

Face off Discourses in the Islamic Republic of Iran Constitution Council (Discourse of Jurist Islam versus the Liberal Islam)

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Abstract

The present study aimed to examine the position of "Jurist Islam" discourses and "Liberal Islam" in the "Final Review of the Islamic Republic of Iran Constitution" in 1979. And consider the conflict between the above-mentioned constitutional discourses to gain a better understanding of these discourses and the constitution. To this aim, should find the point of the debate on the draft was in the final constitutional review session of the IRI. And for finding the result, details the "final constitutional review" negotiations, and the memoirs and interviews of council members, as well as those involved in the constitution draft, were examined using Laclau and Mouffe's theory of discourse. "The Council for Final Review of the Islamic Republic of Iran Constitution," consisted of the Jurist Islam proponents and the Liberal Islam. Based on the views of the representatives of the two sides, the discourse of liberal Islam, which vied for such concepts as freedom, national sovereignty and the governance of law stood against the jurist Islam discourse; which held for "the rule of the jurist" over the society, the Islamic society and establishment of the divine laws and limits. Ultimately, the jurist Islam, backed by an absolute majority in the Council for Final Review of the Islamic Republic of Iran Constitution, building on the revolutionary atmosphere prevailing in the society, succeeded in compiling and ratify the Constitution according to its discourse.

Keywords: Rule of Jurist, The 1979 Constitution, The Council for Final Review of the Constitution, The Discourse of Jurist Political Islam, The Conversation of Liberal Political Islam.

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Introduction

Two discourses of the "Jurist Political Islam" and the "Political Liberal Islam" in the Council for Final Review of the year 1979 Constitution addressed in this study. Thus should review the confrontations of the two mentioned discourses on the Constitution and their impacts on the drafting of the Islamic Republic of Iran's Constitution. There were previous researches undertaken on the discussions of the Islamic Revolution in Iran. For instance, in the article titled: "The shaping of revolutionary discourse in Iran," Mehdi Rahbari (2007) has associated the forming of revolutionary discourse with the internal and external drivers. The article attributes the roots of extremist speech to factors such as the conflict between tradition and modernism, the imposed nature of modernization in Iran, the failure of constitutional revolution in achieving its goals, dissatisfaction with the prevailing conditions, and the proposal of an alternative by the revolutionary discourse. The article describes the trend of revolutionary discourse's formation.

Furthermore, in research on "The Political Jurist Discourses and the Constitution of the Islamic Republic of Iran," Mohammad Mehdi Babapour (2009) reviewed juristic-political discourses during the 1979 and 1989. In this study, essential post-revolution conversations and their features, the most significant drafts of the constitution, and their criticisms have examined. And the comments and criticisms of the religious scholars and leaders on the draft constitution will address. This study reflected the different positions of the Islamic Jurist discourses at the time of drafting the structure and the internal confrontation of jurist sub discourse during this period. Moreover, Davood Firahi (2014) in his book: "Jurisprudence ad politics in contemporary Iran" explains the constitutional revolution of Iran in the year 1904, the concept of government underwent as an essential change in Iran. The main difference was its definition by law before and after the revolution. The idea created in government brought with it issues such as what is code? What are its scope and limits, and who is the lawmaker? The book states that jurisprudence constitutes the most important practical part of religion, and any change in the concept of government leads to crises and the upheaval of the intellectual – political system. In other terms, the book has reviewed the relation between jurisprudence and the law.

The mentioned researches on the discourses of Islamist movements focus on their trend of historical formation and their impacts on the 1979 Revolution in Iran, The present study concentrates on the draft

constitution with the aim of confrontation reviewing the in the two mentioned discourses. This article impact on the law ratification in the Council for the Constitution Final Review.

1. The Theoretical Frame

The present study aimed to apply the Laclau and Mouffe theory as a frame for reviewing the text of the draft 1979 constitution. To the question objective use as a tool for analysing the conceptual system of the draft constitution and the reactions. There is a concept in a lecture called the nodal point through which the indications define. A nodal point is a free sign around which the other symptoms ordered; the other signs acquire their meaning from their relationship to the nodal point (Jorgensen and Phillips 2002: 26). In other words, by using the nodal point, the discourse attributes its intended definition to the indications. In the course of establishing its proposed definition, the dialogue confront by others. The conversation forsakes other possible means. It means that the discourse conflict is rooted in the constraints put upon the discourse reality. Discourse is a particular way of talking about and understanding the world (or an aspect of the world) (Jorgensen and Phillips 2002: 1). In this theory, life events occur randomly, or as the discourse put it, the society and humanity can potentially appear in different forms, and the comprehensive discussion of each period addresses the determined realization and appearance in one of these forms (Bashiryeh, 2007: 334). Discourses are humankind's only window of the world knowledge. Each dissertation bestows a special meaning to anything within the frame of definition system, which is specific to the same order of definition. So, it is possible for a verb, talk, symbol, etc. to have different or even opposing meanings in two different discourses (Kassrayiei, 2009: 342). Thus, given the subject nature, the Laclau and Mouffe theory is the most appropriate discourse to review the two mentioned discourses in this study.

2. The Process of Drafting the Constitution

The Revolution led to the establishment of the "Islamic Republic of Iran" on April 1st, 1979, following which, the "Council for Final Review of the Constitution" was formed on August 19th, 1979. The draft of the new constitution had prepared before the victory of the Revolution in February 1979. It took about eight months from the start of the draft preparation until the opening of the Council, during which the draft constitution underwent many changes. Ultimately the final text of the

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structure was prepared in the Council for Final review of the Constitution. The three main discourses directly involved in the preparation and compilation of the Islamic Republic of Iran Constitution included the Jurist Islam doctrine, the liberal Islam doctrine, and secular nationalism. After the downfall of the Pahlavi government and the victory of the 1979 Revolution, violent face-offs occurred among the different discourse, which had a high impact on the trend of preparing the constitution and its content. Finally, the jurist Islam doctrine succeeded in establishing its hegemony on the revolutionary society of Iran by defeating the other two, in dominating the minds and thoughts of the social actors, thereby affecting their social identity, behavior, and functions (Hosseinizadeh, 2010: 22) and in preparing and ratifying the constitution according to its intended discourse.

