

A Comparative Study of the Imamī Jurisprudential Foundations Shaping the Constitutions of the Iranian Constitutional Revolution and the Islamic Republic of Iran

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Abstract

The development of constitutional law in modern Iran has been shaped not only by modern concepts of public law but also by the continuing normative influence of Sharia and Imamī political jurisprudence. This study comparatively examines the Imamī jurisprudential foundations underlying the constitutional order established by the Iranian Constitutional Revolution and the Constitution of the Islamic Republic of Iran, with particular attention to political legitimacy, the position of Sharia, the constitutional role of the jurist, popular participation, legislative supervision, and the relationship between law and public expediency. Using a comparative-analytical and interpretive approach, the study examines the constitutional translation of jurisprudential concepts within the two political orders. The findings demonstrate that both constitutional systems recognize Islam as a normative component of public order, subject legislation to Sharia-based limitations, assign constitutional significance to juristic authority, and accommodate forms of popular political participation. Nevertheless, they differ fundamentally in the institutional function assigned to jurisprudence. The Constitutional-era model is predominantly based on supervisory jurisprudence, in which principles such as the rejection of despotism, justice, consultation, public supervision, preservation of order, and Sharia conformity operate primarily to limit political authority and regulate legislation. Within this model, the jurist functions principally as a supervisor of Sharia compliance rather than as the holder of supreme political authority. By contrast, the Constitution of the Islamic Republic institutionalizes a guardianship-oriented jurisprudence centered on wilāyat al-faqīh, in which jurisprudential authority contributes directly to the establishment, legitimacy, direction, and preservation of political power. The study concludes that the principal transformation in modern Iranian constitutional jurisprudence is best understood as a transition from jurisprudence as a normative restraint on political power to jurisprudence as both a restraint upon and a constitutive foundation of political authority.

Keywords: Imamī Jurisprudence; Iranian Constitutional Revolution; Constitution of the Islamic Republic of Iran; Supervisory Jurisprudence; Guardianship-Oriented Jurisprudence; Political Legitimacy; Wilāyat al-Faqīh

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1. Introduction

The constitutional history of modern Iran cannot be adequately explained as a straightforward process of importing European concepts of public law into a traditional political society. Concepts such as constitutional limitation, parliamentary representation, separation of powers, ministerial responsibility, elections, legislation, and citizenship undoubtedly entered Iranian political discourse within the broader encounter with modernity, yet these concepts were received and reformulated within an intellectual environment in which Islam, Sharia, and Imāmī jurisprudence retained substantial normative authority. Iranian constitutionalism therefore emerged through a complex process of interaction between new legal institutions and pre-existing jurisprudential conceptions of political authority, justice, religious obligation, and the legitimate exercise of public power. Ajoudani describes Iranian constitutionalism as a conceptual encounter in which modern political vocabulary acquired meanings conditioned by the Iranian religious and intellectual context (Ajoudani, 2008). Tabatabaei similarly emphasizes that the formation of constitutional government in Iran entailed a transformation in political and legal reasoning rather than a simple replication of a foreign constitutional model (Tabatabaei, 2007). From the standpoint of political jurisprudence, this interaction is particularly important because the central problem was not merely whether modern institutions could be adopted, but how institutions that had no exact equivalent in classical jurisprudence could be understood within a normative system that continued to regard Sharia as a superior source of public obligation. Firahi's analysis of jurisprudence and politics in contemporary Iran demonstrates that the encounter between jurisprudential reasoning and modern political institutions produced different models of the relationship between religion and political authority rather than a single unchanging doctrine of the state (Firahi, 2012). Consequently, the constitutional experience of Iran is best understood as a history of changing modes of translating Imāmī jurisprudential concepts into public-law institutions.

Two constitutional moments are especially significant in this transformation. The first emerged from the Constitutional Revolution and the establishment of a constitutional monarchy in the early twentieth century. The Constitutional Revolution arose against a political order characterized by the concentration of authority in the monarchy, weak institutional accountability, unstable limitations on royal power, and the absence of an effective representative legislature. Historical accounts of the movement emphasize that demands for justice, law, institutional restraint, and political representation developed within a broader reaction to arbitrary government and administrative disorder (Kasravi, 2005). Kermani's account of the awakening that preceded the Constitutional Revolution likewise depicts demands for justice and legal restraint as central components of the political mobilization against existing forms of government (Kermani, 2005). Yet the movement was never solely a secular campaign for the transplantation of European constitutionalism. Religious scholars were deeply involved in debates over the legitimacy of constitutional government, and the resulting constitutional settlement attempted to accommodate both representative lawmaking and the superior normative authority of Islam. Naeini's *Tanbih al-Ummah wa Tanzih al-Millah* became one of the most important jurisprudential articulations of this accommodation because it sought to demonstrate that restricting despotic government in the age of the Occultation was not only compatible with Imāmī jurisprudence but could be justified as a means of reducing injustice and political corruption (Naeini, 2005). In this constitutional configuration, jurisprudence principally operated as a normative framework for limiting power, preventing legislation contrary to Sharia, and legitimating mechanisms of political supervision.

The second constitutional moment followed the Islamic Revolution and culminated in the Constitution of the Islamic Republic of Iran. Although the new constitutional order retained many recognizable institutions of modern constitutional government, including elections, a legislature, a presidency, a judiciary, constitutional rules governing public authority, and forms of political representation, it reorganized their normative relationship with Islamic jurisprudence. Hashemi explains that the constitutional identity of the Islamic Republic rests on the simultaneous presence of republican institutions and Islamic normative commitments, with Sharia principles affecting both legislation and the organization of public power (Hashemi, 2018). The jurisprudential transformation was especially evident in the constitutionalization of *wilāyat al-faqīh*, through which the qualified jurist acquired a position fundamentally different from the supervisory role contemplated in the Constitutional-

era arrangement. Khomeini's theory of Islamic government presented political authority during the Occultation as inseparable from the necessity of implementing Islamic law and maintaining an Islamic social order (Khomeini, 2013). His wider political writings likewise associated the formation and preservation of government with the practical realization of Islamic norms and public interests (Khomeini, 2010). The resulting constitutional framework therefore did not limit jurisprudence to determining whether parliamentary enactments violated Sharia; it incorporated jurisprudential authority into the institutional architecture of the state itself.

The comparison between these two constitutional systems becomes theoretically significant because both arose within an overwhelmingly Imamī legal and intellectual environment while producing markedly different configurations of juristic authority. It would therefore be misleading to describe the first arrangement as essentially secular and the second as simply religious. The Constitutional order expressly retained Islam as a constitutional norm and established a mechanism through which qualified jurists were to supervise legislation. Conversely, the Islamic Republic did not eliminate representative institutions or popular political participation, but located them within a constitutional order whose highest normative and institutional principles were defined through Islamic jurisprudence. The more precise question concerns the different constitutional functions assigned to jurisprudence. Mavani's examination of Twelver Shi'ī religious authority demonstrates that the political significance of juristic authority has never been reducible to one fixed institutional formula; its public implications have developed through competing interpretations of representation, guardianship, authority, and the position of jurists during the Occultation (Mavani, 2013). Firahi likewise shows that contemporary Iranian political jurisprudence developed through changing efforts to relate jurisprudential authority to modern political organization (Firahi, 2009). The two constitutions can therefore be studied as distinct attempts to translate Imamī jurisprudential concepts into constitutional institutions.

The distinction between supervisory jurisprudence and guardianship-oriented jurisprudence provides the analytical framework for this comparison. Supervisory jurisprudence refers here to a model in which Sharia and juristic authority operate primarily to constrain political power, supervise legislation, protect religious norms, and prevent government from departing from standards of justice and legality, without necessarily requiring the jurist personally to occupy the apex of executive or political authority. This model does not imply a politically passive jurisprudence. On the contrary, its normative force derives from its ability to subject government to limits that exist beyond the unrestricted will of the ruler. The Constitutional-era jurisprudence articulated by Naeini is particularly representative because the legitimacy of constitutional restraint was related to the reduction of tyranny and the limitation of powers that could not, in the age of the Occultation, claim the full legitimacy of government by the infallible Imam (Naeini, 2005). The constitutional significance of this position lay in creating jurisprudential space for institutions such as Parliament, representative participation, written legal limitation, and supervision of public authority. The jurist's role was essential, but predominantly corrective and supervisory.

