



A DETAILED ANALYSIS OF IRAN'S CONSTITUTION

📅 OCTOBER 12, 2010 | 🏷️ CONSTITUTION, IRAN, RELIGION

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The following is a detailed analysis of the Iranian Constitution, beginning with the arrival of Ayatollah Khomeini in power in Iran in 1979:

On February 16, 1979, fifteen days after the Ayatollah Khomeini returned to Iran from France after the fall of the Shah, Richard Falk, currently the United Nations [Special Rapporteur on the Situation of Human Rights on Palestinian Territories Occupied Since 1967](#), published an Op-Ed piece in the *New York Times* entitled "Trusting Khomeini." Falk noted that President Carter and National Security Advisor Brzezinski "have very recently associated him [Khomeini] with religious fanaticism" and claimed that "the news media have defamed him in many ways, associating him with efforts to turn the clock back

1,300 years, with virulent anti-Semitism, and with a new political disorder, 'theocratic fascism,' about to be set loose on the world."

(Article 102 of Iran's Penal Code: "The stoning of an adulterer or adulteress shall be carried out while each is placed in a hole and covered with soil, he up to his waist and she up to a line above her breasts." Article 23 of Iran's Judicial Code: "In the case when conviction of the prisoner is based on his or her confession, the ruling judge will throw the first stone at the convict, then the spectators can proceed to cast their stones. However, if conviction is based on the statement of witnesses, the first stones are thrown by the witnesses, followed by the ruling judge." Compare with Nobel Peace Prize winner Shrin Ebadi's *Iran Awakening* (2006), where she wrote of her reaction soon after the 1979 revolution reading Iran's new Islamic penal code: "The drafters of the penal code had apparently consulted the seventh century for legal advice. The laws, in short, turned the clock back fourteen hundred years," (p. 51).

Falk closed his article by writing "Ayatollah Khomeini has spoken of his hopes to show the world what a genuine Islamic government can do on behalf of its people" and that "Iran may yet provide us with a desperately-needed model of humane governance for a third-world country."

Eight months later, the new Islamic Republic of Iran adopted its constitution, amended once in July 1989. Falk's view is supported by the constitution's preamble which states the constitution shows Iran's intention "to establish an ideal and model society on the basis of Islamic norms."

Parts of this Iranian Constitution sound familiar; the first clause of Article 57: "The powers of government in the Islamic Republic are vested in the legislature, the judiciary, and the executive powers;" every citizen can seek justice through the courts (Article 34); a party will be provided with legal counsel if need be (Article 35); defendants are presumed innocent (Article 37); evidence obtained under torture is inadmissible (Article 38); "affronts to the dignity" of arrested persons are prohibited (Article 39); so too are the enactment of ex post facto laws (Article 169).

Some articles seem laudable: "All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; and color, race, language, and the like, do not bestow any privilege" (Article 19) and "The investigation of individuals' beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief" (Article 23).

Still, while the constitution states it protects the equal rights of “All people of Iran,” – “Zoroastrian, Jewish, and Christian Iranians are the only recognized religious minorities” (Article 13). The continuation of Article 57 which establishes the Iranian legislature, judiciary, and executive powers dictates that they are to “function[ing] under the supervision of the absolute wilayat al-'amr [Iran’s Supreme Leader] and the leadership of the Ummah.” And, while Article 6 of the U.S. Constitution states “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States,” the Iranian Constitution requires its president to swear that he will “dedicate [himself] to the propagation of religion and morality” (Article 121) and requires the members of Iran’s Islamic Consultative Assembly [Parliament] to swear “to protect the sanctity of Islam” (Article 67). Presidential candidates must be “from among religious and political personalities” who are “convinced belief in the fundamental principles of the Islamic Republic of Iran and the official madhhab [Islamic jurisprudence] of the country” (Article 115).

The Iranian Constitution established an Islamic theocracy. Article 1 states “The form of government of Iran is that of an Islamic Republic” while Article 2 explains this to mean, among other things, “the necessity of submission [to Allah] and the “fundamental role” of “divine revelation” in “setting forth the laws.” Iran’s flag must contain the phrase “Allahu Akbar” (Article 18) and “Absolute sovereignty over the world and man belongs to God” (Article 56). Articles 5 and 107 establish the position of Supreme Leader, first held by Ayatollah Khomeini and since his death in 1989, held by Ali Khamenei, whose “duties and power” are enumerated in Article 110. Article 91 establishes a Guardian Council “in order to examine the compatibility of the legislation passed by the Islamic Consultative Assembly with Islam” and “The authority of the interpretation of the Constitution is vested with the Guardian Council (Article 98).

Irrespective of the constitution’s ostensibly appropriate provisions—“All civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria” (Article 4) and judges “are obliged to refrain from executing statutes and regulations of the government that are in conflict with the laws or the norms of Islam” (Article 170).

