

Democracy and Constitution

February 11, 2000

In the Name of God, the Almighty

The present pamphlet aims to answer various questions posed by religious brethren and sisters and also contains questions posed by the Reuters News Agency and the Daily Guardian that were answered on December 27, 1999. Naturally, part of the answers form sections of this pamphlet and since completion of the work coincided with the (parliamentary) election campaign, its publication was postponed on the recommendation of some friends. However now, on the occasion of the victory anniversary of the Islamic Revolution and since the previously published answers were somehow ambiguous, I am publishing this pamphlet with no other goal but to fulfill my divine duty and serve Islam and the country. May God make all of us successful.

February 11, 2000

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In the Name of God, the Compassionate, the Merciful

From the beginning of the latest uprising of the clergy – which started in protest to the bill on state and provincial societies and ended in the victory of the Islamic Revolution – I have always stood on the side of the late Imam Khomeini. After the victory of the revolution, I was the head of Assembly of Experts of the Constitution, and constantly facing questions regarding constitutional articles, especially regarding *velayat-e faqih* (guardianship of the religious jurist; the holder of the office is the *faqih*). Since I could not answer all those queries due to my physical condition and being preoccupied with scientific studies, I decided to write a brief sketch of the most urgent of those issues in several sections.

The human mind is always exposed to a variety of thoughts and ideas. My dear master, the late Grand Ayatollah Boroujerdi used to say, "Every day I am another man," meaning that man must not be backward and always seek new innovations. No advice from me that has stemmed from good intention should be considered a sin because I have always been abreast of the country's affairs. Although conditions for implementing some of my thoughts might not be ready, their expression could be of use in that they possibly give rise to useful notions in the minds of future officials because nature is an arena for action and reaction, cause and effect. On this basis, I do not claim that all I written here is faultless, but it can be studied and corrected by other experts.

Finally, I have always been frank about what I considered to be correct and expedient and never hid my intentions under the guise of complicated diplomacy. Nor have I yearned to hold a post because I believed that worldly positions do not bring honor. These are but transitory affairs that bring nothing but the brunt of responsibility, unless, as put by Imam

Ali (AS), they become a means for realizing a right or preventing a vice.

Chapter One: Materialization of Government through Elections

The fact is that legitimacy of government in Islam stems from appointment of the ruler by God (although this is mediated). Or it comes about through being elected by people who swear allegiance to him (a social convention between people and the ruler). The fact also arises of a difference between the rule of the Holy Prophet (PBUH) or an infallible Imam and that of the religious jurists in the age of *gheibat* (occultation). In that instance the rule of the Prophet (PBUH) or the infallible Imam – like their message – was an appointment by God, while the rule of the jurist materializes through popular election. But this is the subject of an academic discussion that cannot be brought up here.

Of course, the discussion pertains to the outward rule of the Prophet and the infallible Imam and not their spiritual degrees and *velayat-e takvini* (guardianship in creation) which we attribute to them. Finally, I would like to reiterate several points with regard to outward rulership:

1. The issue under discussion is that manifestation of the outward rule of the Holy Prophet (PBUH) and Imam Ali (AS) as well as the *faqih* in the age of occultation would depend on popular election and public acceptance.

As long as the Prophet was in Mecca, conditions for his rulership were not provided. When at a gathering of 73 dignitaries of Medina during Hajj period at Aqaba Thania, he recited verses from the Holy Quran and told them, "You must swear allegiance to defend me in the same way that you defend your wives and children." Then Bara' bin Ma'rour took his hand and said, "By the God who rightly has chosen you, we will defend you against anything we protect our families from. Accept our allegiance, O, messenger of God, because we are the children of war and weapons." Then they swore allegiance to the Prophet and, upon his request, chose 12 chiefs and representatives from among themselves to oversee their treatment of the Holy Prophet (*Sirah of ibn Hisham*, Vol. 2, p. 85).

The allegiance paved the way for Prophet's rule in Medina and, in fact, a social pact was signed between the Prophet and people of Medina. Of course it was a simple government liked by God and not a government full of formalities that was a common feature of rulers at that time.

After entering Medina, the Prophet signed treaties to live in peace with the Jews in Medina and observe their rights. When he conquered Mecca and accepted the allegiance of the men, the women also asked to swear allegiance. The Prophet asked for a bowl of water, dipped his hands in it and told the women to pledge fealty by dipping their hands in it too (*Nur-ol-Thaqalain*, Vol. 5, p. 307).

Suras Fath and Mumtahanah in the Quran contain verses on vowing obligation to the Holy Prophet. Finally, his outward rule was established on the basis of people's allegiance because at that time allegiance was usually a means of stabilizing the

government, assured loyalty to it and signified a social pact. The word '*bei'at*' stems from '*bei*' which means an obligatory, bilateral contract.

2. With regard to the rule of Imam Ali, although the Prophet had introduced him as his successor on various occasions, after his demise, the recommendations were ignored and other individuals governed people. However, after Uthman was slain, people from various walks of life went to Imam Ali and swore allegiance to him of their own free will. This can be inferred from sermons 3, 8, 34, 137, 172, 218, and 229 as well as letters six and 54 of *Nahj-ul-Balagha*. In his arguments with Talha, Zubair, Muawiyah and other contenders, Imam Ali referred to people's fealty to him.

Also, Sheikh Mufid in his book, *Ershad* (p.116), quotes Imam Ali as saying, "O people! You swore allegiance to me on what you had previously sworn allegiance to other people. Before allegiance, people have the right, but after that they forsake their right." A similar theme can be found in the sixth letter of *Nahj-ul-Balagha*.

The Imam valued the people and their allegiance and argued on its basis because materialization of the government can only take place through popular acceptance. It should be noted that allegiance is valid as long as the person to whom fealty has been sworn remains qualified, acts in line with his obligations and does nothing that would be considered a breach of allegiance.

3. Imam Hassan once wrote a long letter to Muawiyah saying, "After the demise of Imam Ali, Muslims entrusted me with the government." (*Maqatel al-Talebin*, p. 35) As we see, the Imam attributes his government to the action of the Muslims and the vote of the people.

4. The verses and traditions that emphasize consultation among Muslims denote that government is a popular affair. The Holy Quran says "And those who accepted the call from their God were regular in their prayers and settled their affairs through mutual consultation." (Sura Shura, Verse 38). The word 'affairs' used in the above verse and traditions, is used to mean the government. For example, Imam Ali says in the third sermon of *Nahj-ul-Balagha*, "When I rose to rulership, a group of people went back on their word." Also, the letter sent to Muawiyah by Imam Hassan reads, "The Muslims entrusted me with the government after the demise of Imam Ali." (*Maqatel al-Talebin*, p. 35)

5. Verses and traditions on social obligations (not individual obligations) that address the Islamic society (not a specific person and not all people separately) denote that all people in the society are duty-bound to elect a qualified person or persons and empower them to enforce the law. In fact, they would be the embodiment of the society and elected by its people.

Verses related to war and *jihad*, preparing forces to confront enemies, cutting the hands of male and female thieves, as well as flogging adulterer and adulteress are some instances of this. Ordering *jihad* and implementing *hodud* (punishment prescribed in

religious law) is not a task to be undertaken by everybody because, in that case, it would have led to chaos. However, it is a power of the government and the judiciary, albeit the Islamic society has been directly addressed. So, it becomes clear that the ruler has been given these powers, because he has been elected by the society.

6. The approach taken by wise people in all ages and countries has been to draw up regulations to establish social order, meet public interests and prevent aggression and transgression. They would then choose a qualified person or persons from among themselves and, in fact, a social pact would be concluded between them and the elected person. Not only does the Quran and Sunna not negate this approach, they have substantiated it. However, they consider certain conditions for the ruler. So, this is an instance of what has been referred to by the Quranic verses, "Abide by your pacts," (Sura Ma'idah, Verse 1) and "Keep your promises" (Sura Asra', verse 34).

In other words, government is not a canonical affair established by the religious lawmaker, but a common logical affair that has been widespread among people like all social transactions and contracts and has not been rejected by the sacred canon. However, due to expediencies cared for by the legislator, conditions have been considered and the electorate has been advised to make sure of the existence of those conditions when electing the ruler.

7. A hadith from Imam Ali says, "O people! Certainly Adam has not given birth to slaves and servants and all people are free." (*Rozeḥ Kafi*, p. 69) In his letter to Imam Hassan we read, "Don't be the servant of another person, because God has created you free." (*Nahj-ul-Balagha*; Letter 31)

All people are free in what they do, or say or write, on the basis of their creation. Nobody has a mandate over another person, unless it is the mandate of God who is the creator or the one to whom God has delegated such a mandate or people have accepted his rule according to a bilateral pact. Of course, since all people have rights, every human being is free as long as his/her freedom does not interfere with the rights of other people, as well as the rights of Almighty God as their creator.

8. Based on the Constitution, the fundament of officials' power on different levels of the government is the popular vote. Ruling powers even *vali fiqh* (religious jurist) are determined by public ballot and their power limitations are set by the method used to elect them as well as the law.

Article 6 of the Constitution says, "In the Islamic Republic of Iran, the country's affairs must be run through public votes via elections..." Article 56 says, "The absolute rule over the world and human beings belongs to God and He has empowered man over his social destiny. Nobody can deprive mankind of its God-given rights or use it in the interest of an individual or group and the nation can use this God-given right through the articles that follow."

9. The late Imam Khomeini always talked about people and their votes in his interviews and speeches both in Paris and Iran and emphasized elections, republicanism and the

popularity of the system and said, "The norm is people's votes." He was outspoken and said everything that he really believed in and did not want to deceive people.

He was aware that people possessed political common sense in our age. As a result of advanced public communications people worldwide had become members of a family. No government could continue to rule through force, coercion or inculcating mandatory behavior and only a democratic government could survive.

10. Now that people and their votes are to form the basis of the government and people are to protect it, the quality of doing that would be determined in accordance with conditions of time and place. At the advent of Islam, familial and tribal relations were considered a type of party link, especially in Arabia and the Prophet, Imam Ali and other rulers made use of it for the establishment of government and stabilizing it.

However, in the modern world with all the advances in science and communication, the best way for popular participation in establishing a qualified government, monitoring rulers and supporting trustworthy officials, as well as preventing acts of aggression and unjust discrimination (are well established). On the whole, implementing the principle of ordering good and prohibiting vice in the society, creating bureaus and institutes (the efficacy of which) is proven in advanced countries.

(A clear need) is establishment of free and independent political parties to fulfill their social and political duties (that would encompass) various tastes and schools of thought as well as different interpretations natural to human beings. (Accepting) logical and Islamic norms (is of course essential in this process).

The word 'party' is not a foreign term to cause fear, but a Quranic and Islamic expression. The Holy Quran says, "The Party of God is sure to overcome" (Sura Ma'idah, verse 56), "Salvation is for Party of God," (Sura Mujadala, verse 22, which are in harmony with the verse, "There must be a group of you to order good and prohibit vice and those people would be saved," (Sura Al-e Imran, verse 104).

Hezbollah (Party of God) would be established when a grouping of people are attuned with the conditions of time and place according to wisdom and logic. (This is to be achieved) by adopting a correct contemporary analysis and a comprehensive and suitable program. (It would) gradually grow in the political and social arena, not through instantaneous provocation and illegal actions by those who come together and disappear after heckling and chanting incorrect slogans. Such persons are used as leverage to impose undemocratic, illegal ideas and thoughts.

Powerful parties with advanced communication facilities could guide public elections at various stages in a direction that would be to the benefit of Islam and the nation through constructive and healthy competition and establish a committed and powerful government capable of preventing aggression, deviations and despotism. Naturally, under such circumstances, the nation would avoid being afflicted by mushrooming upstart parties appearing before every election.

For this very reason, all committed officials are not only duty-bound to pave the way for the establishment of popular parties, but must encourage this approach, which would end in encouraging officials who really serve people in attaining their sacred goals. Preventing this process and depriving people of their legal freedoms is not only a sin and encroachment of the natural rights of people, but will also discourage them and lead to estrangement between the nation, government and officials. A government without a base among people would undoubtedly be under pressure in its international relations too. I was previously asked about the legitimacy of political parties to which I answered on November 5, 1997 and which has been separately printed at the end of the pamphlet themed, *Velayat-e faqih and Constitution*.