Guardianship-oriented jurisprudence operates at a different constitutional level. It regards jurisprudence not merely as an external normative limit upon political authority but as a source for defining legitimate political leadership and structuring the state. Khomeini's conception of *wilāyat al-faqīh* connected the qualifications of the jurist with the continuing need for government, implementation of Islamic norms, administration of public affairs, and protection of the Islamic order (Khomeini, 2013). Discussions of Islamic political theory have similarly treated the authority of the qualified jurist as extending beyond adjudication and the supervision of specific religious matters to the public direction of the political community (Mesbah Yazdi, 2001). Al-Hosseini al-Haeri also approaches Islamic government as a juridical problem concerned with the institutional authority necessary for the implementation and preservation of an Islamic order (Al-Hosseini al-Haeri, 2002). Within this model, jurisprudence becomes constitutive because it contributes to determining not only the legal limits of government but also the institutional location and qualifications of supreme political authority.

The relationship between these models must nevertheless be approached as a transformation rather than an absolute rupture. Both constitutional orders assume that positive law cannot be entirely autonomous from Islamic normativity. Both assign legally meaningful roles to juristic expertise. Both confront the problem of reconciling institutions generated by modern constitutional government with the claims of Sharia. Both also recognize, in different forms, that public authority requires mechanisms of representation, institutional organization, and social acceptance. What changes is the constitutional position from which jurisprudence performs these functions. In the Constitutional model, Sharia largely appears as a superior normative

limit above a political structure whose principal institutions include monarchy, Parliament, ministerial government, and popular representation. In the Islamic Republic, jurisprudential principles penetrate more deeply into the organization of the political structure and become directly associated with leadership, supervision, constitutional interpretation, legislation, and governmental expediency. Hashemi's constitutional analysis illustrates how Islamic principles in the Islamic Republic operate through concrete constitutional institutions rather than remaining merely declaratory values (Hashemi, 2009). Amid Zanjani likewise treats the Islamic character of the constitutional order as structurally integrated with the allocation and regulation of public authority (Amid Zanjani, 2005).

The existing literature has addressed many components of this transformation without always integrating them into a single comparative framework. Historical studies have extensively examined the Constitutional Revolution, its political actors, and its confrontation with despotism. Abrahamian situates constitutionalism within the wider transformation of Iranian society and political conflict during the decline of the Qajar political order (Abrahamian, 2010), while Katouzian relates recurrent struggles over arbitrary power, state formation, and social instability to characteristic patterns of Iranian political development (Katouzian, 2007). Studies of contemporary Islamic political thought have, by contrast, concentrated heavily on Islamic government, *wilāyat al-faqīh*, political legitimacy, and the Islamic Republic. Enayat demonstrates the importance of reinterpretations of Islamic political concepts in modern political thought (Enayat, 2003), while Bashiriye places twentieth-century Iranian political thought within broader ideological transformations concerning state, authority, revolution, and political participation (Bashiriye, 2001). Legal scholarship has analyzed the formal institutions of the Islamic Republic in substantial detail (Madani, 2011). Yet a comparative analysis must move beyond studying the two constitutional periods independently and ask how similar jurisprudential concepts were transformed when translated into different institutional structures.

The objective of this study is therefore to compare the principal Imāmī jurisprudential foundations shaping the Constitutional-era constitutional order and the Constitution of the Islamic Republic of Iran and to determine how differences in those foundations affected political legitimacy, the role of the jurist, the place of Sharia, popular participation, legislative supervision, and the relationship between law and public interest. The analysis is comparative and interpretive rather than fatwa-producing: it reconstructs the jurisprudential logic reflected in constitutional institutions and compares the function performed by jurisprudence within each constitutional order. The central argument is that the principal transformation in Iranian constitutional jurisprudence was a movement from a predominantly supervisory model, in which jurisprudence constrained political power and protected the boundaries of Sharia, to a guardianship-oriented model, in which jurisprudence became simultaneously a source of constitutional legitimacy, an institutional principle of political leadership, and a mechanism for directing and supervising the state. This transformation did not eliminate the earlier concern with limiting arbitrary power; rather, it repositioned that concern within a broader theory in which legitimate political authority itself became jurisprudentially constituted.

2. Imāmī Jurisprudential Foundations of the Constitutional Order: The Supervisory Model

The jurisprudential foundations of the Constitutional order must be understood against the central political problem that confronted Iranian society at the beginning of the twentieth century: how could political power be restrained under conditions in which neither the restoration of the direct government of the infallible Imam nor the continuation of unchecked monarchical rule provided a practical solution to contemporary political disorder? The Constitutional Revolution emerged in an environment in which dissatisfaction with arbitrary royal authority, administrative corruption, foreign influence, economic pressures, and the weakness of legal accountability increasingly converged around demands for justice and law. Kasravi's historical account demonstrates that constitutional demands grew through a sequence of conflicts in which the establishment of a justice-oriented and law-bound government became inseparable from opposition to arbitrary rule (Kasravi, 2005). Kermani similarly describes the pre-constitutional awakening as a movement in which criticism of arbitrary government increasingly became articulated through demands for institutional reform (Kermani, 2005). The jurisprudential significance of this political setting was that Shi'ī scholars could not address constitutionalism merely by asking whether Parliament or elections had direct precedents in classical fiqh. They were required to determine whether the purposes served by constitutional institutions could be justified

through existing principles concerning justice, oppression, consultation, responsibility, public order, and the duties of religious authorities during the Occultation.

The condemnation of despotism provided perhaps the most powerful jurisprudential bridge between Imamī political reasoning and constitutional limitation. Naeini developed a distinction between arbitrary government and government subject to restraint, arguing that political power which could not attain the ideal legitimacy of the government of the infallible Imam should nevertheless be prevented from descending into unrestricted domination (Naeini, 2005). The importance of this reasoning lies in its departure from an all-or-nothing conception of political legitimacy. Instead of assuming that the impossibility of establishing the ideal government rendered all non-ideal political forms jurisprudentially equivalent, Naeini treated political arrangements as susceptible to normative comparison according to the extent to which they reduced oppression and restrained unlawful appropriation of public authority. Constitutional limitation could accordingly possess jurisprudential value because it diminished the scope of arbitrary government. Firahi interprets the Constitutional period as an important moment in the development of Shi'i political jurisprudence precisely because the problem of legitimate restraint acquired institutional expression through law and representative government (Firahi, 2012). In this sense, the Constitutional order did not derive its jurisprudential significance from declaring every modern institution intrinsically sacred; rather, those institutions became defensible insofar as they operated against despotism and subjected political authority to legal and moral limits.

Justice was inseparable from this anti-despotic logic. In Imamī jurisprudential and ethical reasoning, justice represents more than an aspiration of good administration; it establishes a normative criterion by which the exercise of authority can be assessed. Mohaghegh Damad's jurisprudential treatment of public law emphasizes the significance of justice, public responsibility, and legal limits in the Islamic regulation of collective affairs (Mohaghegh Damad, 2008). Within the Constitutional context, justice acquired institutional significance because opposition to oppression required structures capable of transforming an ethical demand into a continuing limitation on government. A written constitution, a representative assembly, public legislation, ministerial responsibility, and legal procedures offered mechanisms through which political authority could be made answerable to rules rather than exercised according to personal command. Tabatabaei's analysis of constitutional government stresses that the decisive innovation of constitutionalism was the transformation of power into authority governed by law (Tabatabaei, 2007). From a jurisprudential perspective, the significance of this transformation was that law-bound government could be defended as a practical instrument for decreasing injustice even if the institutional forms through which this aim was pursued were historically novel.