The revolutionary government had two central political bodies, which were established by Imam Khomeini's order. The first was the "Provisional Government," to which Mehdi Bazargan was ordained as Prime Minister on February 4th, 1979, by Imam Khomeini. In this Premiership appoint, Bazargan selection and his mandates were specified: "Following the Proposal of the Revolution Council and under the Sharia law and the legal right derived from the near-absolute majority of the Iranian nation ... and based on the trust I have on your staunch belief on the Sacred School of Islam ..., I as a result of this mandate you To form the provisional government to carry out the affairs of the country, and in particular organize the referendum and reference to the general votes of the nation on the change in the political system of the country to the Islamic Republic and the Council formation of Founders among the elected representatives of the people to approve the constitution of the new regime, and ..." (Sahifeh-ye Imam, 2000, volume 6: 54). The second entity was the "Revolution Council," which established in January 1979 on the order of Imam Khomeini. Its members, who were entirely the disciples and followers of Imam Khomeini, were Mohammad Beheshti, Mohammad Javad Bahonar, Morteza Motahari, Ali Akbar Hashemi Rafsanjani and Sayyed Abdolkarim Mousavi Ardebili. Alongside the "Revolution Council," Imam formed another body named "The Provisional Committee of Islamic Revolution," which was, in a way, the executive arm of the Revolution Council. The latter was the legislative body, while the "Provisional Committee of Islamic Revolution" acted as the enforcer. Another organization, which was established by order of Imam Khomeini

that was under the instructions of his disciples, was the "Islamic Revolution Court" with the mandate to prosecute and judge the heads of the Pahlavi regime and the anti-revolutionary groups. Furthermore, he established in Qom a Central Mosque Office whose task was to appoint imam jum'ehs to provincial capitals (Abrahamian, 2008: 163). The radical actions of the "Provisional Committee of the Islamic Revolution" and the "Islamic Revolution Court" and their timely and untimely interferences in jurisdictions under the rule of the provisional government, were the cause for the protests of Mehdi Bazargan the Prime Minister of the Provisional Government and led finally to the resignation of the Provisional Government on November 5th, 1979.

The constitution drafting had started the revolution late. Imam Khomeini reside in the village of Neauphle-le-Chateau in the suburbs of Paris. Nearly simultaneously but separately, the Imam's close companions in Paris and Shah's opponents inside Iran, by forming delegations composed of legal experts, judges, lawyers, and professors of law, started to prepare the draft constitution of the future political system. After a while, Hassan Habibi, one of the individuals involved in developing the draft constitution in Paris, traveled to Iran on behalf of Imam Khomeini to collaborate with his counterpart groups in Iran. To complete and amend the law, they worked in forming a 6-man group composed of Hassan Habibi, Abdolkarim Lahiji, Mohammad Jaffar Jaffari Langaroodi, Abolfath Banisadr, Nasser Minachi and Nasser Katoozian (Katoozian, 2014: 183).

The six-man group completed the draft constitution, and Hassan Habibi presented it to Imam Khomeini a few weeks after the victory of the 1979 Revolution. On the latter's, orders the bill was introduced to Qom Scholars for them to read and provide their proposals and requests (Katoozian, 2015: 381). Thus, Hassan Habibi sent the mentioned draft to Qom, and some Grand Ayatollahs and jurisprudence experts reviewed the plans and put forward several proposals. Finally, the suggested draft amended by the group based on some recommendations made by the Grand Ayatollahs and scholars in Qom (Katoozian, 2014: 186). Moreover, the provisional government had also some comments, which were incorporated in the draft constitution by the group, the draft submitted, Subsequently, to the interim government to revise once more by "The Supreme Council of the Revolution's Plans," which, after the launch of the provisional government, was set up on March 28th, 1979 following a cabinet decision with the mandate to "prepare the constitution plan based on Islamic regulations and the principles of

freedom," according to article 2 of its statute, resulting in significant changes in the plan (Sahabi, 2004: 222). Then the draft text was sent to the Revolution Council, which made changes in some of its principles. After the approval of the draft's version by the Revolution Council, a copy was presented to Imam Khomeini, who ordered a print to send to Ayatollahs Shariatmadari, Golpayegani, and Marashi as well (Babapour, 2009: 74). Then the mentioned draft was published in Keyhan daily on June 16th, 1979. The important note about this draft is the Jurist rule principle that was the cause of many disputes and differences, was not mentioned in this draft. And more importantly, that Imam Khomeini was fully aware of the draft's contents and had reviewed it several times at different stages.

At the beginning of the revolution's victory, its leaders, including Imam Khomeini, insisted on establishing the Council of Founders to review, compile and approve the constitution (the Sahifeh-ye Imam, 2010, volume 6: 54), (the Sahife-ye Imam, 2010, volume 5:467). However, in the end, and due to the differences that arose between the provisional government and the Revolution Council about the establishment of the "Council of Founders," in the course of a meeting between the two, it decided to set up a council with fewer members called "The Council of Experts of the Constitution." This decision also approved by Imam Khomeini (Ahmadi, 2001: 82). Finally, 72 representatives were nominated, and the relevant election hold on August 3rd, 1979. Of the 72 representatives in the Council, 60 were clergies and members of the "Islamic Republic Party," "The Combatant Clergy Association" and "The Society of Seminary Teachers of Qom" (Bashiryeh, 2008: 39), all of whom were either the disciples of Imam Khomeini or his sympathizers and supporters. Moreover, the Election Law for the Final Review Council of the Constitution was formed to provide the final opinion on the "Text of the Islamic Republic of Iran's Constitution," which prepare beforehand and reviewed at different stages (details of the discussions, 1985, volume 4: 311).