Chapter Two: *Velayat-e faqih (Guardianship of the Religious Jurist)*

The draft Constitution, that was drawn up by a group of dignitaries on orders from the late Imam Khomeini. (It had been confirmed by Imam Khomeini. He prayed over it and said it should be approved as soon as possible so that "we can go back to Qom and attend to our clerical affairs".) (The document) contained no reference to *velayat-e faqih*, let alone the question of its being appointed or elected. Certainly, he was satisfied with the notion of healthy, free elections that would lead to establishment of a democratic government with him overseeing its performance as *vali fiqh* (religious jurist). However, during discussions in the Assembly of Experts of the Constitution a group of deputies including the late Ayatollah Beheshti and myself insisted that *velayat-e faqih* should be explicit in the Constitution.

We had inferred from Quran and Sunna that an Islamic ruler required several conditions that coincided to those of a just, management savvy, efficient *faqih* who would be free from ambition and greed. We emphasized that Islam was not indifferent to economic, political and social issues and had programs in every field to run the country's affairs accordingly. We believed that true awareness was not possible except through *fiqh* and *ijtihad* applied in accordance with Quran and Sunna.

When the majority of people in a country believe in a certain ideology and school of thought, which is supposed to form the basis of that country's laws, naturally the leading proponent of that ideology, must oversee the country's affairs, though Islam has also protected the rights of minorities.

1. The Holy Quran says, "Are the knowing and unknowing people the same? Only those who are wise pay attention. (Sura Zumar, verse 9)"
2. Again it says, "Does he who guides toward truth deserve to be obeyed or he who is not guided himself unless another one guides him? What has happened to you, how do you judge? (Sura Yunus, verse 35)"
3. *Nahj-ul-Balagha* says, "O people! The most eligible one for this purpose is he who is the most powerful and wisest of them with regard to God's orders." (*Nahj-ul-Balagha*, Sermon 173). As said before, the word '*amr*' (order) in Quranic verses and traditions denotes the government and there are many verses and traditions concerning conditions

of the ruler.

I have mentioned eight conditions for the ruler in my book *Lessons on Velayat-e faqih*, one of which was *fiqahat* (jurisprudence) or even being the most knowledgeable *faqih*. Of course none of those verses or traditions have stipulated that *faqih* should be appointed, but conform to the idea that he must be elected by people, so that, people have to choose the person who is qualified for the post.

It must be noted that being the most knowledgeable *faqih* equates to being the most knowledgeable and understanding person with regard to Islamic issues related to governance and running the society. This includes social, political, military, penal and economic issues because a person might be the most knowledgeable in terms of issues related to worship, but be less so when it comes to political and penal issues of Islam. The phrase used in *Nahj-ul-Balagha* denotes this because the "order of God" in that phrase includes the political, military and penal codes of Islam related to governance. Therefore, one can say that when imitating a *faqih* in every field the reference should be made to he who is the most knowledgeable in that field. By following this method, *fiqh* would gradually become specialized, as is the case with medicine. Every person in any field can refer to the *faqih* who specializes in that field or a council comprising all specialists, given the vastness of *fiqh* in our time and the emergence of new issues. (These conditions) make it be very difficult for one person to specialize in all fields of *fiqh*.

There is a point here, which is accepted by all *faqihs*, even those who do not accept *velayat-e faqih*. That is, past *faqihs* paid attention to special affairs known as "obligatory affairs" on the basis of their inferences from tradition and rational judgment. The obligatory affairs include necessary business left unattended. They should be carried out, but have no special attendant. There is no doubt that attending to such matters would be a duty of *faqihs* who are aware of canonical stipulations. Although, in the absence of such a *faqih* the just faithful would be responsible, followed by unjust faithful. In any case, those affairs must not be left unattended.

The *faqihs* usually mentioned misappropriating property of orphans or insane people who had no guardians and absentee people whose whereabouts were unknown as examples of such obligatory affairs. Yet it is obvious that such fundamental issues as defending the Islamic country and security of the society, as well as establishing an Islamic government are much more important than the mentioned instances. Nobody can claim that Islam, which has paid attention to small details, has no opinion on such vital social questions.

Therefore, if people for any reason do not elect a person for accepting the responsibility of government and managing the affairs of the Islamic society, the just *faqih* who is aware of the Islamic norms would be duty-bound to do his best with regard to obligatory affairs and seek help from other people. If such a *faqih* be not available or unable to take charge, faithful, just persons must accept the responsibility and other people are required to help them because managing such matters takes priority over other things. If there is no just faithful person or they could not accept the responsibility, unjust people must take

charge and the responsibility of *faqih*s and other people with regard to such affairs is not because they were elected, but because it is a religious obligation for them.

We come to the conclusion that there are three possibilities regarding the powers of a *faqih* in the political and social affairs of Muslims:

First: the infallible Imams have appointed the just *faqih* to the post by. His eligibility and rule has descended from a higher authority.

Second: He has been chosen as ruler by the *ummah* and the logic for necessity of keeping one's promise is the main reason for his legitimacy. Naturally, the powers of rulership from the viewpoint of time period, quality and limit of powers are a function of the way through which he has been elected.

Third, we might reject velayat, but believe that the *faqih* is necessitated as a religious obligation to attend to neglected affairs.

I have discussed the reasons for appointment and election in my book *Lessons on Velayat-e faqih* and, finally, I believe that the arguments backing appointment are open to controversy while arguments for election are stronger. The *vali fiqh* is delegated the post of *velayat* by people or he takes charge of obligatory affairs out of religious commitment. Therefore, there is no need for a *faqih* to be appointed by infallible Imams. Anybody who doubts this can not be considered a heretic. Even the principle of *velayat-e faqih* is not an essential issue of faith, but a controversial one.

In addition, if *velayat-e faqih* is established through appointment, as some *ulema* say, undoubtedly no specific name had been mentioned for the period of occultation of Imam Zaman (AS). No Quranic verse or tradition has been quoted to single out a person, but the appointment - based on this assumption - has been considered for a just, qualified *faqih* and all just qualified *faqih*s are included.

Therefore, insisting on rulership of a specific person and negating rulership of other *faqih*s is incorrect. However, if one of them embarked on something others are not entitled to interfere. The experts elected by people could testify that a specific person was qualified, but they are not entitled to negate the right of other *faqih*s who have also been appointed. If they pursue unity, nobody must take unilateral action, but attune themselves to other *faqih*s and carry out their basic and important affairs through consultation. Naturally, a council of *faqih*s would be in charge of the country's affairs and in this way the sacred Quranic verse, "And their affairs are carried out through consultation," would have been realized and do away with various discrepancies.

At present, unfortunately everybody considers themselves qualified for issuing *fatwas* including a high-ranking military official who recently said, "Today, some of those who talk about Islamic democracy and Imam have become heretics." He is not aware that although being in the war fronts for several years is an honor in itself, it is not sufficient cause for issuing *fatwas* and nobody except a *faqih* can issue *fatwas*.

Chapter Three: Objective of *Velayat-e faqih*

Although *velayat-e faqih* is acceptable in accord with religious stipulations, since the *faqih* is an expert on Islamic issues, the outstanding goal of the institution is implementation and enforcement of Islamic injunctions and managing the affairs of Muslims. This should be done according to Islamic tenets; either under the rule of a *faqih*, if he is in charge, or by the executive power under his supervision if the head of the executive power is somebody else.

The Constitution is based on this objective and aims to run the country on the basis of Islamic rules. Naturally, the *faqih*, who is an expert on Islamic issues must either head the executive power or supervise its performance and, in fact, *velayat-e faqih*, equates with the rulership of *fiqh*; that is, the rule of God regarding the social behavior of human beings. Finally, the Islamic nature of the system necessitates that a just *faqih* who is also an expert on Islamic issues should oversee the country's affairs to insure conformity with religious injunctions.

Imam Khomeini told a gathering of west Tehran *ulema* on October 22, 1979 that, "You don't need to be afraid of *velayat-e faqih*. The *faqih* does not seek to oppress people. If a *faqih* sought to oppress people, he would not be fit for *velayat* (religious jurisprudent) anymore. It is Islam; in Islam the law will rule. Even the Holy Prophet obeyed the law, obeyed the divine law and could not violate it... There is no dictatorship. We want to curb dictatorship. *Velayat-e faqih* means having power over all affairs to prevent them from going astray. (He) must supervise over the *Majlis* and president lest one of them might make a mistake. (He) must oversee the prime minister lest he might do something wrong; stand up to all organizations and oversee the army lest it might do something wrong; we want to curb dictatorship not to be dictators ourselves. We want to fight dictators. *Velayat-e faqih* is against dictatorship, not dictatorship." (*Sahifeh Nour*, Vol. 10, p. 29)

Now, if the absolute rule of *faqih* on which the current officials insist means is equal to religious jurisprudence in its broad sense, as opposed to those who believe *velayat-e faqih* to be limited to such minor affairs as property of orphans and insane people, it could be accepted. It would be better termed "common *velayat*". However, if it means absolute rule of the *faqih* with regard to all the affairs of the country including political, economic, cultural, military, disciplinary as well as domestic and foreign policy affairs, we say: Firstly, *velayat-e faqih* is assumed - on the basis of the Constitution - to be elective and *vali fiqh* is chosen by experts. These are in turn elected by people. The prerequisite for electing the leader, president and *Majlis* deputies by the nation is that the system of government should be democratic and all powers would be determined by people through their election.

Secondly, if academically speaking, we accept the absolute rule of the *faqih* as purported by its proponents, it would be at loggerheads with the Constitution. Based on various articles of the Constitution including Article 6 and Article 56, the Islamic Republic must be run on the basis of popular suffrage. The nation elects *Majlis* representatives and the president and they choose the ministers who would run the country's affairs. However, the absolute rule of *faqih* - as they interpret it- necessitates ignoring all these institutions.

In that case, spending all the money, manpower and budgetary resources on electing *Majlis* deputies and the president would not only be in vain, but amounts to squandering resources. This is because, as they believe, the leader makes decisions with regard to everything and appoints whom ever he wishes to whatever post without limitation.

Finally, the Constitution is not restricted to the principle of *velayat-e faqih*, but also comprises articles that denote people run the government in Iran. A whole chapter of the document has been dedicated to delineating the nation's rights. In their propaganda campaigns, the proponents always stress *velayat-e faqih* and its absolutism, but readily ignore all articles that guarantee popular rule and peoples' rights.

The late Imam, sources of imitation and the people of Iran voted for this Constitution and its democratic articles. The Imam always stressed the republican nature of the system and the fact that it is based on popular will. In a country that is run according to the law and enjoys various legal institutions, *vali fiqh* can not be above the law, but included in it and certain duties would be considered for him. His election by the nation is based on his commitment to the Constitution and other approved laws. Article 107 of the Constitution says, "The leader is equal before the law with other people," and Article 110 has stipulated his duties and powers. The interesting point is that most items referred to have been mentioned in this article as duties of the leader by Article 111 and not his powers. As a result, he is duty-bound to observe them and cannot do otherwise.

The phrase '*velayat-e faqih*' was not mentioned in the original Constitution, but was added during its (1989) revision to remove a discrepancy among members of the revision council. At that time, the late Imam had passed away and I am informed that many people did not vote for the amended Constitution due to this change. At present all officials at every level chant slogans in the name of law. That being the case it is well to recall the fact that absolute *velayat-e faqih* and the interpretation given it is incongruous with other laws. These include Article 110 of the Constitution, which clearly specifies the duties and powers of the leader. Insisting on this unambiguous point during speeches will have no other effect but to make the country's political atmosphere more turbulent.

Thirdly, in the modern world people are acculturated to read books. They enjoy a high degree of political awareness and are in contact with the outside world. People are witness to political freedoms in other countries. Thus, ignoring legitimate freedoms of a nation and their views and insisting on submission of all scientists and experts on social, political and economic sciences to viewpoints of a fallible person will only lead to indignation and insurgence of the nation that would view the situation as despotism. As a result, the main goal of *velayat-e faqih*, which is supervising the country's affairs for conformity to Islamic norms, would be jeopardized too.