Consultation provided another jurisprudential concept through which representative institutions could be interpreted. Classical *shūrā* should not be mechanically equated with modern parliamentary sovereignty, because the conceptual and institutional contexts differ substantially. Nevertheless, consultation supplied a vocabulary through which collective deliberation and the rejection of purely personal rule could be rendered compatible with Islamic political reasoning. Enayat observes that modern Islamic political thought frequently reinterpreted established Islamic concepts in response to constitutional and representative institutions (Enayat, 2003). In the Iranian Constitutional setting, consultation was important because the Majlis represented a shift from the concentration of political decision-making in the monarch toward deliberative and representative processes. Ajoudani's analysis demonstrates that the meaning of constitutional concepts in Iran emerged through precisely such acts of translation between modern institutions and familiar normative vocabulary (Ajoudani, 2008). The jurisprudential value of consultation therefore did not necessarily establish the unlimited sovereignty of parliamentary majorities; rather, it strengthened the argument that public affairs should not be determined exclusively by the arbitrary will of a ruler.

The principle of commanding right and forbidding wrong also supported a logic of political supervision. Although traditionally applicable across a wide range of moral and social contexts, its political implication is especially apparent where rulers exercise power unjustly or public institutions deviate from normative obligations. Firahi notes that Shi'i political jurisprudence contains multiple resources for conceptualizing the responsibility of the religious community toward public power (Firahi, 2009). When linked to the Constitutional demand for institutional supervision, commanding right and forbidding wrong could be understood as supporting mechanisms through which governmental conduct was made subject to continuing scrutiny. This did not mean that modern parliamentary oversight was simply identical to the classical jurisprudential duty. Rather, the principle contributed to the normative justification of institutions that prevented rulers from becoming entirely

immune from criticism and accountability. Popular participation, public discussion, representative institutions, and institutional checks could accordingly be understood not merely as foreign political techniques but as mechanisms capable of serving the jurisprudentially recognized objective of preventing injustice.

The preservation of social and political order further complicated the jurisprudential evaluation of constitutionalism. Imāmī jurisprudence could not treat the absence of the infallible Imam as a reason for accepting institutional disorder, because collective life necessarily involved adjudication, protection of rights, administration of public matters, and prevention of social harm. Mohaghegh Damad's discussion of jurisprudential rules illustrates the broader importance assigned to preventing harm and sustaining legally ordered social relations (Mohaghegh Damad, 2012). The necessity of maintaining order did not by itself establish a specific constitutional form, but it strengthened the argument that political institutions could be evaluated according to their capacity to prevent chaos, protect public interests, and constrain destructive uses of authority. Naeini's constitutional reasoning thus combined opposition to tyranny with recognition of the practical necessity of government (Naeini, 2005). Constitutional limitation did not entail the abolition of political power; it sought to transform political power into a bounded authority operating through rules, institutions, and accountability.

This jurisprudential logic became constitutionally concrete in the relationship between Sharia and legislation. The Constitutional system recognized the necessity of statutory lawmaking for a modern state, yet it did not conceptualize legislative authority as normatively unlimited. The Supplementary Constitutional Law established Twelver Shi'ism as the official religious framework and provided, most famously through its Second Principle, for supervision of legislation by qualified *mujtahids*. Ajoudani situates this arrangement within the larger struggle to reconcile the new concept of legislation with the normative authority of Sharia (Ajoudani, 2008). Ghazi Shariatpanahi's treatment of Iranian constitutional law likewise identifies the religious limitation of legislative competence as an important characteristic of the Constitutional legal order (Ghazi Shariatpanahi, 2004). The constitutional solution was therefore neither the complete displacement of Sharia by statutory law nor the elimination of statutory legislation in favor of direct administration through classical jurisprudential texts. Instead, legislation was permitted as a necessary function of the state while remaining subject to a higher normative requirement of non-contradiction with Islamic rules.

The proposed body of first-rank *mujtahids* embodied the supervisory character of this arrangement. The jurists were not constitutionally positioned as the ordinary holders of executive power, nor did the constitutional framework place a jurist at the apex of the state in a manner comparable to the later institution of leadership in the Islamic Republic. Their function was principally to ensure that legislation enacted through the representative process did not violate Sharia. This distinction between supervision and direct government is crucial. The jurist possessed constitutionally relevant authority because the validity of legislation could not be considered entirely independently of religious norms, but the jurist's institutional role remained distinguishable from the political administration of the state. Naeini's jurisprudential defense of constitutionalism is consistent with this structure because his primary concern was to reduce domination and subject power to restraints rather than to formulate a constitutional system in which the jurist necessarily governed directly (Naeini, 2005). Firahi consequently identifies Constitutional-era jurisprudence as an important form of political reasoning in which religious authority supported the institutional limitation of government (Firahi, 2012).

The distinction between juristic supervision and political rule also clarified the constitutional position of Parliament. The Majlis possessed authority to legislate concerning public affairs, but this authority was neither understood as absolute sovereignty in the classical secular sense nor reduced to a merely ceremonial function. Parliament was a representative institution through which political demands, social interests, and public deliberation could enter the state. Tabatabaei emphasizes that representative lawmaking constituted a decisive change in the legal organization of political authority because it displaced personal command as the sole source of public rules (Tabatabaei, 2007). At the same time, the Sharia-supervision mechanism placed a substantive normative limit on legislative competence. The resulting constitutional order therefore combined two different sources of legal authority: representative lawmaking provided the institutional mechanism for producing statutory rules, while Sharia established an external criterion beyond which parliamentary legislation could not legitimately proceed.

Popular participation should consequently be understood within this dual structure. The Constitutional Revolution introduced the people into the institutional organization of power through elections, representation, political associations, public

opinion, and the Majlis. Katouzian describes the Constitutional transformation as an attempt to replace arbitrary political relationships with more predictable and institutionalized forms of government (Katouzian, 2007). The rise of representative institutions was politically significant because subjects of monarchical authority were increasingly conceptualized as members of a nation capable of participating in the political order. Yet this transformation did not necessarily amount to a jurisprudential affirmation of unrestricted popular sovereignty. Naeini's constitutional reasoning accepted mechanisms of representation and public supervision as means of limiting tyranny (Naeini, 2005), while the constitutional requirement of conformity with Sharia simultaneously established that the will of representatives was not the final normative source of law. The people's constitutional role was therefore substantial but bounded: participation helped create and supervise legal authority, while Sharia remained a criterion of ultimate normative validity.

The supervisory model is most clearly visible when these jurisprudential foundations are considered together. The rejection of despotism supplied the negative imperative to restrain arbitrary power; justice established a normative goal for government; consultation contributed to the acceptability of collective deliberation; commanding right and forbidding wrong supported the supervision of public authority; preservation of order justified the continuation and rational organization of government; representative institutions translated participation into constitutional form; and juristic review ensured that statutory legislation remained within Sharia boundaries. None of these elements alone fully defines the Constitutional order, but their combination produced a distinctive constitutional logic. Jurisprudence did not withdraw from public affairs, yet neither did it become the sole organizational grammar of the state. It stood simultaneously within and above the constitutional system: within it through the recognized role of juristic supervision, and above it insofar as Sharia constituted a normative limit upon ordinary legislation. The essential constitutional achievement of this model was therefore to institutionalize Imamī jurisprudence as a restraining and legitimating force without converting the jurist into the sovereign center of political administration.

The limitations of this model were as important as its innovations. The supervisory mechanism depended upon institutions capable of enforcing constitutional restraints, while the political history of the Constitutional period repeatedly exposed the vulnerability of representative government to monarchical intervention, institutional weakness, political fragmentation, and external pressure. Abrahamian's history demonstrates that the establishment of formal constitutional institutions did not immediately resolve the deeper struggles over political authority in Iran (Abrahamian, 2010). Katouzian likewise emphasizes the recurrent difficulty of converting formal legal limitations into durable patterns of political accountability (Katouzian, 2008). These historical limitations did not negate the jurisprudential significance of the Constitutional settlement, but they affected subsequent evaluations of whether supervisory jurisprudence was sufficient to secure an Islamic and law-bound political order. In later political thought, the perceived inadequacy of merely supervising an independently constituted state would become an important background condition for the emergence of a more constitutive jurisprudence of government.