3. The Discourse of "Jurist Political Islam" in the "Council for Final Review of the Constitution."

This discourse, in the years leading up to the revolution, enjoyed higher power and influenced vis-à-vis others in Iranian society. Most of its leaders were the disciples of Imam Khomeini and individuals from religious families. The discourse's proponents gather in the "Islamic

Republic Party," "The Society of Seminary Teachers of Qom," "The Combatant Clergy Association of Tehran," "The Islamic Coalition Society," "Mujahidin of the Islamic Republic Organization" and "Fedayeen-e Islam." (Devotees of Islam). During the elections of the Final Review Council for the Constitution, these parties and groups coalesced and succeeded in gaining the absolute majority in the Council.

"Velayat-e Faghih (Rule of the Jurist)" is the nodal point of this discourse. It is a free sign around which the other symptoms ordered; the other signs acquire their meaning from their relationship to the nodal point (Jorgensen and Phillips, 2002: 26). The representatives of this discourse consider the most crucial objective in forming a government in Islam is to implement and enforce the sacred laws and orders of Islamic jurisprudence (Rajaei, 2001: 58). They further hold that in the absence of the innocent Imam, the Islamic government must be in the hands of a jurist, who, on behalf of the righteous Imam, ensures the correct implementation of the Islamic laws in the society. For example, Abdol Hossein Dastgheib stated: "First of all, the issue of Imamah and Velayat (leadership and rule) are among the requirements of religion. According to the principles of benevolence, Leadership and Rule mean that, the revelation of the Prophet established, and the leadership of Imam also fixe according to the principles of benevolence Imam means leader, guide, moderator, someone who maintains the nation, takes charge of the nation's affairs and does not allow the arrogant and the unruly to dominate the Muslims by the requirement of our religion during the absence of the Imam of the Age. The Almighty God has not left the humanity, the Muslims, the Shias without a leader. And the righteous subrogates are the righteous jurists who are the prime subrogates, the governor of affairs. Their obedience is obligatory for all Muslims" (details of the discussions, 1985, volume 2: 1158). In other terms, as humans lack the faculty to guide themselves, God selects a guide and a guardian for them, and these guides are the prophets, the imams, and in the era of absence the jurists. Their mission is to maintain the people on the right path and to guide them. According to the Ali Akbar Qureshi, another member of the Council for Final Review of the Constitution, this duty has been put on the jurists' shoulders by God: "This rule is conferred by God to the Prophet, by the prophet to the imams and by imams to the jurists Therefore, the issue of the jurist's rule and guardianship is a necessity" (details of the discussions, 1985: volume 1: 73).

In the opinion of the IRI Constitution compilers, the rule has been indirectly bestowed on the jurist by God and not by the people, and it is

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this divine ordination that guarantees the Islamic nature of the government. In this context, Ayatollah Hossein Ali Montazeri said: "If the government is to be Islamic, it should rely on a leader, who is ordained by God, albeit through an intermediary. Even if all the people elect a president, but do not meet with the Jurist and the Mujtahid's approval, he would not have any executive credibility, and it would become one of those despotic, which will not act accordingly" (details of the discussions, 198, volume 2: 1183). Hence, the duty of "Jurist" in society, as the God-ordained person, is to guide the people for establishing an Islamic culture, where Islamic laws enforce. It is for this reason that the people's choice is not enough for the legitimacy of a government, meaning that in an Islamic state, the government does not gain legitimacy from bottom to up, and the public vote only use to identify the representative and determining the qualification (Behniafar, 2008: 61). The legitimacy of the Jurist is from ordination by God and not the public's choice. This means that the Jurist is qualified for leadership before the public vote and has ordained to rule on behalf of the innocent Imam (Behniafar, 2011: 184).

The reason for obedience to him is not his knowledge of the school when he makes a mistake in his efforts and attempts, he will not be liable, and instead, he will rewarded as well. The main criterion is ordination on behalf of the Imam (a.s.) (Yazdi, 1996: 92). It is necessary to cite the Principle 107 of the constitution as approved by the Council: "Any time one of the eligible jurists mentioned in the 5th Principle of this law is recognized and accepted as authority and leader by the absolute majority of the people ... This leader shall be the ruler and shall carry all the responsibilities associated with it. Otherwise, the people's elected exerts shall review and advise about all those who have authority and leadership." This part of Principle 107 has an important note; in this principle, the expression of "election" is used for the representatives of the Council of Experts, while for the jurist, the terms "recognition" and "acceptance" are applied. This difference in terms underlines the duty of the people in identifying the most knowledgeable jurist, meaning that a most knowledgeable jurist exists in society and the people must try and find him, because God has given legitimacy to the jurist beforehand, and this means that he is only accountable to God. He does not take an oath of office before the Majles or any other authority, do not must he respond to, or appear in, the Majles (Milani 1994: 158).

The answerability of the jurist to God means that sovereignty belongs to God. Principle 2 of the Constitution explicitly attributes the government to God: "The Islamic Republic is a system based on faith in the uniqueness of God" (there is no god but Allah), the attribution of sovereignty and power of legislation to Him and the necessity of submission to His will. In the opinion of the representatives in the Council for the Constitution Final Review, this is the only applicable law issued from God. In this regard, Mohammad Mahdi Rabani Amlashi believes that: "The second issue is the executive orders of the government, for the obedience of which our society must be faithful as this command is the command of God. It means that our society will be Islamic and submitted to God when it considered the government's command as the divine command, and from Islam, no command is valid unless the command is related to God. Therefore, the issue of the rule of jurists raises from the issue of leadership and the issue of the jurist or the Council of Jurists' oversight on the executive affairs and all the government's structure" (details of discussions, 1985 volume 1: 64).