The complicated system of government in our time is quite different from and cannot be compared with the simple government at the advent of Islam, which was headed by an infallible Prophet or Imam. Given the complexity of politics and economics in the modern age, the resultant political growth of nations and global communications, the need for various specialties in various fields, trusting all the country's affairs to a non-

infallible person (is fraught with dangers). Influence can be exerted on that person through ignorant or malicious people. Even putting a specific group of people in charge of other social forces would be neither in favor of Islam nor that person or group. So, there is no choice for *vali fiqh*, but to pay attention to the Islamic nature of the system and supervise the way country is run for conformity to the Islamic tenets in accordance with his specialty while leaving other affairs to specialists in the field. He must refrain from giving a final opinion on such issues, which might entail heavy damages to the country because the disadvantages of mistakes made by high-ranking officials with regard to their social responsibilities would address the whole society.

For example, an uncalculated economic decision may prompt capital owners to take their assets out of the country or a mistaken political decision could lead to isolation of the country in the international arena. When we believe that commands of God can change according to conditions of time and place, then temporal conditions naturally play a great role in political and economic issues. Understanding these questions is a task for specialists and experts in the relevant scientific fields and cannot be accomplished by a single person. It is only logical that every technical job should be referred to a specialist in that field. Neither canon, nor law would ever allow for decision-making about complicated social, political, economic, military and international relations affairs to be delegated to a single person who only specializes in *fiqh*.

The late Ayatollah Hajj Sheikh Mohammad Hossein Esfahani has said. "Such affairs must be entrusted to those who are knowledgeable about them and a *faqih* as *faqih* is only an expert in inferring rules from the commands of God not other affairs that are related to order in the country or protecting borders, defense and jihad. Therefore, there is no need for such issues to be referred to a *faqih*."

In conclusion, the absolute rule of *faqih* in the sense that he is above the law could unquestionably interfere in all the country's affairs. Even the supposed right to pass laws would be construed as absolute despotism by global culture and no despotic regime can survive in the modern world. Insisting on keeping up such a system of government in the face of public disagreement would eliminate the grounds for supervision of the *faqih* over the executive power and managing the country. As a result, the *velayat-e faqih* that began with the late Imam would not be viable because, "everything surpassing its limits will turn into its own antagonism."

Chapter Four: Constitution

To reiterate at the beginning of this chapter this material is being written by a person who has been a participant in numerous struggles against the former regime years before the victory of the Islamic Revolution. (The same person) was elected to the Assembly of Experts of the Constitution after the victory of the revolution and has always been deeply involved in political developments. Even now - despite pointed propaganda - he is still interested in the Islamic system, has always defended it to the extent possible for him and suffered from negative propaganda against the origin of the system and, consequently,

against cherished Islam. Mankind is a part of the universe and the universe is the basis for change and development. Simply expressing viewpoints about an issue to improve affairs will not make one a heretic, or an opponent of the system. Experiences of the past 20 years tell us which part of the system has been vulnerable. In the future, we must try to do away with such problems.

In this chapter, I refer to several points:

First point: Democratic articles of the Constitution

The Constitution has sound articles on the republicanism of the system, the rights of the nation as well as legitimate freedoms that also observe Islamic and canonical principles. However, when it comes to political articles, there are many problems and contradictions. Although they are difficult to change under the current circumstances and perhaps any effort to change them would pave the way for misuse by opportunist elements, therefore, the current Constitution must be considered as a norm and the country must be run through an understanding among officials and other forces.

However, it is necessary that weaknesses be recognized so that God willing, when conditions are provided, expedient decisions could be made about them. Members of the board appointed to follow-up and supervise implementation of the Constitution are expected to record any points that occur to them for future use.

Second point: Political articles of the Constitution

The absolute majority of Iranians are Muslim and interested in the implementation of Islamic law and regulations in the country. However, they are also in quest of their legitimate freedoms. The nation's goal has also been reflected in the axial motto of 'Independence, Freedom, Islamic Republic'. Therefore, those articles of the Constitution that are related to independence of the country, the rights of the nation, as well as the Islamic and democratic nature of the system cannot be changed and an absolute majority of people support them. However, other articles are controversial.

Such political articles are not similar to God's commands that are unchangeable and will remain as they are until the Day of Judgment. In addition, even the commands of God may change as a result of a change in conditions of time and place. The people and majority vote is the basis of the country's political laws. And though the majority of people voted for the current Constitution, given the lapse of more than 20 years and the emergence of a new generation, a burgeoning of population, that majority no longer exists. The past generation can not be considered as the representative of future generations. Therefore, their votes are not valid for future generations. On the whole, politics is constantly changing and political opinions of past generations cannot be accepted as the norm by their successors.

The late Imam Khomeini addressed people upon his return from Paris at Tehran's *Behesht-e Zahra* (cemetery) and said, "The destiny of every nation should be determined by them... Who was the nation at that time to determine our destiny at the present time?... Who were they to decide about our destiny?... Everybody determines their destiny

themselves. Were our fathers our guardians too?" (*Sahifeh Nour*, Vol. 4, p. 282)

Third point: Contradiction among constitutional articles

As I mentioned earlier, when the draft Constitution was published, there was no mention of *velayat-e faqih*. The late Imam approved of this. On the other hand, the issue of *velayat-e faqih* was being discussed at the seminaries. The late Imam had conducted a long discourse on the subject when he was in Najaf and the tapes of his remarks were available. Therefore, the issue was brought up in the Assembly of Experts of the Constitution and it was inserted in the Constitution after long deliberations. Although the experts were generally pious men, firstly, they lacked any experience with regard to lawmaking and the intricacies of that process. Secondly, the revolution had recently become victorious and the bitter taste of despotism and tyrannical power of past rulers still lingered. Everybody was scared of the emergence of a new despotic power like the past regime.

On the other hand, since everybody liked Imam Khomeini and a divine picture had been depicted of him in the minds of people, the experts thus tried to reduce the powers of the executive branch as much as they could to make it an inefficient institution. Instead, they wanted to give all power levers to the leader, which was manifested in Imam Khomeini. At that time, they did not meditate on the practical consequences and contradictions that would surely surface. During the amendment of the Constitution, which took place about 10 years later and shortly after the demise of the late Imam, the problem was exacerbated. More powers were added, including the power to appoint or dismiss the head of the police force, regulating relations of three branches of government and appointing the head of the state broadcasting to whom the executive owed much of its power for running the country's affairs. The contradictions of the (constitutional) law have gradually surfaced during the past 20 years and caused serious challenges and problems for the executive officials, which impeded the country's progress.

On the one hand, all power levers have been delegated to the leader (Article 110 of Constitution) in such a way that the president has no role in any of them. On the other hand, the president has been held responsible for running the country's affairs, implementing the Constitution as well as domestic and foreign policies, each of which requires adequate powers. Article 113 of the Constitution says, "After the Leader, the President is the highest ranking official authority in the country and is responsible for implementing the Constitution and heading the Executive power except for the affairs that are directly related to the Leader."

The prerequisite for the president to be able to implement the Constitution, as well as the country's domestic and foreign policies is that the police force must be fully controlled by him. Other powers (judiciary and legislative) cooperate with him because it is unbelievable that he should be responsible for implementing the Constitution and other laws when he has no control over the police force and other powers are not cooperating with him. Thus, it becomes clear that changing Article 113 of the Constitution to its current wording has not been to the benefit of the country. The original text read as such: "After the Leader, the President is the highest ranking official authority in the country

and is responsible for implementing the Constitution, regulating relations of the three powers and heading the Executive power except the affairs that are directly related to the Leader." After amendment, the phrase 'regulating relations of three powers' was omitted and added to the leader's powers.

Article 121, which is related to the presidential oath of office says, "I swear to protect the official religion and the system of the Islamic Republic and Constitution of my country and use all my talents and efficiency to fulfill responsibilities that I have assumed and dedicate myself to serving people, uplifting the country, promoting religion and ethics, supporting truth and propagating justice; refrain from any kind of despotism and support the freedom and dignity of people and the rights envisaged for them by the Constitution and spare no effort to safeguard the borders as well as the political, economic and cultural independence of the country."

How can a president could support the truth, propagate justice, defend freedom and dignity of people and the rights of nation, and take action for safeguarding borders and independence of the country if he were not in control of the police and other disciplinary forces? How can he accomplish this and be stripped of the power to regulate relations among the three powers by the amended Constitution or, in other words, has been totally disarmed?

All expectations of the society are directed toward the president. He is overwhelmed with letters, requests and complaints yet cannot do anything in the face of any of these (disciplinary) forces and institutions - even the illegal Special Clergy Court. He has no alternative but to confine him self to expression of regret and lip service in the face of all grossly illegal activities. (He must bear) such heinous occurrences as the serial murders; as well as attacking universities, the press, public gatherings, speeches, bookshops and dignitaries. When it comes to the necessity of expanding ties with other countries and the extreme need for having economic and political relations with them, the president has to go to those countries with empty promises accompanied by anticlimactic remarks by certain factions inside the country. Meanwhile, the nation expects that such trips should add to global credit of the Islamic Republic. It is looking forward to a commensurate status to be given to the nation and the country in the political and economic arena, while we all know that all issues pertaining to Iran reverberate in world media.

The president talks about the rule of law and respecting civil rights of dissidents as well as dialogue among civilizations both inside and outside the country and, in contrast, a military commander talks about cutting heads and tongues. How can the nation's rights be protected despite such clear contradictions?

I do not mean the current president, but I mean the presidential institution that is, according to the present Constitution, charged to undertake arduous executive tasks and manage the domestic and foreign policy of the country with a practically empty hand and without executive power and that of publicity. To the contrary, the leader wields all the powers and this is a clear contradiction in the Constitutions, especially the new Constitution. Therefore, the Constitution has not been and could not be successful as a

consequence of such a contradiction and something must be done in this regard.

It seems that, in view of the nature of responsibilities involved the leader must be elected by the nation as head of the executive. (He must) assume all responsibilities and be responsive to the nation and *Majlis*, or all power levers including the army, Islamic Revolution Guards Corps, *Basij*, disciplinary forces and state broadcasting. In addition the power to regulate relations of the three branches should be delegated to the president and he should be held responsible before the nation with regard to his responsibility. The political parties and people who vote for the government must control and guide it and people's constructive criticism must be directed at him. The president, for his part, must refer every task to specialists and do nothing before consulting with them.

In this alternative paradigm, the duty of *vali fiqh* – while protecting his spiritual respect and observing the necessity of referring Islamic affairs to him – would be to oversee the way country is being managed for conformity to Islamic norms. This should be done according to his expertise in *fiqh* and Islamic sciences that would be carried out through his representatives. At the same time, he will not interfere in anything that is out of his field of specialization.

The important point for a *faqih* who is an expert on Islamic issues is to vet all laws and programs of the country in all fields for conformity to Islam and prevent any procedure that would be opposed to the *sharia* after consulting with experts regarding important questions. At the same time, his lifestyle must be simple and he must socialize with all walks of life just as did the Holy Prophet and Imam Ali and not create distance from people. Finally, given the democratic nature of the system all levers and instruments of power must be given to the executive and the president must be held responsible with regard to them.

Fourth point: Assembly of Experts

Another important institution of the Islamic Republic is the Assembly of Experts mentioned in Article 107 and 108 of the Constitution. It is responsible for choosing the leader and about which I have explained in detail on many occasions including in my book *Lessons on Velayat-e faqih* (Vol. 1, p. 552 and beyond). What is inspiring in this regard is a letter from Imam Ali to Muawiyah that reads in part, “The fact is that consultation is a right of the *Muhajireen and Ansar*. So, if they agreed on a man and called him ‘the Imam’ it would please God (*Nahj-ul-Balagha*, Letter 6)” by which the Imam apparently meant that there was no need for all people to swear allegiance directly – which was not easy at that time. Thus if a special group of *Muhajireen* (immigrants) and *Ansar* (helpers) that was present in Medina chose the Imam, he would be the Imam of all Muslims.

