasional encounters with him (Mohammad Ali Amir-Moezzi, 'Islam in Iran vii., The Concept of Mahdi in Twelver Shi'ism', in *Encyclopædia Iranica* XIV, no. 2 (1982), 136-143 <<http://www.iranicaonline.org/articles/islam-in-iran-vii-the-concept-of-mahdi-in-twelver-shiism>>. Accessed 26 March 2014.

³⁸ Khomeini, 'Islamic Government', 30.

³⁹ Ibid., 53.

⁴⁰ Ibid.

⁴¹ Ibid., 62.

⁴² Ibid., 65.

⁴³ Ibid., 62.

⁴⁴ Ibid., 63.

⁴⁵ Hamid Enayat, 'Iran: Khumayni's Concept of the "Guardianship of the Jurisconsult"', in *Islam and the Political Process*, ed. James Piscatori (New York: Cambridge University Press, 1983), 172.