Furthermore, according to Ali Akbar Qureshi: "We believe, the government belongs to God. Command, government, guardianship, and rule all belong to God Therefore, the issue of reign and custody of the Jurist is a requirement, and on the other hand, the Jurist issues the government's decree as God's ordinance. If we include the issue of Jurist's rule in the law then the laws and orders of the Islamic Government will come out as God's commands and must therefore obey" (details of discussions: 1985, volume 1: 72 – 73).

Based on the above mentioned, the representatives of this discourse are the opinion that the divine law must enforce in an Islamic government, and no code is worthy of obeying unless God has decreed it. As God's representative, the Jurist is the instrument for the expression of the Divine Law, and the people are mandated to obey only the divine law. In this context, the views of Lotfollah Safi are noteworthy: "In Islam, it is the government of God over the people; it is the government of sharia laws over the people and include this issue of the rule of the Jurist" (details of discussions 1985 volume 2: 1162). In other words, the essential duty of the "jurist Rule" body is to express the divine law. Any law that has not passed through the Jurist or does not meet with his approval will not have any legitimacy, and therefore, it is not necessary to obey.

On the other hand, disobedience from this divine law is disobedience from God. When the jurist ruler has expressed an opinion about a matter

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and has issued a decree, abidance is mandatory for all (Yazdi, 1996: 85). The system legitimacy and its endurance is subject to the leader or the jurist ruler's approval. And when this authority through his confirmation does not legitimize an affair, even if all the people have voted for it and agree with it, it will not be legal. For this reason, although the people elect a person by their vote, the legitimacy of this individual depends on the leader (Akhtarshahr, 2008: 15).

In light of all the propositions mentioned before, it becomes clear that in the view of the representatives of the discourse, sovereignty is the absolute prerogative of God, and the jurist ruler is the agent for implementing God's governance on earth. Thus he must enforce the divine law in its entirety.

The sovereignty of God had a significant effect on the representatives' approaches to the discourse of Jurist Political Islam to the "Legislative Council." The legislation concept of the representatives in this discourse has a fundamental difference with the legislation in modern terms, and the similarity of the word "legislation" in this discourse must not mislead us. Hojjatol Eslam Jaffar Sobhani has emphasized: "We accept the legislative body, but not in the sense that use in the non-Islamic states, where it is the de facto the legislator council, the lawmaker. Our committee is not the legislator lawmaker. It identifies the needs based on and according to the Islamic laws and ratifies the regulations. It is the scope of our legislative body" (details of discussions, 1985 volume 1: 547). Moreover, Abdollah Ziaeenia has pointed out: "The legislative body in Islam is none other than the Sharia. However, the Consultative Council will express the correlation of the significant Islamic laws to the minor and vice versa and will match them with the present-day issues" (details of discussions, 1985, volume 1: 60).

In other words, in the interpretation of the proponents of this discourse, in Islam, the parliament no longer has a legislative power as a divine law already exists. The legislative council must seek the commands and to express them from the core of the Islamic jurisprudence. In this context, addressing the Council for the final Review of the Constitution, Mohammad Mahdi Rabani Amlashi said: "Is there a separation of powers in Islam or not? In my opinion, the authority of Jurist in Islam is the executive power as well as the legislative power. It means that it is the Islamic ruler and governor who sits on the seat of leadership and commands on the seasonal and provisional regulations, and submission is a must for all Muslims Do the governor and ruler think

alone and decrees a law or through consultation? And consult them in the matter. And this is where another issue raise: we have a legislative council in Islam and Islamic republic or a consultative council? We should not have a legislative assembly, and the parliament is an advisory council. It is a council for consultation” (details of discussions, 1985, volume 1: 62).

The total of these excerpts demonstrates that the Parliament has to provide advice to the jurist ruler, and its decisions are not applicable and serve only the purpose of providing decision making aid to the jurist ruler. For more explanation, I point out to a section of Jalaluddin Farsi’s speech: “Sovereignty and dominion or the power of legislation belong exclusively to the Creator, and anyone claiming or discharging the authority for legislation is idolatrous. The influence or control of law or sovereignty, which includes such a prerogative or right, does not belong to the people of the Muslim people to be able to relegate it to a person or persons through elections or consultation or even engage in it personally We do not have a legislator individual or institute in an Islamic system ... but we have a "jurist" or a law scholar. Therefore, we must have a jurist’s council” (details of discussions, 1985, volume 1: 78).

Jalaluddin Farsi believes that humans have no right to decree laws, as it belongs to God. In his opinion, even the jurist has no legislative powers, being merely a law expert who must extract and express the law from the text of the Quran and jurisprudence according to needs. In other words, under representation on behalf of the Innocent Imam, the jurist has the right to express the law and not by his intellect. The outcome of these views can observe in Principle 58 of the Constitution. In the beginning, the text of Principle 58 of the Constitution was: “The application of legislative power, which would be responsible for identifying the needs and for approving and drawing up the necessary regulations for order and growth of the society shall be through the National Consultative Council, composed of a public elected representative, and its ratifications shall notify to the executive and the judiciary authorities after the signature of the Council of Guardians and the President” (details of discussions, 1985, volume 1: 544).