The Constitutional-era synthesis should ultimately be understood as a historically specific answer to the problem of political authority during the Occultation. It accepted the necessity of modern state institutions without granting them complete normative autonomy; it preserved Sharia as a superior criterion without requiring that every public institution be directly derived from classical jurisprudence; it acknowledged a constitutionally important role for jurists without placing them at the apex of routine political government; and it enabled popular representation without treating majority will as legally unlimited. This equilibrium was possible because the fundamental jurisprudential function assigned to constitutionalism was the limitation of arbitrary authority. In this sense, the model was not jurisprudentially minimal because religion was unimportant; it was jurisprudentially supervisory because the principal constitutional task of fiqh was to establish boundaries, guarantee Sharia compatibility, and support institutional resistance to despotism. That model would provide the principal point of contrast with the constitutional order established after the Islamic Revolution.

3. Imamī Jurisprudential Foundations of the Constitution of the Islamic Republic: The Guardianship-Oriented Model

The constitutional foundations of the Islamic Republic emerged from a substantially different jurisprudential and political question. Constitutional-era jurists had primarily confronted the problem of how an existing non-juristic monarchy could be restrained and brought closer to justice and Sharia during the Occultation. The jurisprudence associated with the Islamic Revolution increasingly asked whether political authority itself could and should be constituted on explicitly Islamic and

jurisprudential foundations. This shift altered the location of fiqh within constitutional reasoning. Instead of operating principally as an external criterion by which the laws and conduct of an otherwise independently structured state were judged, jurisprudence became a source for defining the nature, purposes, leadership, and institutional direction of legitimate government. Firahi characterizes the development of contemporary Iranian political jurisprudence as an expansion of jurisprudential engagement with the modern state and its institutional requirements (Firahi, 2012). Mavani's analysis of Twelver Shi'i authority likewise shows that the concept of juristic authority underwent significant reinterpretation as scholars debated the public implications of representation of the Imam during the Occultation (Mavani, 2013). The Constitution of the Islamic Republic represents the most extensive constitutional institutionalization of this guardianship-oriented interpretation.

The jurisprudential genealogy of this development is broader than the theory of *wilāyat al-faqīh* alone. Classical Imāmī jurisprudence contained discussions of the authority of jurists in adjudication, religious taxation, guardianship over particular persons and properties, *hisbah*, administration of certain public matters, and representation in functions for which the presence of lawful religious authority was considered necessary. These discussions did not uniformly amount to a comprehensive theory of the modern state, and important disagreements existed regarding their scope. Nevertheless, they provided doctrinal resources through which later jurists could consider whether authority traditionally recognized in discrete areas implied a more general responsibility for public affairs. Mohaghegh Damad's jurisprudential examination of public law illustrates the breadth of legal questions arising when classical fiqh is applied to the administration of collective and governmental matters (Mohaghegh Damad, 2008). Mavani similarly emphasizes that debates over the authority of the jurist concern both the doctrinal foundations and institutional extent of religious representation during the Occultation (Mavani, 2013). Guardianship-oriented jurisprudence arose when these dispersed authorities were reconstructed within a more comprehensive theory of political government.

Khomeini's theory of Islamic government was decisive because it transformed the necessity of implementing Sharia into an argument concerning the necessity of political authority exercised by a qualified jurist. Government, in this framework, was not merely a neutral administrative apparatus whose religious legitimacy depended on avoiding prohibited conduct. It was an indispensable instrument for realizing legal, social, political, and moral dimensions of Islam. Khomeini argued that the enduring character of Islamic law presupposed an institutional authority capable of administering public affairs and implementing rules whose application could not be reduced to individual religious observance (Khomeini, 2013). His reasoning therefore connected the continuity of Sharia with the continuity of governmental necessity. The qualifications of Islamic leadership were not regarded as arbitrary additions to a modern constitutional structure; knowledge of Islamic law and justice acquired constitutional significance because legitimate government was conceived as institutionally responsible for maintaining an Islamic legal order. Khomeini's political writings further linked government with the preservation of the political community and the effective implementation of Islamic purposes (Khomeini, 2010).

The concepts of general appointment and general deputyship are central to this transition. Under a strong guardianship-oriented interpretation, the qualified jurist's political authority does not originate solely from delegation by the electorate. Rather, juristic authority is related to the general normative position assigned to qualified jurists during the Occultation, while popular participation affects the establishment, practical realization, institutional operation, and continuation of the political system. Mesbah Yazdi's account of Islamic political theory emphasizes the religious foundation of legitimate authority and treats popular political participation within a broader normative framework established by Islam (Mesbah Yazdi, 2001). Al-Hosseini al-Haeri likewise conceptualizes Islamic government as requiring an authority legally grounded in Islamic norms rather than one deriving its entire validity from an autonomous popular will (Al-Hosseini al-Haeri, 2002). The constitutional significance of this model lies in its relocation of juristic authority from the boundary of legislation to the center of political structure.

The principle of *wilāyat al-faqīh* is therefore qualitatively different from the supervisory role of jurists envisaged under the Constitutional system. In the earlier arrangement, juristic competence was constitutionally relevant primarily because legislation required conformity with Sharia. In the Islamic Republic, the qualified jurist occupies the institution of leadership and is assigned responsibilities extending to the general direction and preservation of the constitutional order. Hashemi explains that leadership represents a central organizing institution within the constitutional architecture of the Islamic Republic and cannot be reduced to the role of ordinary constitutional review (Hashemi, 2018). Madani similarly treats the Leader's

constitutional position as structurally related to the organization and coordination of the principal powers of the state (Madani, 2011). The jurist thus becomes not merely a guardian of the border between statutory law and Sharia but an institutional guardian of the political order itself.

This shift becomes especially visible in the relationship between leadership and the constitutional distribution of powers. Modern constitutions ordinarily seek to divide political authority among institutions in order to prevent its concentration, yet the Islamic Republic combines institutional differentiation with an overarching structure of guardianship. Hashemi describes the branches of government as legally distinct while operating within the constitutional framework established by the Islamic character of the state and the institution of leadership (Hashemi, 2009). The constitutional model therefore does not abolish separation of functions, but it refuses to understand the branches as fully autonomous sources of political legitimacy. Leadership operates within the constitutional architecture as a coordinating and directing authority whose jurisprudential qualifications distinguish it from a hereditary monarch or an ordinary elected executive. Amid Zanjani's account of the foundations of the Islamic Republic's constitutional law accordingly places Islamic political principles within the structural organization of sovereignty rather than treating them as symbolic constitutional declarations (Amid Zanjani, 2005).

The position of Sharia within legislation also reflects this deeper institutionalization. The Islamic Republic preserves the negative principle familiar from the Constitutional period: legislation cannot validly contradict Islamic norms. Yet it embeds that principle within a more permanent and systematically organized mechanism of constitutional supervision. The Guardian Council provides the clearest institutional example. Its jurist members assess legislation for compatibility with Islamic criteria, while the Council also performs constitutional functions extending beyond religious review. Hashemi analyzes the Guardian Council as a central institution through which both constitutional legality and Islamic normativity are protected within the legislative process (Hashemi, 2018). Madani similarly treats the Council's review of parliamentary enactments as one of the defining limitations on the ordinary legislative authority of the Islamic Consultative Assembly (Madani, 2010). Unlike the unrealized or inconsistently implemented supervisory arrangement of the Constitutional era, juristic review under the Islamic Republic is integrated continuously into the formal legislative process.

The institutionalization of Sharia is not limited to legislative review. The constitutional order assumes that public law itself must operate within Islamic norms and objectives. Hashemi observes that the Islamic character of legislation possesses a general constitutional status affecting the legal system as a whole (Hashemi, 2009). This changes the relationship between fiqh and positive law. Under a strictly supervisory model, jurisprudence can be imagined as standing outside the state and invalidating specific acts that cross religious boundaries. Under a guardianship-oriented model, jurisprudence also participates in constituting the criteria by which state institutions understand their purposes and authority. The difference is one of constitutional depth. Sharia remains a limit, but it simultaneously becomes an internal organizing principle of political and legal institutions.