At that time, people were not able to directly choose the just, qualified *faqih* since this was a specialized task. Therefore, people would elect those *ulema* that they knew and they would, in turn, choose the qualified leader. However, the 20-year experience in Iran shows that this plan has not been very successful and most people, who form the fundamentals of the government, look upon it with misgivings and have certain questions

concerning it:

Firstly, if only one person was introduced for a specific region from outside that region and despite many *ulema* living in that region, people had to vote for that person. This is tantamount to appointment not an election.

Secondly, determining the scientific level and other qualifications of candidates has been entrusted to *faqih* members of the Guardian Council who are themselves appointed by the leader and, as a result, the leader is indirectly elected by himself and this is a vicious cycle.

Thirdly, how come despite the existence of many sources of emulation and *ulema* in the country, choosing the leader has been entrusted to specific persons some of who are even inferior to those *ulema* in terms of scientific level, knowledge and cognition?

Fourthly, why are the experts all from a specific social class while juridical learning is only one of the conditions of the leader and other conditions should be also ascertained? In view of the above objections, people are less willing to take part in the elections for the experts despite widespread publicity.

Moreover, without intending to insult individual experts who are generally knowledgeable, pious men, what most people understand from the Assembly of Experts is that despite the heavy budget spent on electing experts they convene only once or twice a year without any tangible, positive outcome. They never seem to care for important events in the country and many issues about which they have to notify the leader or affiliated bodies go unheeded. Yet they are supposed to be the eyes and ears of the leader in various parts of the country. I have personally asked some of the experts why they failed to notify the leader with regard to a certain issue that was vital and related to his credibility. They replied by saying, "We can tell it to everybody, but the leader." This is the opposite of what people expect from them.

The important point is that many of them are only concerned with seminary courses and have nothing to do with print (or other) media and are unaware of political issues. Therefore, experts on political and social issues opine, "How can these people seek to choose the leader on our behalf?" Meanwhile comparing the experts with the *Muhajireen* and *Ansar* at the dawn of Islam is incorrect because they were arbitrators and abreast of political issues of their time and people accepted their views. The idea that people cannot choose their leader directly is not correct. Through the same process that they can choose their source of imitation through investigation and questioning from wise people, if needed, they might be prepared to choose their leader in the same way too.

Finally, despite all the resources and the budget allocated to Assembly of Experts during elections, they have not been very successful. They were tasked to keep a close eye on the leader and the affiliated bodies, but this has not occurred in practice and a review (of this insufficiency) will be necessary in the future. Unfortunately, the exams taken by candidates last year in Qom were filled with unjust discriminations and reverberated badly in the seminary and among people. I am unwilling to expand more on this. What I

write here is for future use to pave the way for amending the Constitution.

It seems that the best alternative is decentralization of power and separation of powers allowing each power to act within its own domain by taking advantage of the forces needed to do its job. No power should interfere in the affairs of another power. Although the Holy Prophet and Imam Ali issued *fatwas* while governing people, they firstly were infallible and all-knowing; and secondly, the complicated system of government now is very different from the simple system of government at that time. As you know *Majlis* deputies and the president are directly elected through popular vote. In other words, people are the center of gravity for the legislature and the executive and supervision of jurist members of the Guardian Council on *Majlis* laws and the oversight powers delegated to *vali fiqh* guarantee their conformity to Islam.

On the other hand, Muslim people, especially Shias directly refer to sources of imitation to get information on the Islamic tenets. Each person would choose a source of imitation after asking experts and if they were many, they would choose the most knowledgeable of all. Certainly, this choice stems from the heartfelt beliefs of people. Finally, the grandeur of sources of imitation at all times cannot be denied and since the major goal of *velayat-e faqih* is to oversee the country's affairs for conformity to Islam, therefore, it is a job for a religious expert who can be none other than a source of imitation.

Thus, Article 107 of the original Constitution had stipulated being a 'source of imitation' as a condition for the leader. However, during revision this condition was dropped and the two positions were separated from each other. However, if we assume being the most knowledgeable jurist was a condition both for being a source of imitation and a leader, we should conclude that they are both the same person and cannot be separated. Separation of the two positions would lead to many incongruities and leave the nation bewildered.

Of course, being the most knowledgeable for leadership -- as explained in Chapter Two - means being the most knowledgeable with regard to issues related to government and running the society. This includes social, political, economic, military and punitive matters. And here a source of imitation means a source of imitation who excels in Islamic issues and is aware of politics too, not a source of imitation that would only be an expert on Islamic issues without being aware of political matters.

Finally, those aspects of government that are related to *fiqh* and *fatwa* are the duty of source(s) of imitation specializing in those matters. Therefore, we have no choice but to resort to one of two alternatives:

First, to choose the leader from among the experts. However, to increase the popularity of the leader and insure that he is qualified in other aspects not related to *fiqh* and justice, the Assembly of Experts must also comprise non-cleric members. It should also consist of experts in various fields including seminary courses, politics, management, economics and international relations and its members should be elected through public polls for a specific period of time. Guaranteeing the scientific qualifications of candidates with regard to seminary courses should be carried out by seminary masters and high-ranking

ulema, while in other fields this should be carried out through paying attention to academic degrees and other conditions that would be set by law.

When elected by people, deputies of the Assembly of Experts would choose a source of reference specialized in jurisprudence issues related to governance, politics and economics for a certain period. However, they should not confine themselves to this. A group of them must provide consultation to him and supervise his performance as well as that of the bodies affiliated to his office. They have to notify him when necessary and he must respond to them; just in the same way that the *Majlis* supervises the performance of the government and the executive power and deputies make known their views in an outspoken manner because there is no secrecy in the modern world. Experts are representatives of people and a representative must not cover up his activities from his clients.

The second alternative comes about when there is no Assembly of Experts and sources of imitation who specialize in issues of government and politics and to whom people refer. They would choose a qualified person or persons among themselves for political leadership and invite reputable *ulema* from cities and committed politicians of the country to consult with them. When unanimity about a person is reached, they would introduce him to the public. If there were a number of qualified people, they would refer to public balloting, so that a single person would be elected through popular vote for a specified period of time. At the same time, he would not be separated from other sources of imitation, but would consult with them on important issues and they, in turn, would supervise his performance and that of affiliated institutions and issue warnings when necessary.

Supervising the way a country is run and trying to protect the Islamic nature of a system is not something ordinary that sources of imitation would be insensitive about. In the changing world of today, group activities and consultation in important matters is a necessity. Even if issuance of *fatwas* and imitation were carried out through a council, it could have been done more appropriately and would have solved many difficulties. Finally, it is necessary for the leader who has been chosen through either of the above mentioned alternatives to avoid unilateral action. As was practiced by the Holy Prophet, (he should) consult with experts with regard to new developments and accept friendly advice from the nation because if a person who is representing Islam commits a mistake it would be blamed on Islam and religion. The important task of the leader -- as said before -- would be complete oversight of the country's affairs to assure conformity to Islam.

The members of Guardian Council might be directly selected by renowned sources of imitation or by the elected leader who would select them through consultation with the sources of imitation and oversee their performance. Since being a jurist is a condition for the head of the judiciary and he should be popular too, it would have been expedient if he was elected by renowned sources of imitation. The elected leader could choose after consulting sources of imitation to qualify those who have been nominated to hold the post. Afterwards, he would be judged through a popular vote or, at least, by legal experts

so as to be elected either via public polls or through the votes of legal experts.

On this basis, the ruling system would only be supervised by sources of imitation for conformity of each of the three powers to Islam and not in all aspects of the government. In fact, this is only a measure to refer the job to the expert and this method will do away with the duality between sources of imitation and the leader. The sources of imitation would assume a legal role in addition to their traditional role and they would assure the Islamic nature of the ruling system. It would be better for people to give this legal aspect to the sources of imitation through their allegiance. In addition they would refer to them for imitation.

This is a brief sketch of a general plan, but its details and method of implementation would need more time and specialized argument to evolve. Islam has never been against separation of powers and decentralization of power, but concentration of power in somebody who is not infallible and amenable to mistakes and errors, as well as interference from outsiders would be against the wisdom and the approach taken by wise people across the world.

In other words, if the country is to be ruled as an Islamic Republic, if the government were to be both democratic and Islamic – given the complexity of politics and its vast domain, as well as the dangers of centralization of power and its consequences (certain measures are needed). There would be no choice but that people should freely elect deputies for the consultative assembly. (This would be done) through the establishment of free and sustainable political parties – not ad hoc, temporary parties. Each would specialize in a single field needed by the country including domestic and foreign policy, economics, culture, military tactics and the like, while enjoying commitment and independence of thought and spirit. Also, an efficient and committed person must be chosen to take charge of the executive branch.

The Islamic aspect of the system would be guaranteed by sources of imitation who are naturally selected by people, not by a nominal *vali fiqh* (supreme jurist) who has totally distanced himself from sources of imitation or one whose power would overshadow that of Shiite sources of imitation. The social status and spiritual influence of the late Imam Khomeini was owed to his standing as a source of imitation as well as his political understanding. In this way, people would be in charge of planning, execution and management while the Islamic nature of the system would be assured by sources of imitation.

Fifth point: Multiplicity of lawmaking bodies

Another problem with the Constitution is the multiplicity of lawmaking bodies. Based on the Constitution lawmaking is a duty of the Islamic Consultative Assembly (*Majlis*) whose deputies are elected by people. The conformity of their proposed legislation to Islam and lack of conflict with the Constitution would be guaranteed through the oversight Guardian Council. Nonetheless, the new Constitution has considered new lawmaking bodies:

1. Expediency Council:

With regard to this institution Article 112 of the amended Constitution says: "The Expediency Council would convene upon the order from the Leader at times when an approval of the Islamic Consultative Assembly has been rejected by the Guardian Council as being against the religious norms or the Constitution and the *Majlis* has refrained from meeting the Guardian Council's viewpoints and also for consultation over issues referred to them by the Leader and other duties carried out by this law".

Firstly, if the discrepancy between the Guardian Council and *Majlis* was not solved would the Expediency Council's approval be considered a permanent law or a temporary one which is carried out according to expediencies? If it were a permanent law, then the Expediency Council would be another lawmaking body in parallel to the *Majlis* and Guardian Council.

A member of the Guardian Council had said, "The same bill, which is considered as contradictory to religion by the Guardian Council in the morning and should not be implemented, would be obligatory after approval by the Expediency Council in the afternoon of the same day." This is a clear contradiction between the Guardian Council and the Expediency Council and highlights the lack of credibility of the Guardian Council and its jurists, as well as the weakness of the legislature in the eyes of the elite and legal experts.

In addition, it would be contrary to the stipulation of Article 4 of the Constitution that says, "All civil, punitive, financial, economic, administrative, cultural, military, political and other laws must be based on the Islamic norms. This article would rule all other articles of the Constitution as well as other laws and regulations and relevant cases must be discerned by members of the Guardian Council."

If the Expediency Council's approval were temporary and out of necessity, like the necessity of eating a corpse to avoid death, in that case, the limits, period and degree of necessity should be specified. In addition, would the Guardian Council – which supposedly comprises informed *faqihs* and high-ranking lawmakers – not be capable of differentiating between necessities of a temporary edict through consultation with experts to be in need of a separate body? The jurists and other members of the Guardian Council would be capable of differentiating primary and secondary commands and their applications and if its members were not capable of doing so, they must be changed. The reverberation of what the Expediency Council does in the Islamic society would be that they want to turn the absolute prohibitions of Islam into *halal* (permitted) and this will not be in the benefit of Islam.

Secondly, what is the meaning of 'consultation in what the Leader refers to them'? If it meant that the leader would consult them about fulfilling his duties and making decisions, it would be very good and necessary, but consultation must not be limited to that. Does it mean that the leader would refer ambiguous affairs to them, so that he could forward them to the *Majlis* after the ambiguities are removed, and the *Majlis* would, in turn, decide about them according to the law? (If so) this would still be a good purpose and a source of help for the *Majlis*.

However, if it meant that the leader would be authorized to issue general edicts about the referred matters on his own, this would be against the Constitution because lawmaking is a job for the *Majlis* whose deputies are elected by people. The leader is not authorized to make laws and is similar to other people in this regard. Article 107 of the Constitution says, "The Leader is equal before the law with other people."