As can be observed, the Principle uses the expression of "responsible for identifying the needs and for approving and drawing up the necessary regulations" and not the appearance of "legislator." Due to its ambiguity and lack of emphasis on the legislative nature of the Parliament, this Principle became subject to protests. In the end, after some modifications, it was approved by the Parliament. However, even in the

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ratified text, there is no explicit and clear mention of the legislative role of the Parliament. The version of the mentioned Principle is: "Application of legislative power shall be through the Islamic Consultative Council, composed of representatives elected by people, and its ratifications, after the stages mentioned in the next principles, shall notify to the executive and the judiciary authorities. Abdol Hossein Dastgheyb had said: "In Islam, if the jurists are not present in the Parliament and they do not endorse the approved laws, they shall not have a legislative structure, they shall not be applicability, and it means humans have no right to draw up regulations for other human beings ... humans have no right to forge code for others as legislation is the work of God. Any act that is approved by the National Consultative Council, by order of intellect, this law is not applicable it becomes legal, it becomes binding by the command of understanding when it becomes Islamic, and the public abides by it and says that the law is divine. The scholars and the jurists have signed it" (details of discussions, 1985, volume 1: 92).

The nature of the Council Representatives' works, and their final eligibility and their religious requirement become official when they bear the Jurist Ruler's approval (Javan Arasteh, 2001: 96).

Besides, we reach to the conclusion that the representatives of this discourse have accepted the separation of powers not as an underlying principle and a value if we review the above statement meticulously; but merely as a method and instrument for a better administration of government and provision of service, and through this, they have created a kind of division of specialized duties among the different governmental organization (Bahadori Jahromi, 2011: 109). To avoid the powers autocracy, the representatives of this discourse demanded all the legislative powers to be under the supervision of the Jurist Ruler. In their opinion, who would be better than the jurist to whom they would transfer all the rights once and for all and become free of the temptations and corruptions of power (Kamalizadeh, Soori, 2018: 50)?

In the Council Constitution for the Constitution Final Review, the Guardians Council has taken over the role of the jurist for legislation. The Council of Guardians is a body composed of 6 jurists designated by the Jurist Ruler, and six law experts introduced by Supreme Judiciary Council (consisting of the head of the Supreme Court, the Attorney General and three impartial judges selected by the national judges) to the Legislative Council and elected by the members of the Legislative

Council. Based on the above mentioned, raised that the body of the Council of Guardians is the outcome of the above thoughts on the right of the Jurist Ruler to approve or disapprove the laws, and for this reason, Principle 93 of the Constitution has ratified in this manner: "The Islamic Consultative council will not have legitimacy without the council of Guardians." Moreover, according to Principle 94 of the Constitution, "All the ratifications of the Islamic Consultative Council must be submitted to the Guardians Council." Furthermore, according to Principle 94: "The lack of discrepancy between the ratifications of the Islamic Consultative Council and the Islamic jurisprudence shall determine by the majority jurists of the Council of Guardians." Given the statements as mentioned above, it can conclude that the legislator, through measures considered for the Council of Guardian' control over the ratifications of the Islamic Consultative Council, the composition proposed for this body, and the designation of its jurists by the Leader, has indirectly approved the disrobing the legislative functions of the Parliament by the leader (Koochi Esfahani, 2012: 117 – 118). In other words, the Council of Guardians is the powerful arms of the Jurist Ruler in legislative affairs. Mohammad Rashidian has explicitly expressed this view: "As the Council of Guardians will be the Leader's selection in the Parliament, and all ratifications ... are to be supervised by the Council of Guardians, this means that the Leader has signed them. Because the Council of Guardians is the choice of the Leader or the Leadership Council" (details of discussions, 1985, volume 1: 568). the specific task of the Council of Guardians is to transform the law into a divine command, because in the rationale of this discourse, the validity and the guarantee for the execution of the legislation depends on their divine and religious derivation and not their issue by the people's representatives and their public acceptance.

Freedom is another essential signifier, which must review in the frame of this discourse. In this concept, democracy accept as long as it does not disrupt the principles of Islam. This discourse will reject it if freedom leads to the spread of thoughts and actions that are beyond the frame of jurisprudence. According to Mohammad Beheshti: "There are two types of societies and social systems." The first is societies and social networks that rely only on a single principle, which is the vote of the people without any conditions. These are generally called democratic or liberal societies. The government of the general public in these societies has only a single basis, and that is the public votes but there are other societies, ideological or academic, i.e., societies, where people have

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chosen a school. They have done so, they have proclaimed that henceforth all our matters must be within the frame of this school. The selection of doctrine has made freely, and in complete freedom, they have chosen the school and the comportment. These are called ideological societies or educational systems and societies. The Islamic Republic of Iran is a literary system (details of discussions, 1985, volume 1: 380). In the view of Beheshti and parallel the discourse of Jurist Political Islam, people have elected the Islamic Republic in a free manner. Still, through this vote, they have limited their freedom. After the initial ballot, all other elections must be within the frame of Islam. Mohammad Yazdi believes that: "A society that has embraced Islam has limited the absolute liberty, which could violate the Sharia and commands, through its own choice and by applying its personal prerogative and freedom."

Moreover, when a Muslim opts for Islam or divine law, it will have freedom and choice within this Sharia (details of discussions, 1985: volume 1: 517). Based on the two viewpoints presented, democracy must be constrained within the frame of Islam to prevent people's inclination towards future corruption. Therefore, the basis of the Islamic Republic is the Sharia commands and not the popular vote. For a better understanding of the concept of freedom in the Jurist Islam discourse, we refer once more to another statement by Ayatollah Beheshti: "The real preservation of national independence realize through preserving justice and freedom in the country. When in a society or nation, justice and liberty are not appropriately protected, the ground is automatically paved for the intrusion of foreigners freedom in a country and a government, which depends on and follows another state and nation, will automatically be undermined" (details of discussions, 1985, volume 1: 421). In the following, Beheshti mentioned: "What is meant by independence is not the independence of the individuals, but the freedom of the society in the face of powers beyond the organization" (details of discussions, 1985, volume 1: 427).