The requirement of implementing Islamic norms reinforces this positive dimension. Khomeini's theory of government treats political authority as necessary precisely because significant parts of Islamic law concern collective affairs and cannot be realized through isolated individual compliance (Khomeini, 2013). Government consequently acquires a positive religious function. This does not mean that every administrative decision is predetermined by a fixed jurisprudential text. Rather, the state becomes responsible for pursuing an Islamic legal and social order within changing political circumstances. Firahi's analysis of the modern relationship between jurisprudence and statecraft highlights the difficulty and importance of translating normative jurisprudential concepts into institutions capable of governing complex societies (Firahi, 2012). Guardianship-oriented jurisprudence is therefore governmental not simply because a jurist holds office, but because fiqh is required to address the continuous problems of public administration, collective interests, legislation, institutional conflict, and political order.

The preservation of the system acquires particular importance in this context. The classical concern with preservation of order could justify the necessity of government even under the Constitutional model, but in the Islamic Republic the concept becomes intertwined with preservation of an explicitly Islamic constitutional system. Khomeini's political statements assigned substantial importance to the maintenance of the Islamic political order as a condition for implementing collective religious obligations (Khomeini, 2010). The constitutional effect of this reasoning is that protection of the system is not regarded merely as administrative stability; it becomes connected to the continuity of an institutional framework through which Islamic

government is realized. This broadens the scope of governmental jurisprudence because conflicts between abstract legal norms and urgent requirements of public administration cannot always be resolved solely by applying a simple rule of non-contradiction.

The concept of *maṣlaḥah*, or governmental and public expediency, consequently becomes one of the most distinctive features of the post-revolutionary constitutional arrangement. Expediency responds to situations in which the requirements of governance, social interests, or institutional necessity cannot be addressed adequately through an inflexible opposition between ordinary legislation and a particular jurisprudential rule. Khomeini's later political reasoning gave substantial importance to the needs of Islamic government and the preservation of the political order when evaluating such conflicts (Khomeini, 2010). Hashemi explains that the Expediency Discernment Council occupies an important position in the constitutional mechanism for resolving certain disputes and addressing interests of the system (Hashemi, 2009). This institutionalization of expediency introduces a third dimension into the relationship between Sharia and legislation: the system must negotiate not only the conformity of statutory law with religious norms but also the practical requirements of governing an Islamic political community.

Expediency should not be interpreted as the abandonment of Sharia. Within guardianship-oriented jurisprudence, it functions as a governmental concept because Sharia is understood as regulating a living political order rather than merely prescribing isolated individual rules. Firahi's treatment of political jurisprudence demonstrates that the emergence of governmental fiqh requires jurisprudential reasoning to confront institutional complexity and changing public circumstances (Firahi, 2009). The significance of *maṣlaḥah* therefore lies in its attempt to preserve the normative authority of Islam while allowing the state to respond to conditions not reducible to the direct application of premodern legal categories. This produces a more complex constitutional relationship among jurisprudence, statutory law, political authority, and institutional judgment than existed in the Constitutional system.

The role of the people within this framework is equally important because guardianship-oriented jurisprudence does not render republican institutions constitutionally meaningless. The Constitution of the Islamic Republic relies extensively on elections and popular participation for the formation of major institutions. Hashemi identifies popular sovereignty and public voting as indispensable dimensions of the republican component of the constitutional order (Hashemi, 2018). Madani likewise emphasizes that elections provide the constitutional means through which citizens participate in the establishment and operation of representative governmental institutions (Madani, 2011). The President, Parliament, local councils, referenda, and the Assembly of Experts all demonstrate that the political system cannot be described simply as a structure of appointment independent of the population.

The jurisprudential question concerns the meaning assigned to this participation. In a model based on unrestricted popular sovereignty, the will of citizens supplies the ultimate source of political legitimacy and no prior normative order can permanently limit the sovereign constituent power of the people. The Islamic Republic adopts a different configuration. Mesbah Yazdi treats popular acceptance as politically consequential but normatively situated within an Islamic theory of legitimate authority (Mesbah Yazdi, 2001). Hashemi's constitutional account similarly depicts the republican and Islamic elements as coexisting within a structured constitutional relationship rather than as entirely independent sources of authority (Hashemi, 2018). Popular participation therefore operates at several levels: it gives institutional form to republican government, selects officeholders, provides political acceptance, facilitates effective governance, and enables citizens to participate in public authority. Yet the electorate does not possess constitutional power to transform the Islamic foundations of the state through ordinary majoritarian decision-making.

The relationship between religious legitimacy and popular acceptance is therefore neither identical to secular democratic sovereignty nor reducible to political irrelevance of the population. Haeri Yazdi presents a critical philosophical perspective on claims of political guardianship and raises fundamental questions about the relationship between religious authority and the political autonomy of citizens (Haeri Yazdi, 2002). The significance of such criticism is that it reveals the central theoretical tension built into the constitutional model: the state is simultaneously republican and jurisprudentially ordered. From within the guardianship-oriented framework, however, the two elements can be understood as performing different functions. Religious legitimacy concerns the normative qualifications and limits of political authority, while popular participation

concerns institutional realization, representation, accountability, and social acceptance. The resulting constitutional system is consequently neither purely plebiscitary nor purely appointive.

Taken together, these principles establish the distinctiveness of guardianship-oriented jurisprudence. The general authority of the jurist, the theory of Islamic government, the constitutionalization of leadership, the permanent juristic review of legislation, the positive responsibility to implement Islamic norms, the preservation of the political system, the institutional recognition of expediency, and the continuing role of elections create a constitutional order in which jurisprudence is deeply internal to political structure. This represents more than the expansion of clerical influence. It constitutes a transformation in the juridical function of fiqh. Jurisprudence becomes concerned with the design, legitimacy, continuity, and direction of government itself. The jurist is no longer positioned principally at the boundary between Parliament and Sharia; juristic authority becomes one of the organizing principles of the state. This is the essential distinction between the Constitutional supervisory paradigm and the constitutional model created by the Islamic Republic.

4. Comparative Analysis: From Supervisory Jurisprudence to Guardianship-Oriented Jurisprudence

A meaningful comparison between the two constitutional orders must begin with their common foundations, because the differences can otherwise be exaggerated into a false opposition between a supposedly nonreligious Constitutional system and an exclusively religious Islamic Republic. Both constitutional experiences rejected the complete privatization of religion and treated Islam as relevant to the validity of public law. Both recognized Twelver Shi'i jurisprudence as a normative source that could limit the exercise of legislative authority. Both assigned an institutional role to juristic expertise, although that role differed radically in scope and location. Both also accepted legal institutions that could not simply be reproduced from classical jurisprudence, including representative assemblies, statutory legislation, bureaucratic government, written constitutional rules, and forms of electoral participation. The constitutional problem in each period was therefore one of integration: how could a modern political and legal structure be reconciled with an Islamic normative order? Ajoudani shows that this problem of translation was already central to the Constitutional Revolution ([Ajoudani, 2008](#)), while Hashemi demonstrates that the Constitution of the Islamic Republic continued to combine recognizably modern constitutional institutions with specifically Islamic limitations and structures ([Hashemi, 2018](#)). The difference lies not in whether jurisprudence was constitutionally present but in the constitutional function that jurisprudence was required to perform.

Political legitimacy provides the first and deepest point of comparison. The Constitutional model emerged from a political struggle against unrestrained monarchy. Its jurisprudential logic therefore emphasized the illegitimacy of arbitrary domination, the value of justice, the necessity of limiting political authority, and the relative superiority of government constrained by law. Naeini's reasoning did not require the claim that a constitutional monarch acquired the same jurisprudential status as the infallible Imam or a fully legitimate Islamic ruler. Rather, the constitutional arrangement was defensible because it reduced injustice and subjected power to restrictions ([Naeini, 2005](#)). This produces what may be called a jurisprudence of comparative political legitimacy: where the ideal order is unavailable, a more restrained government can be normatively preferable to a despotic one. Political legitimacy accordingly becomes associated with lawful limitation, justice, accountability, and conformity with Sharia.