If they claim that the goal of establishing the Expediency Council was to take advantage of the ideas of the country's political elite, such as the senate does in other countries, it would have been somewhat acceptable, but its members must be elected through popular votes. The laws approved by the *Majlis* must be presented to them to be implemented after being discussed and passed by them.

2. Supreme National Security Council:

Another institution introduced by the amended Constitution is Supreme National Security Council about which Article 176 of the Constitution says, "Approvals of the Supreme National Security Council could be implemented after being confirmed by the Leader." We say, "If the council's approvals were general laws, it should be noted that only the *Majlis* which is made up of elected deputies could ratify laws and no other institution would be authorized to do so. If the council is to decide about issues of general security, the judiciary must scrutinize the issues. This would be done through a qualified court in the presence of the plaintiff who must be informed of his/her charges after choosing an attorney. The verdict would finally be issued in accordance with juridical norms and the decisions of the Supreme National Security Council that are issued in the absence of the plaintiff and before informing him/her of the charges can not be considered fair. The former regime had also set up such a council for suppressing revolutionary and intellectual forces that issued and implemented unjust verdicts."

3. Absolute Rule of Religious Jurist:

Based on the absolute rule of the religious jurist (*velayat-e motlaqeh*) specified by Article 57 of the new Constitution, the *vali fiqh* is authorized to make laws and consider them obligatory without anybody being allowed to raise an objection. We discussed *velayat-e faqih* in detail in Chapter Three and noted that even if such form of juridical rule was acceptable from the viewpoint of academic discussions, it was at loggerheads with the Constitution. Based on the Constitution our government is a republic. The people should elect the supreme jurist. The law determines the limits of his power. This is in accordance with the way he is elected. In a democracy, only parliament is allowed to legislate. People elect parliamentary deputies. Article 107 of the Constitution says, "The Leader is equal before the law with other people."

What was mentioned above included some points regarding the Constitution. Legal experts who are familiar with Islamic law are expected to study the Constitution carefully and express their views to improve upon it.

Chapter Five: The Judiciary

A glance at the history of past and present nations would show that judgment and settlement of social disputes always enjoyed a special status. Security of the society and establishment of justice as well as safeguarding individual and social rights depend on the existence and integrity of the judiciary. If the judiciary did not enjoy a consolidated structure and its officials were not efficient, this power would lose its independence and identity and would be influenced by this or that party. In that case, injustice would prevail in the society, people's rights would go unheeded and governments would become feeble and may finally collapse.

Therefore, the presence of a healthy, just, powerful and independent judicial power that could adjudicate between legal or real entities after accurate investigation and issue a decisive, fair verdict is a necessity for human society. The blessings of such a judicial power are greater than any other amenity for the society and it would suffice to say that its position in Islam is so lofty that special conditions have been considered for one whom wants to become a judge.

There is a hadith from Imam Ali who said to Shuraih the judge, "O Shuraih! You have sat at a place that would not be sat upon by anybody except a prophet or his successor or a miserable person." (*Vasael-ul-Shia*, Vol. 18, p. 7) Perhaps the Imam meant that a judicial post was so sensitive that if its caretaker were not infallible, they would be apt to making mistakes.

In his letter to Malik Ashtar, Imam Ali notes, "Select somebody who is most endeared by you to judge among people. He should not become harassed by many referrals. Disputes between opposing parties must not make him angry. The person should not insist on his mistakes and must easily own up to truth when he recognizes it. He has driven greed out of his mind and would do everything to understand what is told to him. When in doubt, he is most careful and persistent in applying evidence nor is he easily fatigued due to referrals. He is very patient in finding facts and most adamant when he finds them. (He must be) one of those people who are not duped by exaggerated eulogizing and unilateral pressures will not make him inclined to either side. Such people are really few."

I remember that upon the victory of the Islamic Revolution because of a shortage of qualified judges, I told my friends, "Our revolution has become victorious at a time that we need, at least, 1,000 qualified judges, while even 10 such judges are lacking." And many uncalculated, rash measures were taken under the guise of Islamic judgment due to lack of experienced, wise judges that dealt heavy blows to Islam and the revolution. Here, while commending all those who have accepted this great divine responsibility despite all problems and limitations to serve God, Islam and the revolution, I would like to reiterate several points:

First point: Based on Article 157 of the Constitution, a five-member council was to take charge of judicial affairs, three of whom were supposed to be elected by other judges. However, upon amendment, the Supreme Judicial Council was omitted and its duties were delegated to the head of the judiciary who is to be chosen by the leader, which was clearly in opposition to the principles of democracy.

However, based on what we said under the 'Fourth point' in 'Chapter Four', if grounds for a new revision of the Constitution were provided the qualification of those nominated for the post should be approved by a source (or sources) of imitation. (This could also be done by) the leader who has been elected by people. Then the person would take charge of the post through being elected by people or, at least, a group of judges or lawmakers. This method, while observing religious rules; firstly, is closer to prudence; secondly, it is more democratic and less prone to objection; and thirdly, would bring more coordination among judges and lawmakers and the head of the judiciary.

At the same time, the independence of the judiciary should be protected. No authority should influence the institution. A judge's mistakes should be corrected by the head of the judiciary while sources of imitation or the elected leader will look into his mistakes and legal offences. If a dispute breaks out about anything an arbitrator agreed on by both parties would handle the case.

Second point: It would have been better for the head of the judiciary to oppose the illegal acts of the Special Clergy Court which is against the Constitution and its offensive, illicit moves have marred the credit of the judiciary. It seems that now that 20 years have lapsed from the revolution, the Revolutionary Court should have been also disbanded because the Revolutionary Court was suitable for revolutionary conditions and social crises accompanying it. However, after stabilization of the system, there is no reason for it to exist any longer except for its heavy expenditures and creation of an atmosphere of pessimism in the society. Most importantly, there is no mention of it in the Constitution.

Third point: The crucial issues regarding judgment include first realizing people's rights and struggling against tyranny, aggression and crime. Judges must not be lenient when people's rights are at stake. Secondly, implementing divine commandments – of course after the offense is substantiated through legal procedures (is imperative) not through intrigue, threats or investigations that would be against wisdom and religion. However, when it comes to minor offenses punishable by ordinary laws, the judge better be lenient unless the violator had been so emboldened that there is no other way to improve him/her but through punishment.

Punitive laws, except those related to the right of people or God, are part of religious punishments whose execution would depend on the verdict of a qualified judge and they are not obligatory. In such cases, the offender must be handled through advice, guidance, reprimand and pardon, as far as possible. In such minor cases, holding official court sessions and creating an atmosphere of terror and violence would be neither to the benefit of Islam, nor the system and country. Such hostile acts might even cause people to take distance from Islam and its values. All verses and traditions regarding pardon and forgiveness point to these facts. Examples include:

1. A Quranic verse addressing the Holy Prophet says: "Through God's blessing you are lenient to them for if you were harsh and ruthless, they would have dispersed and left you alone. So, forgive them and ask for God's mercy on them and consult them in all affairs." (Sura Al-e Imran; Verse: 159)
2. Another verse says, "You would continually be informed about their treachery, except

a few of them. So, forgive them and overlook their mistakes. God likes those who do good." (Sura Ma'idah, Verse: 13)

And there are other verses in which God has ordered the Prophet to be lenient and merciful. Certainly there had been some guilt or treason for which God mercy and has also ordered the Prophet to consult with them, which would lead to attracting them.

3. In Letter 53 of *Nahj-ul-Balagha* we read, "Lodge the mercy and compassion for your inferiors deep inside your heart and don't be like an attacking savage with them because they are two groups: either your religious brethren or human beings like you. Their mistakes are many and many things happen to them. They commit sins on purpose or out of ignorance. So, be merciful to them and forgive them just as you like God Almighty to forgive you. You are superior to them and your guardian (*wali*) is superior to you, and God is superior to your guardian... Don't regret when you pardon and don't be happy when you punish."

Imam Ali taught Malik Ashtar how to run a country and reminded him not to be conceited by his power and not to abuse it to put pressure on people. "Your guardian is superior to you and God is superior to everybody and He is the Compassionate and Merciful." This is part of the ruling plan of Imam Ali whom we claim to follow. The ruler of Muslims must be kind and lenient. Framing individuals and discrediting them or holding kangaroo courts with much publicity for any small offense would gradually lead to separation of the nation from the government and pit them against each other. Many mistakes should be ignored or mended through reminder.

4. Imam Ali ibn Hussein – in his *Treatise on Laws* – says, "And the right of your subordinates on you is that you must know that they are your subordinates because they are weak and you are powerful. So, you must judge among them according to justice and be a kind father to them and overlook their ignorance and do not hasten in punishing them and thank God for the power he has bestowed upon you. Of course, people's rights cannot be ignored unless the entitled party forgives."

5. The *Ghorar va Dorar* by Amodi (No. 5342) has quoted Imam Ali as saying, "Many a sin whose declaration to the sinner would be enough punishment."

These are examples of verses and traditions on forgiveness. However, we who claim to be followers of Imam Ali would stop at nothing short of discrediting our opponent and subjecting him/her to frequent bouts of investigation followed by trial and imprisonment and, finally, deprivation from all social rights.

We better pay attention to the procedure used by the Prophet and Imam Ali in this regard: It has been narrated that after conquering Mecca, the Prophet told members of the tribe of Qureish, "O Qureish! What do you think I would do with you?" They said, "Justice. You are our respected brother and son of a respected brother." He said, "Go! You are free." Thus he forgave all of them. (*Kamal ibn Athir*, Vol. 2, p. 252)

For many years, the Qureish were hostile to the Prophet and his followers and waged the wars of Badr, Uhud and Kheibar against Muslims. Nonetheless, the Prophet forgave them

after conquering Mecca and even pardoned Abu Sufyan, Hind and Vahshi, who had slain his uncle, Hamza. He even declared house of Abu Sufyan, who was a staunch adversary of his, a safe haven.

Asbagh bin Nabateh has been quoted as saying that after the victory of Imam Ali in the Battle of Jamal (camel in Arabic), the Imam ordered soldiers not to kill those injured and not to follow those who had escaped. He said anybody who laid down arms would be safe. Then he entered a house with his aides in which Aisha, Marvan bin Hakam and his followers as well as Abdullah bin Zubair were kept in separate quarters. Asbagh bin Nabateh said, "We prepared to use our swords and waited for the Imam's orders, but he pardoned all of them." (*Mustadrak*, Chapter 22: *Jihad*) He even sent Aisha respectfully to Medina escorted by female bodyguards. This was the way the Prophet and Imam Ali treated their defeated enemies.

In war, one must fight valiantly, but after victory it is time for pardon not vengeance. I wish this method had been used after the victory of the Islamic Revolution so that millions of men and women, most of whom were educated would not have left the country and served it instead.

I proposed to the Imam on various occasions that he should promulgate a public amnesty except for those that were murderers or intended to topple the Islamic system. In that case, Iranian expatriates who were willing to come back to their country would have referred to Iranian embassies abroad and the embassies would have issued a letter of amnesty for them after investigations and they could enter the country without being molested by revolutionary guards or intelligence agents. I told him, "Suppose out of 2-3 million expatriates, 100,000 are murderers or intending to topple the system. The rest are either indifferent or just want to lead normal lives and most of them do believe in Islam."

However, the horrific atmosphere dominating at that time as a result of executions, confiscation and excessive arrests soon after the revolution scared them. Most of them were university professors whose expertise or capital was needed. If the domestic environment were secure enough, their capital would have been used for the prosperity of the domestic economy.

We also talked with Interior Ministry officials, but extremist or malicious people, especially in the Ministry of Information did not allow this program to be implemented. This issue has become a problem for the Islamic Republic. Survival of the system would depend on the lenience and liberality on the part of officials and tolerance for dissidents combined with forgiveness. It is not right to file a case or set up a court for any trivial matter and this method can not continue just in the same way that it did not last under the past regime.

A couple of days ago I read in the newspapers that the number of prisoners in Iran was 10 times that of the early post-revolution period and one person entered a jail every 54 seconds. If this is true, it would be a calamity.