It seems that in this discourse, the concept of freedom does not refer to the individuals' freedom. Still, instead, it signifies the freedom and independence of the country against foreign powers. Consequently, although the representatives of this discourse made a limited reference to liberty, in the light of the revolutionary conditions of the time, it can be understood that the main emphasis was on the freedom of the country against foreigners and not the freedom of individuals. One of the

essential consequences of stressing the freedom of the state against foreigners is the priority of the Government over the individual because when the emphasis is on the independence of the country, the government is involved. Because protecting the independence of the country is a government duty. Therefore, a government can curb individual freedom for the sake of national sovereignty. Of course, it must state that not only none of the articles of the constitution provide the government with such a right, the latter has also banned from curbing liberties. However, the prevailing rationale in the Council for the final Review of the Constitution has, for all practical purposes, permitted the government to limit freedoms to preserve the country's independence and to prevent the people's inclination towards corruption and non-Islamic corruptions and thoughts.

4. The Discourse of "Liberal Islam" in the "Council for Final Review of the Constitution."

As mentioned earlier, the Liberal Islam discourse had a useful role in the preparation of the draft constitution and the Council for Final Review of the Constitution. Parties such as "The Freedom Movement" and the "Republic of Iranian Muslim People" fall within the frame of this discourse. Mehdi Bazargan is the most prominent representative of this discourse. Besides, Ayatollah Taleghani, who was a member of the Council for the Constitution Final Review, and who passed away in less than ten days after the inauguration of the Council, was also an impacting member of this discourse. The number of this discourse's proponents in the Council for the Constitution Final Review was less than five. In this section, the views and the position of the representatives of this discourse on concepts such as freedom, the Islamic government, the rule of the jurist, sovereignty, and legislation in the Constitution processed.

On the one hand, a constitution traces limits the individual freedom against the functions of power (the governing bodies), and on the other is the limitation of applying the public authorities in tackling the issues of individual freedoms (Ghazi, 2010: 39). Therefore, addressing the concept of "freedom," as the nodal point of this discourse, in the sense of liberation from the chains and bonds of tyrants, replacing relations with regulations, and freedom in thought and beliefs has considerable importance. Ayatollah Taleghani believes that: "The issue is the issue of the freedom of humans in all dimensions, and we consider this as the greatest divine gift for human beings as they have been borne free and no power should be able to deprive them of this ... What is meant by the

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human revolutions was the breaking of chains. Based on the Quran verse, The Prophet of Islam rose to relieve the humans of the heavy burdens imposed on them and to unlock the chains that bounded their thoughts, their wills, and their decisions, and this according to the clear statement of Quran, was the aim of the prophets” (Keyhan, 02/19/1979, issue 10641: 4).

Therefore, in the opinion of the representatives of this discourse, inquisition and the integration of thoughts and religious penchants are not accepted by Islam. Bazargan, emphatically, stated: “There is no inquisition and imposition of view in Islam, as it is a flexible and all-encompassing religion that accepts any other tenet standing up against it” (Keyhan, 01/31/1979, issue 10626: 6).

Therefore, in the opinion of the proponents of this discourse, Islam cannot and must not curb freedom. This view reflect in one of Ayatollah Taleghani’s speeches, which was related by Rahmatollah Moghadam Maraghi in the Council of the Constitution Final Review of: “The Prophet aimed to liberate the people ... Liberate them from rules and decrees, which were in favor of a group and imposed by a class on others we should also pursue this mission. Against imposed culture, against imposed laws, against policed limitations, which were imposed on people in the name of religion and which was the most dangerous of all. It is the most hazardous imposition, which means whatever that is not from God and that is not right, is used in the name of God to bind and chain the people and to prevent them from their vital movement, too devoid them of all rights for protest and criticism, and to deprive the people, the Muslim and the free people of the right word to free activity” (details of discussions, 1985, volume 1: 376).

Although the representatives of this discourse believed in Islam, under the influence of liberalism, they attempted to provide an interpretation of Islam according to the liberal values.

Like the Jurist Political Islam discourse, the ideal government of this discourse was an "Islamic government." However, any conversation attributes a particular concept to all signs in the frame of the definition system. For this reason, possibility, a verb, talk, or find different or even contradictory meanings for two different discourses (Kasraee, 2009: 342).

On the "Islamic government," Bazargan said: “The right Islamic government is the government of God, meaning a government that is regulated by law and the intelligence of the faithful, and the individual

discipline and police existing in the knowledge of any own supervise it. No imposition and force are allowed on faith” (Keyhan, 01/31/1979, issue 10626: 6).

Furthermore, Ayatollah Shariatmadari believes that: “The Islamic government is a type of democratic Islamic government, its base is the will and the demands of the people meaning against tyranny, against dictatorship and individual rule. The people govern themselves” (Keyhan, 01/24/1979, issue 10621: 8).

Taking note of the above two cases can be concluded that in the opinion of the liberal Islam proponents, all humans using their intellect have the faculty to understand God’s message and, based on their understanding and perception of divine commands, can form an Islamic government. In other words, the formation of the Islamic government is not in the private hands of religious scholars or leaders. Therefore, in the opinion of the representatives of this discourse, the sovereignty of people is accepted in Islam. It is in this context that Ayatollah Shariatmadari does not consider the undisputable and unconditioned implementation of the Sharia laws without people’s consent as correct: “The people of Iran must consult through free elections and a referendum on implementation of Islamic thoughts as social and political realities” (Keyhan, 02/05/1979, issue 10630: 2).