The Islamic Republic is based on a more constitutive conception. Khomeini's theory does not begin merely from the premise that existing political authority should be restricted; it maintains that the implementation of Islam requires legitimate governmental authority and that qualified juristic leadership has a jurisprudential basis during the Occultation ([Khomeini, 2013](#)). The source of legitimacy therefore moves closer to the structure of government itself. Political authority is not regarded as religiously acceptable simply because it avoids certain prohibited acts. Its legitimacy is related to the Islamic basis of leadership, the juristic qualifications required for supreme authority, the state's commitment to Islamic norms, and its role in maintaining an Islamic political order. Mesbah Yazdi's theory similarly distinguishes religiously legitimate authority from the mere factual possession of popular support ([Mesbah Yazdi, 2001](#)). Thus, while both constitutions connect government with Sharia, the Constitutional order predominantly asks how non-ideal power can be restrained, whereas the Islamic Republic asks how legitimate Islamic authority can be institutionally constituted and exercised.

This difference does not mean that popular acceptance was absent in the second system or that it constituted the entire legitimacy of the first. The Constitutional order gave unprecedented institutional significance to the nation through representative elections and Parliament. The people became participants in public authority because legislation was no longer conceptualized merely as command descending from the monarch. Tabatabaei interprets this transformation as fundamental to the emergence of constitutional government in Iran (Tabatabaei, 2007). Yet parliamentary will remained subject to Sharia limitations. Accordingly, popular representation was a source of political authorization and legal participation but not an unrestricted source of normative validity. The Islamic Republic preserves this distinction in a different form. Elections and public votes remain indispensable to the functioning of republican institutions (Madani, 2011), but popular participation occurs within a prior constitutional structure that identifies Islam and juristic guardianship as foundational principles. In both systems, therefore, popular will is constitutionally consequential but not theoretically unlimited; the crucial difference lies in how extensively jurisprudential authority structures the institutions through which that will operates.

The position of the jurist supplies the clearest institutional expression of the transformation. Under the Constitutional order, the jurist is principally a supervisor. The constitutional importance of juristic expertise derives from the requirement that legislation remain compatible with Sharia. Jurists thereby protect a normative boundary, but the political constitution of the state does not make a jurist the holder of supreme governing authority. Naeini's constitutional theory is again instructive because his defense of representative limitation does not depend on a constitutional requirement that the jurist personally govern (Naeini, 2005). Juristic authority remains indispensable to religious legitimacy while institutionally differentiated from monarchy, ministers, and Parliament. The jurist can thus be described as constitutionally authoritative without being constitutionally sovereign.

In the Islamic Republic, this distinction is fundamentally altered. The jurist is not merely an external reviewer of political conduct but the holder of the institution of leadership. Khomeini's theory of *wilāyat al-faqīh* provided the most influential jurisprudential foundation for this change (Khomeini, 2013). Hashemi's analysis of the constitutional system demonstrates that leadership possesses responsibilities affecting the general organization and direction of the state (Hashemi, 2009). The difference is qualitative rather than merely quantitative. It is not simply that the jurist possesses more powers under the Islamic Republic. The constitutional identity of juristic authority has changed: from a supervisory authority whose legitimacy concerns compliance with Sharia to a governing authority whose jurisprudential qualifications contribute to the legitimacy of the political structure itself. Fiqh consequently moves from the perimeter of power toward its constitutional center.

The relationship between Sharia and legislation undergoes a parallel transformation. In the Constitutional order, Sharia operates predominantly through a principle of negative compatibility: Parliament may legislate, but legislation must not contradict Islamic rules. This arrangement acknowledges the necessity of statutory law while maintaining the superior normative position of Sharia. Ghazi Shariatpanahi's account of constitutional institutions identifies this religious limitation as one of the characteristic features of Iran's constitutional tradition (Ghazi Shariatpanahi, 2004). The body of qualified jurists contemplated by the Supplement was intended to police the boundary between permissible statutory legislation and prohibited contradiction with Sharia. Jurisprudence thus operated as a veto or corrective standard without necessarily generating the detailed architecture of the state.

Under the Islamic Republic, negative compatibility remains important but no longer exhausts the constitutional role of Sharia. The Guardian Council institutionalizes continuous juristic scrutiny of legislation (Hashemi, 2018), while the Islamic character of the constitutional order influences leadership, public institutions, governmental purposes, and legal interpretation. Jurisprudence therefore acquires what may be called a positive constitutional function. It contributes to defining the structure within which legislation occurs rather than merely invalidating enactments after they have been produced. The distinction can be expressed as one between Sharia as a constitutional boundary and Sharia as both boundary and constitutional architecture. The first is dominant in the Constitutional model; the second characterizes the Islamic Republic.

The mechanisms of religious supervision further demonstrate this difference. The Constitutional arrangement depended heavily upon a limited juristic mechanism associated with legislative review. Although normatively significant, this mechanism existed alongside a broader state whose institutional design was shaped substantially by modern constitutional models. Ajoudani emphasizes the hybrid character of the Constitutional system and the difficulty of reconciling modern legislation with traditional religious authority (Ajoudani, 2008). In the Islamic Republic, by contrast, religious and constitutional supervision

is distributed through a more extensive network. The Guardian Council reviews legislation, leadership occupies a central position in the political structure, the Assembly of Experts participates in the institutional process concerning leadership, and the Expediency Discernment Council addresses particular conflicts and systemic interests. Madani's constitutional analysis demonstrates that supervision in the Islamic Republic is built into multiple levels of the formal constitutional organization (Madani, 2010). This institutional density reflects a jurisprudence that has become governmental rather than merely supervisory.

The role of expediency exposes perhaps the most profound difference in the normative structure of the two systems. The Constitutional model can be schematically represented as a relationship between statutory law and Sharia: representative institutions produce law, while jurisprudential supervision ensures that the resulting rules do not exceed religious boundaries. This is necessarily a simplification, but it identifies the dominant constitutional problem. Under the Islamic Republic, the relationship becomes triangular: Sharia, statutory law, and governmental expediency interact. Khomeini's political thought increasingly emphasized the responsibilities and requirements of Islamic government when addressing conflicts created by the administration of a complex modern state (Khomeini, 2010). Hashemi's analysis of the Expediency Discernment Council illustrates how the constitutional order institutionalizes mechanisms for addressing interests of the system when ordinary processes of legislative and religious review produce unresolved difficulties (Hashemi, 2009). Expediency therefore indicates that jurisprudence has moved from simply guarding fixed normative boundaries to confronting the dynamic requirements of government.

This development is conceptually important because it changes the meaning of jurisprudential responsibility. Supervisory jurisprudence can operate through a relatively clear question: does a particular law violate Sharia? Governmental jurisprudence must confront a wider set of questions: what institutional arrangements are required to preserve the political order, how should public interests be identified, how should conflicts among legal principles be resolved, how can changing social conditions be governed within an Islamic framework, and what authority possesses competence to make such determinations? Firahi's work shows that these questions become increasingly central as fiqh engages with modern state institutions (Firahi, 2012). The expansion of jurisprudence therefore creates new possibilities for institutionalizing Islamic norms but simultaneously generates new problems concerning competence, interpretation, accountability, and the limits of governmental discretion.

The transition also transforms the relationship between Islam and republicanism. The Constitutional order did not use the concept of republicanism as the Islamic Republic later would, but it did institutionalize representative political authority and a concept of the nation. Political participation principally served the limitation of monarchy and the production of legislation through representatives. In the Islamic Republic, popular participation extends through elections and public institutions while coexisting with the jurisprudential institution of leadership. Hashemi treats the Islamic and republican dimensions of the Constitution as simultaneously constitutive of the political system (Hashemi, 2018). This produces a dual constitutional logic in which the people are neither the exclusive source of normative legitimacy nor passive recipients of a fully non-elective government. Their participation gives political institutions practical form, social acceptance, and representative content, while juristic norms define foundational constitutional limits.