Fourth point: An issue that is currently held as a pretext for incriminating people and trying them, is the charge of insulting the late Imam or sacrilege. Even some erudite people who are committed and serving Islam and the revolution or some journalists have been imprisoned on those charges. Of course, insulting officials and dignitaries is neither rational, nor legal. However, it is not limited to authorities and Islam discourages insulting any Muslim or any human being. However, due to ignorance or political tendencies, any criticism or reminder is considered an insult.

The more I use argument and logic the less I understand the difference between such trials, and similar events that took place under the former regime. How come they were considered tyrants, anti-Islam and anti-clergy due to those proceedings, but current officials are executives of the just rule of Imam Ali? A respectable, erudite 95-year-old man with a brilliant background is attacked for writing a polite, friendly letter to the Leader and they wanted to summon him to the prosecutor general's office. *

Despite his refinement, the late Imam never claimed that he was infallible. The leader, like other people, is not immune from mistakes and due to his responsibility, he should be open to respectful criticism. Criticism and ordering good is something different from insult. Excessive veneration for a personality is against the spirit of Islam and is a type of paganism. Hero-worshipping high-ranking authorities through eulogizing them and depicting them in a halo of imagined radiance so that nobody would dare to criticize them would make some people think that the degrees considered for holy prophets and infallible imams were similar to such exaggerated eulogies and repeated sycophancy. The more such lies are repeated the more people would be mistaken and take the lies for truth. In Islam, there are no red lines save for God, the infallibles, Quran and the fundamentals of Islam. The officials are duty-bound to fight sycophancy and banish the sycophant as well as insolent people.

The Holy Prophet has been quoted as saying, "When you see sycophants, throw dust on their faces." (*Mosnad-e Ahmad*, Vol. 2, p. 94) There is an adage (No. 347) in *Nahj-ul-Balagha* that says, "Excessive eulogy is sycophancy." The late Imam or any other person would not be superior to Imam Ali. We consider him to be infallible; however, in Sermon 216 of *Nahj-ul-Balagha* he says, "You do not treat me with compromise and leniency. Do not think that I would not bear truth and justice and I do not expect you to think highly of me because he who cannot tolerate truth and justice, it would be more difficult for him to observe them in practice. Therefore, do not give up telling the truth and advising according to justice. I do not consider myself above making mistakes, unless God protects me."

As I said before, the important point regarding judgment is protecting people's rights and executing God's orders and not delving into trivial details or getting involved in political or factional disputes. You don't find an instance in the lives of the Holy Prophet or Imam Ali similar to political trials that are in vogue today. The Nahravan insurgents (*Khavarij*) openly objected to Imam Ali. Abdullah bin Kawwa' insulted Imam in his very presence and even while saying his prayers, however, as long as they had not resorted to the sword and did not shed innocent blood, the Imam tolerated them and never cut their stipend

from the treasury. The model of the Islamic government must be the method used by the Prophet and Imam Ali and not to follow suit with the former regime or other reactionary governments.

The Iranian people believe that the recent treatment of the press as well as journalists and writers – despite the fact that most of them are religious persons – is according to factional lines. The content of complaints filed against them would reveal that they are factional and provoked by a certain group to do injustice to another group. People have no access to radio or television and the press generally reflect their wishes. However, a certain faction does not like this and resorts to (creating great) ballyhoo. Banning newspapers is, in fact, muzzling free speech, which would be followed by publication of illegal bulletins.

Fifth point: A great misfortune for the judiciary would be exhibiting prejudice and a double standard in action. The judicial system must handle all accused persons in the same way and never let the superior position of one plaintiff to curb the normal course of law enforcement. In a letter sent by Imam Ali to one of his governors, who had misappropriated public property, the Imam says, "By God, if Hassan and Hussein (Imam Ali's sons) had done this they would have found no compromise on my part. (They) could not influence my determination until I had taken the people's right from them and removed the wrong from their deed." (*Nahj-ul-Balagha*, Letter 41)

As some instances, I refer to three important mishaps that occurred during the past two years to scrutinize the judiciary's performance through a comparison:

1. For years, hideous murders were being committed in the country and some of victims, whom I knew, were unfortunately religious and committed people. However, the judiciary did not react until last year when several such murders occurred within a few days and after a follow-up investigation by some officials, they were blamed on rogue elements inside the Information Ministry.
2. In July this year, some members of the disciplinary forces and plainclothesmen attacked a Tehran University dormitory and viciously beat up a large group of Iranian and foreign students. At least, one innocent student was killed during the incident. Tabriz University was also attacked during the same night and, based on what I have heard the attack was more violent than what happened at the Tehran University dormitory.
3. The onslaught against university students was followed by demonstrations against state officials during which vitriolic slogans were chanted against the system and involved vandalism.

Nobody favors vandalism and violent demonstrations. Yet it is apparent to everybody what kind of judiciary rapidly investigates what is in the favor of the system, proves the charges swiftly and convicts a number of students from Tehran and Tabriz universities to extreme punishments. (Most of who were tried in kangaroo courts and received heavy sentences). However, the heart-wrenching case of the serial murders is still in limbo and the related files are not even given to attorneys or next of kin. This discrimination would reveal that the judiciary is not meant to defend the security and rights of people, but to protect the position of state officials. Naturally, people would lose their trust in the

judiciary. Finally, the whole massive establishment of the judiciary is leaning on one foot and this is reflected in the method used by it to handle various cases. As long as the judiciary fails to handle all issues and incidents transparently and according to a uniform procedure, the nation would not trust it.

There is a hadith from Imam Ali when he ordered his servant, Qanbar, to flog a man and Qanbar, mistakenly, beat him with three extra lashes. Imam lashed Qanbar thrice in return for the mistake (*Vasa'el-ul-Shia*, Vol. 18, p. 312). Crime and aggression must be reprimanded even if the aggressor is related to the Imam of Muslims.

The judiciary must act in such a way that, firstly, the right of nobody would be trampled upon; secondly, the international atmosphere would not turn against us. The case of the serial murders, for example, or attacks on university dormitories and lack of serious attention given to them by the judiciary mobilized international societies and organizations against the Islamic Republic of Iran and was followed by widespread demonstrations and publicity against our country.

Or take the case of 13 Jews that were arrested in Shiraz on espionage charges and the delay in attending to their case as another example. It turned into a big subject against the Islamic Republic of Iran. If they were really guilty, the judiciary should have seen into their case rapidly and not keep them in prison for many months to make it an excuse for the opposition taking into account that after such a long period of incarceration their admissions would have been invalid. The delay could not be justified with any logic. Now who decides about such cases? Only God knows.

Sixth point: An issue that must be observed by the judiciary is the scientific level, political understanding as well as the judicial wisdom of judges. People differ greatly with regard to such characteristics. Most *faqih*s consider *ijtihad* as a prerequisite for a judge and even the late Imam Khomeini considered it a condition.

Islamic judgment can not be realized by a judge's referring to *Tahrir-ol-Vasileh* (a religious treatise authored by the late Imam Khomeini) and issuing a final verdict, especially when it comes to important cases involving execution or other heavy sentences. Judgment should be entrusted to a righteous, experienced and seasoned jurist and judge. Sometimes judges that are not jurists and incapable of inference issue heavy verdicts. The injustice done through such verdicts does not include the judges alone. One issue that needs special attention is that of the blood and credits of people. Such cases must not be entrusted to any judge. Quality is more important when selecting a judge than quantity. This concern was less cared for during the early years after the revolution and led to heinous acts. Now, after 20 years a review is necessary in this regard.

Ordinary judges should handle ordinary cases that do not need final verdicts. Such cases can be settled through reprimand, advice, warnings or such things while high-ranking jurists familiar with the law and judicial methods must be called upon to judge important cases, even if they do it in addition to their official tasks and do not accept being

officially employed.

Chapter Six: Special Clergy Court

A manifestation of lawbreaking in the Islamic Republic of Iran is the establishment of an institution known as the 'Special Clergy Court'. Soon after the revolution, when the Islamic system was incipient, such a court was established in Qom with the late Ayatollah Azari Qomi as prosecutor and worked for a while. Although the court was initially set up on the pretext of protecting the clergy and purging misfits, due to the extreme course it took and acting according to personal views of certain officials, unfair verdicts were issued for some clerics. Since I was against it from the outset because I considered it a type of prejudice and prerogative, I obtained Imam's agreement to close it down.

However, I was later informed that Imam Khomeini had decided to reestablish it to improve the clergy. I sent a telegram to him reminding him of the bitter outcome of the previous clergy court. (I also) proposed that a panel should be established in Qom comprising five *ulema* from Qom, including the head of the Qom Justice Department to supervise the performance of the clergy and see into their illegal deeds. In response, they sent me a telegram and, at the same time, a high-ranking official asked me "Could this panel that you have proposed summon Mr.?" and he mentioned the name of one of the outstanding *ulema*. It was then that I knew the Special Clergy Court pursued a more far-reaching goal than I thought. Anyway, the second Special Clergy Court was established and took extreme measures.

Late in his life, Imam Khomeini responded to a plea by *Majlis* deputies regarding the necessity of implementing the Constitution by saying that all temporary establishments that were formed in defiance of law were a necessity of war conditions. However, after the demise of Imam Khomeini, the Special Clergy Court was established for a third time with Mr. Reyshahri as prosecutor to summon and try anybody who had the slightest connection with a clergy.

Clause D of Article 13 of the court's forged law, formulated by Mr. Reyshahri, is related to qualifications of the court and says, "All affairs referred by the Supreme Leader for investigation." This clause introduces the court as a tool for enforcement of the leader's policies and, therefore, casts doubts on its social status and validity.

If the leader does not trust the judiciary, why does he do nothing to improve it and why has he trusted it with the lives and reputations of people? If he trusts the judiciary why have they launched such an extensive establishment at an exorbitant cost against the Constitution to see into issues of their concern?

Finally, the performance of the court during the three periods revealed that though it was established on the pretext of purging the clergy, it pursued political goals and was used as a tool for suppressing political opposition. Otherwise, what is the necessity of

establishing a separate court for outwardly clerical persons who are charged with financial or moral corruption? The justice department could try them like ordinary citizens. Such people do not enjoy a special respect to deserve a prerogative. Even if we assumed that existence of a separate court was necessary, why must it not be part of the judicial apparatus?

I wrote a relatively long letter to the Muslim nation of Iran on April 30, 1992 and explained the reasons for the illegality of the special court. I repeat those reasons here: "The Special Clergy Court, that has marred the credit of many *ulema* and sources of imitation and interferes in anything even the affairs that are directly related to sources of imitation on imaginary grounds has been the protagonist behind nightly encroachment on my house. Making (my household) insecure and plundering its assets, (the court) has no legal basis and its establishment is against the Constitution for the following reasons:

"First reason: Article 61 of the Constitution says, "The judiciary enforces its decisions through the justice department courts that should be held according to Islamic norms." It is clear that the Special Clergy Court is not among the courts that are overseen by the justice department and is not supervised by the judiciary either. It has no respect for the country's judicial laws and, therefore, is not qualified to interfere in judicial affairs and its officials must be held responsible before God and the Iranian nation for their illegal deeds.

"Second reason: Assume that a high-ranking person of authority launches an establishment called a 'Special Court' with its special laws in the face of the judiciary that acts independently and would not be held responsible before the judiciary for what it does. Undoubtedly, this measure by that authority would be against the Constitution. Therefore, if it were done on purpose, it would be an offense. If it were done by mistake, the authority must regret his mistake and make up for the losses he had inflicted. On the other hand, Article 107 of the Constitution says with regard to the leader, "The Leader is equal before the law with other people." Therefore, just in the same way that the president is not allowed, for example, to form an independent court against the judiciary, the leader has no right to do so. The Assembly of Experts that according to Article 111 of the Constitution is responsible for seeing into the leader's performance must attend to this illegal measure of the leader.

"Third reason: Article 110 of the Constitution has explained the duties and powers of the leader in eleven clauses without mentioning the Special Clergy Court. Therefore, the court is illegal. It should be noted that electing members of the Assembly of Experts by people and electing the leader by the experts are both done according to the Constitution. The nation chooses a leader through experts who should abide by the Constitution and does not violate it.