In the opinion of the discourse proponents, the aim of the people from the revolution was not the governance of Islam. Still, they pursued freedom and democracy by their revolution and therefore, they considered that instead of sovereignty of Islam, they had to move towards the implementation of liberty and justice (Molavi, Vardanjani, Arjini, 2018: 197), or put in another way, in this discourse, Islam belongs to people and not vice-versa.

By reviewing the standpoint of this discourse’s representatives about the 5th Principle of the Islamic Republic of Iran’s Constitution, which is related to Rule of the Jurist, can discern their view on national sovereignty. According to the Ezzatollah Sahabi about Jurist Rule: “The Jurist Rule in the sense of Sharia’s supervision on the laws has fully incorporated in this draft (Constitution), and we do not consider anything more for the concept of Jurist Rule as positive in these circumstances... However, the supervision of Sharia and the religious leaders on the government does not exceed the limits of supervision on the laws or the legislative body, and the diligence does not exceed the scope of ensuring compliance with Sharia or compliance with the principles of clear commands of Islam by the legislative organs or Iran. If we were to

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stretch this diligence and supervision beyond this limit and extend it to affairs that would include the executive matters and interference with the executive authority, then it would lead to extensive corruption, among which the multi-polar hubs of decision making and execution, resulting in chaos and the undermined authority of the executive authority and consequently the weakness and the instability of the existing regime” (Enghelabe Eslami, 08/30/1979, issue 59: 7).

Also, based on the Abolhassan Banisadr’s interview: “Last week during an audition with Imam (Khomeini) I said that if we were to give special powers to the Jurist, then the claim of "free parties" would be just plain talk” (Etelaat Daily, 09/19/1979, issue 15956: 2).

Ayatollah Shariatmadari was also opposed to the Jurist Rule in the form that incorporate in the Constitution. Before the opening of the Council for the Constitution Final Review, he described the Islamic Government as: “When we say that this government, this republic is Islamic, it state on the strength of the fact that the majority of the Iranian population are Muslims, and consequently, the laws that the people’s representatives must pass are laws that cannot be opposed to Islam, they should accorde to Islam” (Ayandegan, 03/29/1979, issue 3320: 1).

Moreover, in another interview, he said: “The religious authority is even higher than the President and the status of a Sultan, and even a government is only valid when the religious authorities give it the vote of confidence” (Ayandegan, 06/10/1979, issue 3371: 12).

The representatives of this discourse agreed with the supervision of several clergies in the Parliament to guide the members in passing laws that would not contradict the essential commands of Islam. Because the majority of Iranians are Muslims, and in their view, this would ensure public acceptance. It means that the presence of clergies in the legislative council would be due to the people’s approval and not due to their religious status. Consequently, from the viewpoint of the representatives of this discourse, the "the jurist political rule" as in the form approved by the Council for the Constitution Final Review can limit the sovereignty and the will of the people and so they rejected it.

National sovereignty is manifested directly by the right to legislate. Therefore, knowing the representatives' views of the liberal Islam discourse about the legislative body would lead to a better understanding of the national sovereignty in their discourse system. The representatives of this discourse believe the people have the right to legislate on social issues, and legislation in such problems do not fall within the jurisdiction

of the jurisprudence. On this Ezzatollah Sahabi said: “If there is talk of sovereignty in it (draft constitution), what is meant by national sovereignty, is not legislation about Sharia laws, because the laws that are raised by the legislative body, are those related to the daily matters such as economic, political and social issues and are different from issues that address under specific or general headings in Sharia or jurisprudence texts. They are daily concerns that people have to resolve among themselves” (details of discussions, 1985, volume 1: 91).

Therefore, the representatives of this discourse believed that in the matter of government, the final view is of the people and not the jurisprudence commands. Consequently, they do not want jurisprudence and, by extension, the jurist to dominate society, as they consider jurisprudence as a source of legislation alongside others. Consequently the legitimacy of the law is derived from the public acceptance and not from the divine approval, and this idea considered in the draft constitution. Principles 142 and 144 of the draft constitution stated that upon the request of a prominent religious authority, the president, or the head of the Supreme Court, or the Attorney General of the country, or the Council of Guardians, which was composed of three professors of law, three Supreme Court judges and 5 top religious authorities, had the qualifications for checking the correspondence of ordinary rules with the national constitution. It is when in the proposal approved by the Council for the Constitution Final Review, all the usual requirements, must without exception, be approved by the Council of Guardians after being passed by the Islamic Consultative Council.

Ultimately, given the statements mentioned above, it can be concluded that the concept of "freedom" is the original concept among the representatives of this discourse. Nearly all their stance about the principle of the Constitution in the Council for the Constitution Final Review build around their concept of freedom. Their opposition to the Jurist Rule, as displayed in the Council for the Constitution Final Review, was due to the reason that they considered as contradictory to freedom. Because in their opinion, the Jurist Rule bestowed a heavenly and divine attribute to the government, and such a government would then destroy "freedom" by prioritizing the enforcement of the divine commands. In the end, it should also note that the proponents of this discourse expressed their liberal views through an Islamic background.