The distinction between legitimacy and acceptance becomes particularly relevant here. In guardianship-oriented theory, religious legitimacy may be grounded in Islamic law and the qualifications of legitimate authority, whereas public acceptance is essential to the realization and functioning of government. Mesbah Yazdi articulates a strong distinction between these concepts within Islamic political theory (Mesbah Yazdi, 2001). Haeri Yazdi, from a critical perspective, questions whether political authority can legitimately be derived from juristic guardianship in a manner that limits the autonomous political agency of the population (Haeri Yazdi, 2002). These competing positions reveal that the relationship between *wilāyah* and republicanism is not merely an institutional matter but a fundamental theoretical question about the source of political authority. For comparative purposes, however, the key point is that the Constitutional system largely situated juristic authority outside the direct exercise of supreme government, whereas the Islamic Republic incorporates juristic authority into the structure within which popular participation itself occurs.

The transition from supervisory to guardianship-oriented jurisprudence cannot be explained exclusively by doctrinal evolution. Historical experience also influenced the transformation. The Constitutional Revolution succeeded in establishing a written constitution and representative institutions but struggled to stabilize the limitation of political power. Kasravi's historical

narrative depicts recurring conflicts that weakened the constitutional system (Kasravi, 2005), while Abrahamian situates the subsequent transformation of Iranian politics within broader struggles over centralization, social power, foreign intervention, and state authority (Abrahamian, 2010). Katouzian's analysis of Iranian state–society relations highlights the recurring instability of legal constraints on centralized authority (Katouzian, 2008). These experiences contributed to later doubts about whether a system in which religious authority primarily supervised the boundaries of government was sufficient to secure a durable Islamic and constitutional political order.

The Pahlavi period intensified this problem by creating a more centralized modern state while marginalizing many forms of independent political participation. Bashiriyeh's history of twentieth-century Iranian political thought shows how authoritarian modernization, ideological conflict, nationalism, socialism, Islamism, and demands for political participation transformed conceptions of legitimate government (Bashiriyeh, 2001). The Islamic Revolution consequently emerged not merely as an attempt to restore the Constitutional balance between monarchy, Parliament, and Sharia supervision but as a project to replace the political regime and establish a new normative order. Khomeini's political thought supplied a jurisprudential vocabulary capable of transforming the revolutionary demand for Islamic government into an institutional theory of state authority (Khomeini, 2013). The guardianship-oriented model therefore arose through the convergence of doctrinal development and historical dissatisfaction with previous political arrangements.

Yet describing this transformation as a simple progression from weak to strong jurisprudence would be misleading. Supervisory jurisprudence possessed a powerful anti-authoritarian logic precisely because it concentrated on limiting domination rather than claiming comprehensive juristic direction of the state. Its constitutional strength lay in the differentiation between political institutions and juristic supervision. Guardianship-oriented jurisprudence, conversely, acquires greater capacity to shape government directly but must confront more complex questions regarding the limitation of the authority that acts in the name of jurisprudence. The problem of constitutionalism does not disappear when legitimate authority is jurisprudentially constituted. Rather, it changes form. Hashemi's analysis of the Islamic Republic shows that constitutional rules continue to regulate institutions even within an Islamic and guardianship-oriented order (Hashemi, 2018). Thus, the transformation from supervisory to guardianship-oriented jurisprudence simultaneously expands jurisprudential authority and increases the importance of defining its constitutional boundaries.

The comparison therefore reveals continuity as well as rupture. The anti-despotic jurisprudence of the Constitutional period established the important principle that political authority is not normatively absolute. The Islamic Republic retains the idea that public authority is subject to higher norms, but it identifies those norms with a constitutional order in which the jurist occupies a central governing position. The Constitutional model asks how power that is not intrinsically jurisprudential can be restrained by jurisprudence. The Islamic Republic asks how jurisprudentially legitimate power can be exercised through a modern constitutional state. In the first model, jurisprudence is primarily a guardian standing over political power; in the second, it becomes both guardian and participant in the constitution of power. This distinction explains why similar concepts—Sharia, justice, public order, religious authority, representation, and political responsibility—produce different institutional consequences in the two constitutional systems.

The transformation also modifies the constitutional meaning of law itself. Under the Constitutional model, law represented an instrument for restraining personal government and creating predictable public authority. Statutory law acquired legitimacy through representative enactment while remaining bounded by Sharia. Under the Islamic Republic, law continues to perform these functions but becomes part of a more explicitly jurisprudential hierarchy. Islamic standards affect the validity of legislation, leadership possesses constitutionally defined authority, and expediency mediates between normative rules and governmental requirements. Madani's analysis demonstrates that law in the Islamic Republic operates within a network of constitutional institutions designed to protect both legality and the Islamic identity of the system (Madani, 2011). Consequently, the movement from one constitutional order to the other is not simply an expansion in the quantity of religious rules. It is a transformation in the constitutional theory of how legal validity, political authority, and jurisprudential legitimacy relate to one another.

This comparative framework ultimately suggests that the constitutional development of modern Iran should not be narrated through a binary opposition between tradition and modernity. Both constitutional systems are hybrid in the technical sense that each translates jurisprudential concepts into institutional forms shaped by modern statehood. Nasr's broader discussion of

Islam's encounter with modernity underscores the difficulty of preserving an Islamic normative worldview while responding to institutional forms generated by modern social and political life (Nasr, 2004). The Constitutional system answered this problem by allowing substantial institutional modernization while placing Sharia and juristic supervision above the legislative process. The Islamic Republic answered it by internalizing jurisprudential authority more extensively into the structure of the modern state. The resulting historical transition is therefore best understood as a transformation within Iranian Islamic constitutionalism itself: from jurisprudence as a normative restraint upon political power to jurisprudence as both a normative restraint and a source of the constitutional constitution of power.

5. Conclusion

The comparison of the two decisive constitutional experiences of modern Iran demonstrates that Imamī jurisprudence has played a continuous but changing role in the formation of Iranian public law. Neither the constitutional order created by the Constitutional Revolution nor the Constitution of the Islamic Republic can be adequately understood by treating religion as an external cultural influence upon an otherwise autonomous legal structure. In both cases, the constitutional system developed through an attempt to define the relationship among political authority, positive law, Sharia, juristic expertise, and popular participation. The principal difference between the two systems therefore lies not in the presence or absence of Islamic jurisprudence but in the constitutional position assigned to it. The Constitutional order primarily located jurisprudence at the level of limitation and supervision, whereas the Islamic Republic moved jurisprudential authority into the institutional constitution and direction of political power.

The Constitutional Revolution created a jurisprudentially significant model because it transformed opposition to arbitrary rule into a constitutional structure of legal limitation. Its underlying logic was not dependent on the proposition that every institution of constitutional government possessed a direct and literal precedent in classical fiqh. Rather, representative institutions, written legal restraints, legislative procedures, public accountability, and mechanisms of political supervision could be justified according to their capacity to reduce oppression, protect justice, preserve social order, and prevent uncontrolled exercises of authority. This form of reasoning enabled jurisprudence to engage modern constitutional institutions without requiring the complete jurisprudential reconstruction of the state. Fiqh provided normative standards against which the political order was measured and boundaries within which new institutions could operate.

The position of Sharia within the Constitutional settlement reflected this supervisory logic. Statutory legislation was recognized as a necessary feature of public government, but the power to legislate was not treated as normatively unlimited. Sharia continued to occupy a superior position, and the participation of qualified jurists in reviewing legislation represented an effort to preserve this hierarchy. The constitutional significance of juristic authority was therefore considerable, yet its institutional character remained primarily supervisory. The jurist did not become the constitutional ruler. Instead, juristic authority protected the religious boundaries of a political system whose central institutions included monarchy, Parliament, ministers, and popular representation. This arrangement permitted a distinction between the exercise of governmental power and the religious supervision of that power.