"Fourth reason: The Islamic Consultative Assembly (*Majlis*) has not approved the Special Clergy Court. The laws it has ratified are not approved by parliament and their implementation would be an offense. If laws were to be made without reference to lawmaking bodies, the country would have been in danger of despotism and chaos.

"Individual lawmaking without respect for the country's legislature reminds us of the bitter memories of monarchical tyranny and will discredit the nation's revolution. Violating the approved laws and regulations of the country is not only an injustice to the nation's rights that would disappoint people. This will also negatively affect international relations because it leads to distrust on the part of governments as well as international legal and financial entities and end in the political and economic isolation of the country.

"Meanwhile, the *Majlis* is not entitled to approve laws against the Constitution. The issue of illegality of the Special Clergy Court has received wide coverage recently by a number of writers and legal experts in the press as a result of the trial of Hojjatoleslam Abdollah Nouri. His conviction came at a time when evidence proved that his trial only aimed to deprive him of the right to take part in *Majlis* elections. The illegality of the Special Clergy Court was extensively covered by a group of writers and lawyers in the press and they presented strong arguments in this regard. All of a sudden, the Islamic Consultative Assembly stipulated in its session dated December 12, 1999, that 'According to Articles 5 and 57 of the Constitution, the Special Clergy Court would attend to offenses of the clergy as long as the leader believes that its work is expedient.' However, any Iranian readily understands that members of parliament are direct representatives of people. They must remain independent and approve nothing against the Constitution.

"This illegal institution (Special Clergy Court) has continued to work for many years in the face of a deadly silence on the part of the *Majlis*. Now what has happened that the *Majlis* came to life unexpectedly and tried to justify this illegal body?

"The *Majlis* has no right to confirm a body that has been established in violation of the Constitution. Article 57 reads, "The three powers enforce their decisions according to the upcoming articles of this law." And Article 61 reads, "The judiciary would enforce its decisions through justice department courts." Therefore, the Special Clergy Court has been established in violation of the Constitution and has no legal value.

"In counter argument, some advocates of the Special Clergy Court have resorted to three reasons to prove that the body is legal: 1. The absolute jurist rule; 2. Expediency Council that has approved its payroll; and 3. Its establishment by the late Imam Khomeini. The response to the first and second reasons could be found in 'Point Five' under 'Chapter Four' where I said that in the Islamic Republic of Iran only the *Majlis* could ratify laws; neither the Expediency Council, nor the supreme jurist can approve laws. Even the *Majlis* cannot ratify laws against the Constitution.

"With regard to Imam Khomeini: Firstly, his duty as supreme jurist was to oversee the country's affairs within the framework of the Islamic laws and the Constitution and he believed that the three powers were based in popular will. He always respected the *Majlis* and law and was aware of the constitutional stipulation that, "The leader is equal before the law with other people," (Article 107) and special duties have been considered for the leader (Article 110). He had voted for the Constitution and was in a pact with people over it.

"Secondly, Imam was a jurist, a philosopher, a mystic and was pious and dignified. However, he was not infallible and never claimed to be so. We have no right to consider anybody but the infallible Imams to be free from mistakes. There are four sources for drawing up canonical laws, which include the Book (Quran), Sunna, consensus and wisdom; Imam Khomeini is not the fifth source.

"Thirdly, in response to *Majlis* deputies he emphasized the necessity of implementing the Constitution and said anything done against the Constitution was temporary and limited to a certain period of time.

"Fourthly, the *ulema* do not permit primary imitation of a deceased person and are at variance with regard to continuing the imitation of a dead source of imitation. This is related to judicial issues, but when it comes to political matters, continued imitation of a dead person would not be permitted because in the changing world of today, politics alter day by day and political issues constantly change. Anybody aware of politics could discern that expediencies and disadvantages should be considered in political matters and, generally speaking, such matters are not imitative because deciding about them is not a duty for the supreme jurist. Of course, his words are quoted in speeches and writings, but as a confirmation, not as a final, obligatory reason.

"Here, to support him (the late Imam) I beg the officials not to use the status and character of Imam to promote their own policies now that 10 years have passed since his demise and not to sacrifice the name and status of the late Imam for their factional interests. This will reduce his grandeur and damage his personality.

"Finally, the Special Clergy Court is still there with its vast powers and heavy costs for the treasury and continues to work independent of the judiciary. Most of its trials are politically motivated. Many a sacrilege has been made against sources of imitation, *ulema* and the learned esteemed people who were servants of Islam and the revolution. Many pious *ulema* and clergy were and are being put on trial and imprisoned on imaginary grounds and for political purposes. Such measures have negatively affected the morale of young clerics who are interested in Islam and the revolution and have sown seeds of disappointment among them. Many of them have changed their mind about continuation of their studies at seminaries. In fact, willingly or unwillingly, the wishes of imperialists that had received blows from the revolution and the Shiite clergy have been practically realized."

The Shiite clergy and sources of imitation saved the Shiite society and Islamic countries from the influence of domestic despots and colonialist contracts at sensitive junctures and weakening them would be a great national loss and (promote) the wish of the imperialists.

One of the big damages that the Special Clergy Court has done is that due to measures taken by its authorities, an atmosphere of terror has dominated the clergy. It has stripped clerics who should be supporters of truth and defenders of the rights of the weak and oppressed from the valor, bravery and self-confidence that is so vital to them. (The court)

has even scared the dignitaries of the seminary to the extent that they avoid expressing views about scientific and political matters.

The clergy has been a safe haven for people at all ages, but in our time due to the measures taken by the Special Clergy Court, on the one hand, and calumny by pressure groups, on the other hand, the sanctity of the clergy has been desecrated. At the same time the president who is responsible for the implementation of the Constitution according to Article 113 and has taken an oath in the parliament according to Article 121 of the Constitution is duty-bound to take steps for disbanding this unlawful court. (He is charged to) safeguard the official religion and the system of the Islamic Republic and the country's Constitution.

At the conclusion of this chapter, I exhort the founders and officials of the Special Clergy Court to think what has been the benefit of such a gargantuan establishment. (Think about) the heavy costs that it inflicts on the country's budget for the system, the clergy and the nation, (and what does it do but) create suppression, treading on people's rights and making the clergy and the nation disappointed with officials? The results of all these things would result in nothing but weakness of the Islamic system. It should be noted that people are the main support for the system and a recent poll showed that 76 percent of people considered the Special Clergy Court illegal. Therefore, its proceedings would lead to controversy and public chaos in the society and being convicted by that court has become a source of honor among people just in the same way that being convicted by the former shah's courts was considered an honor. Hence, it is necessary for the founders and authorities of the Special Clergy Court to take action for disbanding it because whenever you curb a loss, it would be a profit.

Moreover, I have been informed that most of its judges are not jurists and a non-jurist judge would be illegitimate and lack the proper qualification. You who always resort to Imam Khomeini's reputation to justify your acts, must note what he wrote in the Book of Judgment of *Tahrir-ol-Vasileh* (the first question being on characteristics of a judge). "A judge should have these conditions: maturity, wisdom, faith, justice, absolute – not relative – jurisprudence. (He should be) of pure birth as well as being the most knowledgeable of those who live in that city and around it". Therefore, according to an obligatory caution, which apparently applies to the condition of being the most knowledgeable, anybody who believes in religious basics must be careful about legitimacy of his acts and rights.

I tell you what is the condition of eloquence; you either heed advice from what I say or be annoyed.

Chapter Seven: Elections and People

Here, I would like to reiterate several points in brief about the elections:

First point: Election costs

You know what a heavy budget is allocated to elections both from governmental funds and people's personal property and how much time is spent on it and what grudges, animosities and skirmishes follow.

Since the government is a republic, *Majlis* deputies (the legislature) and the president should be elected through public polls. It would have been better if both elections were held at the same time to decrease costs in terms of finance and time. In other instances as stipulated by the election law, all redundant formalities should be dropped while paving the way for everybody's participation in the polls. As mentioned in 'Chapter One', healthy and free elections would only be possible through participation of independent political parties comprising committed, sensible and wise people.

Second point: Elections in big cities

It seems that a necessary task for the *Majlis* would be dividing big cities including Tehran into various districts, in the same way that has been done for municipality or education departments and every district must elect its own MPs proportionate to its population. The fact that people in Tehran can vote for 30 or more deputies while another person in another city can only vote for a single person is firstly, discrimination and an unjust prerogative. Electing *Majlis* deputies has nothing to do with city expediencies, but is related to the higher expediencies of the country. People's votes form the basis of managing the country and MPs are the embodiment of people's votes.

Every person in the country should take equal advantage of this right. The point is how a simple person who knows nothing about political developments could vote for 30 people in Tehran, but a scientist or expert in another city would be only entitled to vote for one person, taking into account that their votes are instrumental in determining the country's politics.

Secondly, it would be hard for a person living in Tehran to know all 30 candidates and, as a result, most votes are cast for lists presented by political groups and only they benefit from people's votes. If, God forbid, some of them were against Islam and the interests of the country, the voters would be a party to their misdeeds.

When I was a member of the Assembly of Experts I insisted that Tehran should be divided into districts and people in each district should elect their own deputies. However, my proposal failed to attract an adequate number of votes. I still believe that Tehran should be divided into electoral districts and many big cities including Isfahan, Mashhad, Tabriz and Shiraz must follow suit. We must help people vote for known individuals and not unknown lists.

Third point: Approbatory supervision

Another issue that requires special attention is approbatory supervision over elections by the Guardian Council as mentioned in Article 99 of the Constitution. In the amended Constitution, the article reads, "The Guardian Council is in charge of supervising elections for the Assembly of Experts, President, Islamic Consultative Assembly as well as holding plebiscites." There was no mention of the Assembly of Experts in the original Constitution.

I remember that the primary motive for the experts to approve this article was the bitter memory of the lack of free elections under the former regime and its interference in determining candidates and the perfunctory nature of elections. To curb similar interference by officials in the future, the experts ratified the article. Thus, the main goal of the experts, including myself, was insuring free elections and preventing unwanted interference, not interference in qualifying or rejecting candidates. Of course, if qualifications were to be proved for candidates according to the law, the authority in charge of confirming them would be the Ministry of Interior and not the Guardian Council.

Soon after the revolution, when Imam was still alive, elections were held freely and all people took part in them. Nobody thought about approbation of the elections, although some people tried to apply their views on a limited scale. However, after some years, they started talking about approbatory elections and it was stipulated in Article 3 of the election law as approved by the *Majlis* in 1995.

Apparently, approving the article was against the spirit of the constitutional article and has paved the way for disqualification of some candidates on grounds of incorrect or purposeful misinformation and in line with personal viewpoints. Although Article 98 of the Constitution has made the Guardian Council responsible for the interpretation of the Constitution, interpretation means to uncover a concealed fact. However, there is nothing hidden in Article 99 because the law has stipulated supervision over elections not over the candidates to ascertain their factional affiliations. It was meant to ensure free elections and prevent vote rigging. What the Guardian Council does is 'incorrect justification' not interpretation.

On June 2, 1999, a group of seminary students asked me about the approbatory supervision to which I answered and recently some officials have charged me on the grounds of the same answer. It is a pity that a group of uninformed people could express views about such matters and attack with insults whenever they were ordered. Yet somebody who has been among the founders of the revolution and was once head of the Assembly of Experts and has been aware of approval of this and other articles, would not be allowed to express his views. You can see how much the Islamic system has been degraded as stated by *Nahj-ul-Balagha*, "It is a land where the learned people are muzzled and the ignorant people are revered!"

Finally, I am reminded of some points in my response that I mention here. The approbatory supervision on which the Guardian Council insists could be applied to two-

stage elections. In the first stage, the Guardian Council and its members – through their own interpretation – select candidates and in the next stage, people would have to elect from among persons vetted by the Guardian Council. This is against the apparent purport of Article 99 and the experts who ratified it never meant it to be applied in this way. We must take into account the discrepancy among people and even *ulema* and scientists with regard to religious, political and social matters. The delegation of full powers for recognition and determination of all efficient forces in a country to several individuals, who only specialize in realizing the Islamic commands (is shot through with shortcomings). Their main duty is vetting approved laws for conformity to Islamic tenets and the Constitution. (Their excessive powers) might lead to ignoring the rights of many committed and valuable individuals. This is a great sin and against popular rule that has been stipulated in Article 56 of the Constitution and many other articles. It would be insane that a group of people consider themselves as the only ones who can understand Islam and are absolutely right and expect all people to discard their common sense and obey them blindfolded.