Hence, “The dignity, life, property, rights, residence, and occupation of the individual are inviolate, except in cases sanctioned by law” (Article 22) and “No one can be banished from his place of residence, prevented from residing in

the place of his choice, or compelled to reside in a given locality, except in cases provided by law" (Article 33).

Moreover, numerous constitutional provisions are required to be "in conformity with Islamic criteria" or not "detrimental to the principles of Islam"—human rights and equal protection of the law (Article 20); the formation of political and professional associations (Article 26); public gatherings, (Article 27); the right to choose an occupation (Article 28); the confiscation of property (Article 49); the definition of political offenses (Article 168); and "the freedom of expression and dissemination thoughts" on Iranian radio and television (Article 175).

The constitution allows the press to have freedom of expression "except when it is detrimental to the fundamental principles of Islam" *and* further delineates that "the details of this exception will be specified by law" (Article 24).

The Iranian Constitution cites Quranic verses fourteen times. It makes clear its objective to promote Islam worldwide. Its preamble states that "the mission of the Constitution" is "to create conditions conducive to the development of man in accordance with the noble and universal values of Islam" and that "the aim of government is to foster the growth of man in such a way that he progresses towards the establishment of a Divine order (in accordance with the Quranic phrase "*And toward God is the journeying*" [3:28])."

And while Article 11 states "All Muslims form a single nation" the preamble states that the constitution "provides the necessary basis for ensuring the continuation of the Revolution *at home and abroad*" [*emphasis added*] and "will strive with other Islamic and popular movements to prepare the way for the formation of a single world community (in accordance with the Quranic verse "*This your community is a single community, and I am your Lord, so worship Me*" [21:92])."

Iran's constitution establishes the role of its military in fulfilling its goals: "The Army of the Islamic Republic of Iran must be an Islamic Army, i.e., committed to Islamic ideology and the people" (Article 144). From the preamble: Iran's Army and Revolutionary Guard "will be responsible not only for guarding and preserving the frontiers of the country, but also for fulfilling the ideological mission of jihad in God's way; that is, extending the sovereignty of God's law *throughout the world*" [*emphasis added*] (this is in accordance with the Quranic verse "*Prepare against them whatever force you are able to muster, and strings*

of horses, striking fear into the enemy of God and your enemy, and others besides them” [8:60]).

The constitution also elucidates Iran’s foreign policy: “The foreign policy of the Islamic Republic of Iran is based upon the rejection of all forms of domination” and “non-alignment with respect to the hegemonist superpowers” (Article 152) and highlights its “struggle for liberation for all deprived and oppressed people” (preamble); the “negations of all forms of oppression (Article 2(6)(3)); and “The complete elimination of imperialism and the prevention of foreign influence” (Article 3(5)).

Article 154 clarifies that the Islamic Republic of Iran “considers the attainment of independence, freedom, and rule of justice and truth to be the right of all people of the world.” Therefore, while Iran will “scrupulously refrain”[ing] from all forms of interference in the internal affairs of other nations, it supports the just struggles of the *mustad’afun* [oppressed] against the *mustakbirun* [tyrants] in every corner of the globe.”

The preamble gives an historical perspective: “The plan of the Islamic government as proposed by Imam Khumayni at the height of the period of repression and strangulation practiced by the despotic regime [the Shah] . . . [gave] greater intensity to the struggle of militant and committed Muslims both *within the country and abroad* [*emphasis added*].

The Iranian Constitution and Ayatollah Khomeini

The roots of the Iranian Constitution are found in a book written by Ayatollah Khomeini in 1970 entitled *Velayat-e Faqeeh*, or [Governance of the Jurist](#). It is the jurist, or Islamic scholar who should rule an Islamic state; this is the source for Iran’s Supreme Leader.

According to Khomeini: “Islam proclaims monarchy and hereditary succession wrong and invalid” (p. 10) . . . After the death of the Most Noble Messenger, the obstinate enemies of the faith, the Umayyads (God’s curses be upon them), did not permit the Islamic state to attain stability with the rule of Ali . . . The form of government of the Umayyads and the Abbasids, the political and administrative policies they pursued, were anti-Islamic. The form of government was thoroughly perverted by being transformed into a monarchy, like those of the kings of Iran, the emperors of Rome, and the pharaohs of Egypt” (p. 23).

Moreover, "This slogan of the separation of religion from politics and the demand that Islamic scholars should not intervene in social and political affairs have been formulated and propagated by the imperialists; it is only the irreligious who repeat them. Were religion and politics separate in the time of the Prophet?" (p. 16).

Having established the Quranic and ideological basis for governance by a jurist, Khomeini indicates how this governance will be applied.