Conclusion

In conclusion, the two mentioned discourses had a significant impact on the Council for the Constitution Final Review of the Islamic Republic of Iran. The essential and necessity note on the mentioned discourses is that they both had political Islam as their origin, but drew a different interpretation of Islam and the people's intention in the Islamic Revolution. Hence, there were many confrontations between these two discourses in the early years of the Islamic revolution, especially during preparing the constitution. The Jurist Political Islam discourse upheld that the laws required by the society could be extracted by referring to the Quran and that there was no need to draw up new legislation in the legislative council. Therefore, the congressional committee is mandated to plan the proper execution of laws extracted from the Quran, and the Jurist Ruler, as the indirect representative of God, is the only legal reference for expressing the divine laws. Besides, he supervises the performance of the legislative council through the Council of Guardians to prevent any deviance from its duties according to the Islamic laws. In other words, the guarantee for the government being and remaining Islamic is subject to the recognition of the jurist rule. Whereas the liberal political Islam's discourse maintained that if the state of the jurist was the sole venue for the expression of divine law and the Council was mandated to plan the implementation of religious laws, then the people's governance would be contradicted. This violation would be a deviation from the main goals of the Islamic revolution. Because in their opinion, the objective of the Islamic revolution was to establish a democracy and not the governance of an individual. They believe that the rule of the jurist would not ensure the government and, consequently, the laws as being and remaining Islamic; instead, there was no need even for the lawyers to follow the Islamic rules in their entirety, with the lack of divergence from the said laws being sufficient. The importance the mentioned discourses lies in the mandate of the government. In essence, the Jurist Political Islam discourse considers the implementation of Islamic laws as the essential duty of the government. Still, from the viewpoint of the Liberal Political Islamic discourse, the government is not responsible for implementing the Sharia, and the people should not force to abide by this law. Ultimately, while the Jurist Political Islam discourse succeeded in preparing and ratifying the Constitution according to its conversation, the views expressed during the confrontation of the

two mentioned discourses during the proceedings of the Council for the Constitution Final Review, had a significant role in its formation.

References

- Abrahamian, E. (2008). *A History of Modern Iran*. New York: Cambridge University Press.
- Ahmadi, H. (2001). *The Lesson of Experience, Memoires of Abolhassan Banisadr*. Tehran: Enghelab Islami Publications.
- Akhtarshahr, A. (2008). "The Distribution of Power in the Structure of the Islamic Republic of Iran's Constitution." *Islamic Revolution Studies Quarterly*. Vol. 4, no. 12, pp. 161-181.
- Babapour, M. (2009). *The Jurist - Political Discourse and the Constitution of the Islamic Republic of Iran*. Ph.D. Thesis, Faculty of Law and Political Sciences, University of Tehran.
- Bahadori Jahromi, A. (2011). "The Concept and the Status of the Powers' Independence in the Constitution of the Islamic Republic of Iran." *The Research Bulletin of Islamic Laws*. Vol. 12, no. 33, pp. 87-120.
- Bashiriyeh, H. (2008). *An Introduction to the Political Sociology of Iran; the Islamic Republic Period*. Tehran: the Contemporary View.
- Behniafar, A. (2011). "The Rule of the Jurist in the Constitution of the Islamic Republic of Iran before and after Revision." *Islamic Revolution Studies Quarterly*. Vol. 8, no. 24, pp. 171-206.
- Behniafar, A. (2008). "The Concept of the Rule of the Jurist in the Constitution of the Islamic Republic of Iran." *Islamic Revolution Studies Quarterly*. Vol. 4, no. 12, pp. 45-75.
- Feirahi, D. (2014). *Jurisprudence and Politics in Contemporary Iran*. Tehran: Ney
- Ghazi Shariat Panahi, A. (2010). *The Musts of the Essential Rights*. Tehran: Mizan Publications.

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- Hosseinizadeh, M. (2010). *The Political Islam in Iran*. Qom: Mofid University.
- Javan Arasteh, H. (2001). "The Basics of Governance in the Constitution." *Islamic Government Quarterly*. Vol. 6, no. 21, pp. 69-112.
- Jorgensen, M; Phillips, L. (2002). *Discourse Analysis as Theory and Method*. London: SAGE Publication.
- Kamalizaeh, M; Soori, A. (2018). "Conceptual Evolution of the Law in the Process of Preparing the Islamic Republic of Iran's Constitution." *Theoretical Politics Studies Half Yearly*. Vol. 19, no. 24, pp. 29-64.
- Kasrayee M; Poozesh Shirazi, A. (2009). "The Theory of Laclau and Mouffe, an Efficient Tool in Understanding and Clarifying Political Phenomena." *Politics Quarterly*. Vol. 39, no. 3, pp. 339-360.
- Katoozian, N. (2015). *A Step towards Justice*. Tehran: the Mizan Publications. Vol. 1.
- Katoozian, N. (2014). *My Life: Where have come from, for What End?* Tehran: the Publication Stock Company.
- Khomeini, R. (2010). *Sahifeh-ye Imam*. Tehran: the Institute for Compilation and Publication of Imam Khomeini's Works, 5th edition.
- Koohi Esfahani, K. (2012). "The Qualification of the Islamic Consultative Council for Legislation, Absolute or Conditional." *General Law Knowledge Quarterly*. Vol. 1, no. 2, pp. 97-122.
- Milani, M. (1994). *The Making of Iran's Islamic Revolution: From Monarchy to Islamic Republic*. New York: Routledg.
- Molavi Verdanjani, I; Arjini, H. (2018). "The Basic Thoughts of the Freedom Movement on Religion and Politics, With an Emphasis on

the Thoughts of Mr. Bazargan." *Enghelab Eslami Bulletin*. Vol. 8, no. 27, pp. 177-200.

Rahbari, M. (2008). "The Making of Revolutionary Discourse in Iran." *Journal of Law and Policy Research*. Vol. 9, no. 23, pp. 90-114.

Rajaei, H. (2001). "The Scope of Jurist Ruler's Authorities from the Viewpoint of the Jurists of the Constitution." *Ravagh-e- Andisheh Quarterly*. Vol. 4, no. 4, pp. 57-72.

Sahabi, E. (2004). *The Untold Tales of the Revolution and the Essential National Issues*. Tehran: Game-no.

————— (1985). *The Details of the Discussions in the Council for Final Review of the Islamic Republic of Iran Constitution*. Tehran: The Directorate General of Cultural and Public Relations Affairs of the Islamic Consultative Council, 1st Edition. Vol. 4.

Yazdi, M. (1996). *Constitution for All*. Tehran: Amir Kabir.