We all remember that the late Imam Khomeini said on many an occasion that, "The norm is people's votes and they are the main owners of the revolution." While the approach taken by Guardian Council for rejecting many valuable persons in whom people trust would make them disappointed with the Islamic system and the Guardian Council and also make them indifferent toward elections.

People consider approbatory supervision as a type of insult to them and think that the Guardian Council considers itself the guardian of people because it interferes in qualifying candidates that is a right of people. Incriminating the whole society of being irreligious or being a tool at the hands of foreign or domestic enemies would be unfair because people generally believe in the fundamentals of Islam and understand the expediencies of their country. As a result, if left to themselves most of them would chose pious people who would be experts on political and economic matters even if they do not belong to your or my factions. If, presumably, they vote for one or two wrong candidates, they can't make any problems because they would form a minority in the parliament. Meanwhile, their social position would be revealed and they could not take advantage of their weak position to curry favor with people.

At the same time, when a law is approved following lengthy deliberations, by opponents and proponents it would be stronger. If some rulers have come to the conclusion that, God forbid, most people have turned their backs on the truth and religion and, if left on their own, would vote for irreligious candidates, we must say, "Woe betide us if it is really so!", because it would be nothing but the result of the pressure and disrespect for peoples rights and those officials would have no choice but to mend their ways. People would never be attracted to Islam through force or imposition.

Generally speaking, if people were to choose between two alternatives and had either to make a mistake about one or two wrong people or be deprived of their right to choose and have to select some persons (even qualified) that had been introduced beforehand, surely the long-term damage of the second alternative would be much greater than the

first. Because if people made a mistake in an instance, they would try to set it right after realizing their mistake and would achieve a higher level of political understanding. However, if their judgment is ignored, it would both lead to the prevalence of sycophancy and absolute obedience to the ruling system in the society and pave the way for despotism.

Fourth point: Revolution belongs to all people

The Islamic Republic of Iran was not the result of endeavors made by a specific social class. Although the late Imam assumed the religious and ideological leadership of the revolution because of his valor and special understanding, registering the revolution in the name of the clergy would be injustice to other groups. The absolute majority of the nation from clerics to academicians and from workers to businesspeople, intellectuals, political groups and other social strata and even religious minorities took part in it and made the revolution victorious through their faith, unity and obedience to leadership. At that time, there was no sign of opportunism, self-conceit and the ominous new phenomenon of "friend and foe". It was the same faith, consolidation and unity that brought God's blessings to the country because, as said by Quran, "God would not change any nation's destiny, until they do so themselves."

Nature is a world of causes and effects and anything that happens needs its own cause and for an incident to occur, a cause would be needed. However, a species of monopolistic and guardianship morale has developed among a group of people. Perhaps, they are opportunists that have entered the scene and consider other people as 'foes'. They banish even forces that have served Islam and the revolution by attaching imaginary and unjust labels to them. They even use the pretext of defending Islam while Islam is a religion that attracts people unless those who are called *muhareb* (waging war against the Islamic system) who cannot be assimilated.

When they talk of unity they mean unconditional obedience of other people to their viewpoints not a brotherly unity that would mean tolerating each other's views. Everybody is talking about unity between university and seminary, but they aim for the absolute obedience of the university in the face of power centers just in the same way that they seek for the same in the seminary. If this monopolistic morale continues, the revolution would lose its support and would be easily defeated.

The revolution and the Constitution belong to all people and the leader, the president, *Majlis*, elections and other institutions are dependent on the whole nation with people's voting forming a basis for all of them.

Although people differ in their understanding of Islamic issues and degree of their faith, their social and political rights is not a function of their degree of faith, but all of them enjoy equal human, political and social rights because they are children of the revolution and the country. Depriving some groups or individuals of their rights on illegal grounds would be blatant tyranny.

If someone said, "Since I understand prayers, fasting or the philosophy of Mullah Sadra

better than you, so you must obey me in political, economic and international relations matters blindfolded and without question," this would not be accepted in the modern world and would be against wisdom and logic too. The reason is that such matters are complicated and you might be more learned than me with regard to such issues, that are directly related to destiny, independence and prosperity of the country, and wise people are not supposed to imitate blindfolded.

Today most people, especially scientists and theoreticians are in contact with global media and many of them are experts on political and economic issues and can recognize what is good and what is bad for their country. They must declare their views, so that, after a conflict of ideas – which is an accepted method among pundits – the viewpoint of the majority would be accepted as a basis for action. The best place for such a conflict of ideas is the Islamic Consultative Assembly. So, monopolizing it by the leftist or rightist factions would be an injustice both to the country and to other social classes.

When we grant religious minorities the right to be chosen in proportion to their population – which is a good thing to do because they are a real social entity that cannot be denied and are interested in their country too. If, for example, one half or one third of people are Muslims, but as you say are intellectuals or foes, how you can ignore them and tell them "You have no right to be elected," despite the fact that they are Muslims and part of this nation? They are a reality in the country and are interested in the country too and enjoy the expertise that the country needs. The only problem is that they do not accept my or your way of thinking. If we are skillful, we must convince them through friendly discussion and understanding, but depriving them of their social rights is both injustice and can lead to permanent chaos in the political environment of the country.

Fifth point: Degrees of faith

Although most Iranians are Muslims and generally believe in the Islamic tenets, they differ in their practical faith and commitment to the rules of Islam. Also, the mental capacity of different people varies according to their innate ability and the environment in which they live, just in the same way that the learned men might disagree about various issues while nobody is entitled to impose his/her own understanding and interpretation on others.

Of course, scientific discourse is very good and even necessary and many discrepancies could be solved or viewpoints could be brought closer together through free scientific discussions. However, imposing ideas is not only wrong, but also insensible too, because nobody would ever accept a certain opinion by force and this is the real meaning of the Quranic verse, "There is no compulsion in religion."

Anybody that has endeavored to acquire correct beliefs and has done everything that he/she could do and has reached certain beliefs would not be blamed

by God, even if they had committed mistakes with regard to some issues. Anyway, the social rights of human beings must be protected and nobody is entitled to attack anybody else on the excuse of not believing in what he believes, insult him, disdain him or deprive him of his social rights.

There is a hadith quoting Imam Sadeq as telling Abdolaziz Qaratisi, "Faith has ten degrees, just like the rungs of a ladder. He who has achieved the second degree should not tell one who enjoys the first degree that "you know nothing" and the same is true until it reaches the 10th degree. Don't disdain he who is beneath you, because somebody superior to you might do the same to you. Try to boost up one who is beneath you through leniency and don't impose on them what they cannot tolerate because in this way you would have broken them down and he who breaks down a faithful person must compensate for what he has done." (*Osul Kafi*; Vol. 2, p. 45)

In another hadith, Zorareh says: "I told the Fifth Imam, "We use a plumb line." He asked, "What do you mean?" I said, "We would befriend anybody that would agree to our views whether he is an *Alavid seyed* or not and would take distance from anybody who would oppose us whether he is an *Alavid seyed* or not."

The Imam told him, "So, what about the Quran's injunctions about those men, women and children who are oppressed and cannot find any solution? Or those who God would decide about their fate?"

The Imam meant that they should not distance themselves from various social classes in the Muslim society and none of those classes should be banished even if they were beneath them in faith and commitment. In fact, Zorareh had divided Muslims into 'friend' and 'foe' and distanced (himself) from foes though they were Muslims. The Imam chided him and said what he did was against what God had ordered.

* A reference to summoning Dr. Yadollah Sahabi to court following a complaint filed by head of the Tehran Justice Department, which followed publishing an advisory letter containing friendly warnings to the leader in Neshat Daily. The newspaper was closed down several days later. Although the ban was due to publishing the letter, it was later announced that it had been closed for publishing an article on *qisas* (retaliation in kind). This was done to head off the negative reverberations of closing down a paper for printing a letter. However, the main motive could not be hidden in court.

Chapter eight: Pressure groups

As I have reminded many times, establishing and organizing pressure and violence and intimidation groups has been regarded as one of manifestations of illegality in last regime as well as some other unpopular governments ,who always resorted to bearers in order to deny people's lawful claims and in this way continue their despotic rule.

Unfortunately , this wrong behaviour which is against wisdom and *Sharia* and law has been usually employed in Islamic Republic of Iran , which is based on Islam and the people , by some who regard themselves as defenders of the state. They usually attack universities , religious schools, scholarly centers, speeches, Newspaper centers ,cinemas ,bookshops and Jomee prayers by resorting to various Pretenses and employing some organized militia groups and some young deceived People who know nothing about anywhere and anything with a deceiving name On them.

These people wrongly believe that they want to defend Islam and the revolution And the values by beating and injuring people and personalities and breaking equipments and tearing books even the holly Quran and other religious books, Forgetting that the religion or the state never would be strengthened by force and mace and reluctance .there is no doubt that the religion would be strengthened by free debates and scholarly negotiations and friendly raising questions and giving answers and logic and reasoning , and on the other hand the state would be reinforced through observing peoples claims and rights and securing legitimate freedoms.

This wrong , unwise ,illegal and illegitimate behaviour is enforced in many occasions in most cities of Iran ,and the leaders and financial supporters of these groups mobilize and send them anywhere they wish and spend very big sum of funds belonging to the society for these affairs ,and in many occasions they mobilize some followers from various areas and centralize them in one area calling them popular spontaneous forces , not knowing that the people of the country are well-aware of these deceits ,and as the last regime was not able to gain any benefit as well .these efforts will not result in anything but unpopularity of the government and damaging the risage of the state all around the world .this behaviour not only deprives public security and spoils people's rights and dishonoring the people , who are Gods servants , but also paralyzes the countrys economy and foreign policy ,and results in isolating us .I cannot find out that by relying on which legal (*Sharia* law),some of these people incite some groups to attack and beat and curse innocent people and distroy or plunder their equipments just because they think differently .

As one example , no one can imagine that this late tragic event in the universities of Tehran and Tabriz and attacking the home and foreign students to what extent resulted in difficulties and bad consequences and disgracing the nation off around the world apart from the losses in people and equipments . Unfortunately ,the backing of these vandal

groups is such strong that the security forces in the scene come to help them or just stand silent toward them and the key elements of these groups are never prosecuted.

Those authorities and organizations who knowingly or unknowingly incite and support these groups, undoubtedly damage seriously Islam and the revolution and the country and the society and the spirituality(Roohaniat) and Islamic values and betray Islam and the revolution and weaken the bases of the Islamic state.

The power and magnificence of every nation depend on its culture and knowledge and in our country the religious schools(hosets) and the universities and the press are the representatives of the culture but the existence and the reputation of these three bases dishonored and violated by these groups and the scene of the Qume hosete which was regarded as the core of the Islamic revolution now has been fallen in the hands of these vandal groups . such that they pay no respect to any scholarly authority If the enemies of Islam and the spirituality(Rohaniat) would spend billions of tomans to break the limits of the Qume hosete and the sanctuary of the spirituality and the shiete authority(Marjaiat), They could not be so successful; and in this respect it is expected from the main authorities of the hosetes that they think a remedy for protecting the holly Hosete –which is the glorious base of shiete-and salvaging it from the situation and the danger that has encounterd.

The sin of all scurrilities and destructive works and disrespectings and destroying and plundering equipments is not only the performers of these actions but also on the instigators of these groups, which they must be responsible on the last day.

I advise these deceived people who are incited by the instigators under the name of Islam and the revolution and the values, not to spend their faith for the worldly benefits of others and be aware that these conducts by no doubt result in weakening of Islam and the government and the conductors will be responsible on the last day.

You suppose that your goal is to defend Islam, whereas such conducts represent

The pure visage of Islam as violent and the Moslems as anarchist and endangers the society's security .it has been quoted from amiralmomenin(peace be upon him) as saying: "a fierce lion is better than a tyrant ruler , and a tyrant ruler is better than continuous seditions".