Popular participation developed within the same structure. The creation of Parliament, elections, representation, and the concept of the nation introduced an institutional form of political agency that fundamentally differed from the relationship between subjects and an unrestricted monarchy. The people acquired a continuing role in constituting representative authority and supervising public power. Nevertheless, the constitutional model did not transform popular will into an unlimited normative source. The authority of representatives existed within a legal order in which Sharia continued to determine substantive boundaries. The Constitutional system therefore combined representative authorization with religious limitation rather than resolving the relationship in favor of the absolute sovereignty of either Parliament or juristic authority.

The Islamic Republic reorganized these elements around a more comprehensive theory of Islamic government. Its distinctive feature is not merely that Islamic law possesses constitutional recognition, since this was already true in important respects under the Constitutional order. The decisive change is that jurisprudential authority becomes constitutive of political leadership and of the institutional organization of the state. The qualified jurist is no longer confined to an external supervisory relationship with legislation but occupies a central constitutional office. Jurisprudence consequently becomes relevant not only to

determining the validity of public rules but also to defining the qualifications of supreme political authority, the purposes of government, and the mechanisms through which the Islamic character of the state is preserved.

This transformation changes the relationship between Sharia and positive law. The Constitutional model can largely be understood through the requirement that statutory legislation remain within Sharia boundaries. The Islamic Republic retains that requirement but extends jurisprudential institutionalization considerably further. Religious supervision becomes continuous and structurally integrated into the legislative process; leadership is constitutionally associated with juristic qualifications; and the political order develops mechanisms for addressing conflicts among legislation, Sharia, and systemic interests. The jurisprudential problem therefore moves beyond the relatively limited question of whether a particular statute contradicts Islamic law. It increasingly concerns how an Islamic state should govern, how public interests should be assessed, how institutional conflicts should be resolved, and how changing social conditions should be reconciled with continuing normative commitments.

The concept of expediency is especially important in demonstrating the governmental character of the later model. A jurisprudence that assumes responsibility for the organization and preservation of political authority cannot avoid questions arising from the practical requirements of state administration. Government confronts conditions of economic change, political conflict, institutional competition, social transformation, and public necessity that cannot always be managed through a binary distinction between statutory law and prohibited contradiction with Sharia. The formal recognition of mechanisms for discerning systemic expediency reflects the attempt to incorporate these realities within an Islamic constitutional framework. This development makes guardianship-oriented jurisprudence more institutionally comprehensive, while at the same time creating new questions about the boundaries of governmental discretion and the relationship between changing interests and stable legal norms.

The role of the people also changes without disappearing. The Constitutional period principally institutionalized popular participation through parliamentary representation directed against monarchical absolutism. The Islamic Republic incorporates political participation through a broader set of elections and republican institutions, but these mechanisms operate within a constitutional structure that already defines Islamic government and juristic guardianship as foundational principles. Popular participation is therefore neither purely derivative nor normatively unlimited. It is indispensable to the practical realization, social acceptance, and representative operation of the political order, while the constitutional framework places substantive and institutional limits upon what ordinary political majorities can alter.

This produces a distinctive relationship between religious legitimacy and popular acceptance. The constitutional system of the Islamic Republic does not fit comfortably within a model in which political legitimacy originates exclusively from electoral authorization, but neither can its functioning be explained without elections, participation, political representation, and public acceptance. Its structure is consequently multilayered. Jurisprudential legitimacy, constitutional organization, electoral participation, and effective government operate within the same political framework. The resulting tension between guardianship and republicanism is not an accidental inconsistency external to the constitutional system; it is one of the central characteristics generated by the effort to combine an Islamic jurisprudential theory of authority with the institutional forms of a modern republic.

The comparison further shows that the passage from supervisory to guardianship-oriented jurisprudence should not be understood as a total rejection of the Constitutional heritage. The Islamic Republic preserves several concerns that were already central to Constitutional-era political jurisprudence, including the rejection of arbitrary authority, the normative importance of justice, the necessity of lawful government, the relevance of public participation, and the subordination of political action to higher religious principles. What changes is the institutional strategy through which these concerns are pursued. The Constitutional model seeks to protect them chiefly by restraining independently constituted political authority. The guardianship-oriented model seeks to protect them by making jurisprudential legitimacy part of the constitution of political authority itself.

This distinction also exposes different constitutional risks. A supervisory model must confront the possibility that religious supervision will be too weak or institutionally ineffective to restrain political power. If constitutional checks cannot be enforced, the formal recognition of law and Sharia boundaries may fail to prevent renewed concentration of authority. A guardianship-oriented model confronts a different problem: once jurisprudential authority becomes internal to the governing structure, constitutional theory must explain how the authority exercised in the name of guardianship is itself limited, supervised, and

reconciled with the representative dimensions of the political order. The movement from supervision to guardianship therefore does not eliminate the perennial constitutional question of limiting power. It relocates that question within a new institutional structure.

The historical transformation is consequently best characterized as a change in the constitutional function of *fiqh*. During the Constitutional period, jurisprudence principally acted as a guardian of the normative boundaries within which political institutions were expected to operate. It provided arguments against despotism, supported justice and accountability, permitted representative mechanisms to function, and sought to prevent legislation from contradicting *Sharia*. In the Islamic Republic, jurisprudence acquires an additional constitutive dimension. It contributes to the definition of legitimate leadership, participates in the organization of the state, informs the objectives of government, supervises legislation, and interacts with institutional mechanisms of public expediency. *Fiqh* thereby moves from being principally the guardian of the constitutional boundary to becoming one of the architects of the constitutional order.

The broader significance of this transformation extends beyond the institutional position of the jurist. It demonstrates that the encounter between *Imamī* jurisprudence and modern constitutionalism has produced more than one possible model of Islamic public law. The Constitutional experience represents a model in which religious normativity can coexist with extensive institutional differentiation between juristic supervision and governmental authority. The Islamic Republic represents a model in which religious normativity becomes more fully incorporated into governmental structure. Both models respond to the same fundamental problem of governing during the Occultation under conditions of modern statehood, but they answer that problem through different interpretations of the relationship between jurisprudence and political authority.

The constitutional history examined here should therefore not be reduced to a linear transition from tradition to modernity, from monarchy to republic, or from a less religious to a more religious political order. Such descriptions capture important historical changes but fail to identify the jurisprudential transformation occurring beneath them. The more precise development is a transition between two modes of constitutionalizing *Imamī* jurisprudence. In the first, jurisprudence legitimates and supervises the limitation of political power without itself becoming the central institution of government. In the second, jurisprudence becomes both a source of legitimacy and an organizing principle of government while retaining supervisory functions. The shift is therefore from supervisory jurisprudence to guardianship-oriented jurisprudence.

This conclusion also clarifies the relationship between continuity and change in Iranian constitutional law. Continuity lies in the enduring constitutional relevance of Islam, *Sharia*, juristic expertise, justice, public order, and limitations on political authority. Change lies in the institutional translation of those principles. The constitutional history of Iran thus reveals that jurisprudential concepts do not possess fixed constitutional consequences independently of interpretation and political context. The same legal tradition can support different institutional arrangements depending on how juristic authority, government, representation, and public obligation are conceptualized. What distinguishes the two constitutional experiences is ultimately the constitutional location of the jurist and, through that location, the place occupied by jurisprudence in the production, limitation, and exercise of political authority.

The central finding of this study is therefore that the transition from the Constitutional Constitution to the Constitution of the Islamic Republic represents a qualitative transformation in the relationship between *fiqh* and the state. Under the Constitutional model, jurisprudence principally restrained power from outside its central governing institutions; under the Islamic Republic, jurisprudence both restrains power and participates in constituting its highest institutional form. The first model can be understood as a jurisprudence of constitutional limitation, while the second is a jurisprudence of constitutional government. Recognizing this distinction provides a more precise framework for understanding the development of Iranian constitutional thought and demonstrates that the most significant transformation was not simply the increased visibility of religion in public law, but the movement of *Imamī* jurisprudence from the supervision of political authority to the jurisprudential constitution of political authority itself.

Ethical Considerations

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Conflict of Interest

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