"But when Islam wishes to prevent the consumption of alcohol—one of the major evils—stipulating that the drinker should receive eighty lashes, or sexual vice, decreeing that the fornicator be given one hundred lashes (and the married man or woman be stoned), then they start wailing and lamenting: 'What a harsh law that is, reflecting the harshness of the Arabs.' Why should it be regarded as harsh if Islam stipulates that an offender must be publicly flogged in order to protect the younger generation from corruption?" (p. 12).

Khomeini was also a proponent of amputations: "After the Commander of the Faithful [Ali] had cut off the hands of two thieves, he showed such love and concern in treating them and attending to their needs that they became his enthusiastic supporters" (p. 53). The Islamic jurist as ruler must be able to say "'If you do not pay back this loan, you will be the first woman of the Bani Hāshim [tribe] to have her hand cut off.' That is the kind of ruler and leader we want, a leader who will put the law into practice instead of his personal desires and inclinations . . . who will place his own family on an equal footing with the rest of the people; who will cut off the hand of his own son if he commits a theft; who will execute his own brother and sister if they sell heroin" (p. 80).

Khomeini was against "superfluous bureaucracies and the system of file-keeping and paper-shuffling that is enforced in them, all of which are totally alien to Islam." His proposal: "When the juridical methods of Islam were applied, the shari'ah judge in each town, assisted only by two bailiffs and with only a pen and inkpot at his disposal, would swiftly resolve disputes among people and send them about their business" (p. 31). Consider the movie [*The Stoning of Soraya M.*](#)

The Iranian Constitution in U.S. Courts

U.S. courts have had reason to review and scrutinize aspects of the Iranian Constitution. A federal district court in Missouri in 1984 dealt with a dispute

between The McDonnell Douglas Corporation and Iran regarding a contract that was signed in 1975, during the time of the Shah. Iran argued that this matter should be adjudicated in its courts. In concluding that "the Islamic revolution and subsequent rise to power of clerics in Iran has so thoroughly affected" Iran's legal system that it would be "unreasonable" to require McDonnell Douglas to stand before an Iranian court, the U.S. court, among other evidence, specifically cited Article 4 of the Iranian Constitution, that all Iranian law must be based on Islamic standards ([*McDonnell Douglas Corp. v. Islamic Republic of Iran, Ministry of Defense of the Islamic Republic of Iran, and Islamic Republic of Iran Air Force*](#)).

In 2004, a San Francisco court found an Iranian eligible for asylum who "testified that because he abandoned the Muslim faith and joined a minority religion, he was persecuted by the Iranian government in the past and has a well-founded fear of future persecution," citing various [State Department Country Reports](#) on Iran that "arbitrary arrest, detention, and beatings are routine in Iran and that religious minorities not recognized by the constitution of Iran are persecuted" ([*Mohsen Salari v. John Aschroft*](#)). This court quoted a 1992 case which stated "In Iran people receive temporal punishment, including death, for violating the tenets of Islamic law; and apostasy from Islam is indeed a capital offense under that law" ([*Bastanipour v. INS*](#)).

In analyzing whether to grant asylum to a member of an Iranian opposition group, a Seattle court in 2006 similarly quoted the State Department's Country Reports on Human Rights on Iran from 2000: "The [Iranian] Constitution forbids the use of torture; however, there are numerous, credible reports that security forces and prison personnel continue to torture detainees and prisoners. Some prison facilities, including Tehran's Evin prison, are notorious for the cruel and prolonged acts of torture inflicted upon political opponents of the Government." The court also quoted the State Department 1997 Profile of Asylum Claims and Country Conditions: "the Islamic regime's human rights record continues to be abysmal, with continued reports of extra judicial killings and summary executions; widespread use of torture and other degrading treatment." ([*Masoud Hosseini v. Alberto R. Gonzales*](#)).

A Washington, D.C. court in 2003 found Iran responsible for the bombing of the marine barracks in Lebanon in 1983 that killed 241 marines. Quoting the Iranian Constitution's preamble that "The mission of the Constitution is . . . to create conditions conducive to the development of man in accordance with the noble and universal values of Islam" that the constitution "will strive with

other Islamic and popular movements to prepare the way for the formation of a single world community," and that it "provides the necessary basis for ensuring the continuation of the Revolution at home and abroad," the court wrote that "The post-revolutionary government in Iran thus declared its commitment to spread the goals of the 1979 revolution to other nations. Towards that end, between 1983 and 1988, the government of Iran spent approximately \$50 to \$150 million financing terrorism in the Near East" ([*Peterson, et. al., v. The Islamic Republic of Iran*](#)).

A different judge from the D.C. court two years later also found Iran liable for the marine barracks bombing and stated: "Following the 1979 revolution spearheaded by the Ayatollah Ruhollah Khomeini, the nation of Iran was transformed into an Islamic theocracy. The new government promptly drafted a constitution, still in effect today, which boldly declares its commitment to spread the goals of the 1979 revolution to other nations" ([*Holland v. Islamic Republic of Iran*](#)).

Implications

The current Iranian government is an Islamic theocracy with global intentions. Numerous constitutional provisions, particularly Article 4, make all Iranian law subordinate to its Islamic interpretation, which may explain why despite its constitution prohibiting torture or upholding civil rights and the dignity of man, Iran's human rights record has been described as "abysmal" by State Department, and also Iran's justification for its well-known campaign of assassinating its political opponents overseas (See [No Safe Haven: Iran's Global Assassination Campaign](#), [Murder at Mykonos: Anatomy of a Political Assassination](#), and [Condemned By Law: Assassination of Political Dissidents Abroad](#), by the [Iranian Human Rights Documentation Center](#)). If Iran sees an Islamic imperative, its constitution and legislation will be interpreted or superseded to allow for such actions.

Iran is clear about its global intentions. Its constitution's preamble states that the constitution "provides the necessary basis for ensuring the continuation of the [Islamic] Revolution at home and abroad" and that one of the goals of its army and Revolutionary Guards is to "fulfill[ing] the ideological mission of jihad in God's way; that is, extending the sovereignty of God's law throughout the world."

The constitution also makes clear that Iran is on a mission to rid the world of foreign domination and oppression. Most disturbing therefore is Article 154 of its constitution: "The Islamic Republic of Iran has as its ideal human felicity throughout human society, and considers the attainment of independence, freedom, and rule of justice and truth to be the right of all people of the world. Accordingly, while scrupulously refraining from all forms of interference in the internal affairs of other nations, it supports the just struggles of the mustad'afun [oppressed] against the mustakbirun [tyrants] in every corner of the globe."

This allows Iran to make its often-repeated claim that it has never executed an offensive attack on foreign soil – when in fact it does so through proxies, whether the bombing of the marine barracks in 1983 or killing Americans today in Iraq.

Iran's Ahmadinejad is also clear about his country's intentions as expressed in its constitution. From his statements on Iranian television: "One of our slogans during the revolution was: We will convert the entire world to Islam with our logic. We are confident that the Islamic logic, culture, and discourse can prove their superiority in all fields over all schools of thought and theories." Further, "Is there art that is more beautiful, more divine, and more eternal than the art of martyrdom? A nation with martyrdom knows no captivity. Those who wish to undermine this principle undermines the foundations of our independence and national security . . . The message of the (Islamic) Revolution is global, and is not restricted to a specific place or time . . . Allah willing, Islam will conquer what? It will conquer all the mountain tops of the world." Video of Ahmadinejad's statements are available at www.memritv.org under Advanced Search, with clip 987 for his first statement, the relevant language beginning at 4:55. Clip 782 contains his second statement, especially beginning at 00:35.

It should be noted that the essence of constitutional rights is that they are not subordinate to legislation or theology; Iran's constitutional provisions purporting to protect civil rights however are subject to three qualifications. First, numerous articles require them to be "in conformity" with or not "detrimental to the principles of Islam" or state they apply "except in cases provided by law." Second, Article 4 states that all laws must be based on Islamic criteria, and third, the constitutionally established Guardian Council "examines the compatibility" of parliamentary legislation with Iran's Islamic standards. This, while Iran's constitutional provisions regarding its global intentions are unencumbered.

The approach that “we will extend a hand if you are willing to unclench your fist” should be re-examined. Iran understands this to mean that it must make the first move which is to “unclench your fist” – a Western-infidel demand to relinquish its undesirable Islamic ideology. Moreover, those who are willing to extend their hand to Iran may want to consider that Khomeini had already written in *Governance of the Jurist* (1970) that one of the responsibilities of the jurist who governs is to “foreshorten the arms of the transgressors who would encroach on the rights of the oppressed” (p. 27) and that the closing paragraph of this book begins with “O God, foreshorten the arms of the oppressors that are stretched out against the lands of the Muslims” (p. 94).

Those who continue to maintain that Iran can be dealt with as if it functions according to Western norms should carefully note that the closing sentence of the Iranian constitution’s preamble expresses “the hope that this century will witness the establishment of a universal holy government and the downfall of all others.”

The closing sentence of Iran’s constitution leaves no room for misinterpretation: “The contents of the Articles of the Constitution related to the Islamic character of the political system; the basis of all the rules and regulations according to Islamic criteria; the religious footing; the objectives of the Islamic Republic of Iran; the democratic character of the government; the wilayat al-'mr the Imamate of Ummah; and the administration of the affairs of the country based on national referenda, official religion of Iran [Islam] and the school [Twelver Ja'fari] are unalterable” (Article 177).

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