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Jurisprudence:
The Two Cases of Montazeri and Sistani**

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Abstract

An attempt is made to study two influential Shi'i Muslim thinkers of democratic rule and religious authority in the context of contemporary Iranian and Iraqi histories. It is argued that a new discourse and a practice of democratic governance is currently under reconstruction by two senior Shi'i clerics, Ayatollah Morteza Montazeri and Ayatollah Ali Sistani, who in both explicit and implicit language and body of practices advance a Shi'i normative theory of what authentic Islamic governance should be like in terms of an inclusive and pluralistic idea of political community. The term "democratic *Usulism*" refers to such democratic-minded clerical tradition that these two leading clerical figures both in theory and practice advocate in Iran and Iraq. The article is divided into three sections. The first part provides a brief historical and theoretical description of "democratic *Usulism*" as a distinct mode of Shi'i modernist thought that innovatively links sacred normativity with democratic form of politics. The following two sections give account of the role of (post-1989) Montazeri and (post-2003) Sistani. My focus here is to describe political-theology of two connected yet different democratic *Usuli* clerics who both in theory and practice attempt to revise Shi'i authority in terms of democratic norms and practices. In conclusion, the study considers the potential perils and promises of democratic *Usuli* thought, while emphasizing that the tradition should primarily be recognized as a critical response to authoritarian rule by rearticulating normative judgments about political community through a transcendental ideal of divine law manifested in popular sovereignty.

Keywords

Shi'i Islam; democratic rule; pluralism; Islamic governance; political community; *Shari'a*; constitutionalism

Introduction*

This article compares two influential Shi'i Muslim thinkers of democratic governance and religious authority in the context of contemporary Iranian and Iraqi political histories. Advanced after the election of Mohammad Khatami to presidency in 1997 in Iran and strengthened with the toppling of Saddam Hussain's regime in April 2003 by U.S.-led forces, I argue that a new discourse and practice of democratic rule is currently under reconstruction by two senior Shi'i *ulama* (Muslim scholar), Ayatollah Morteza Montazeri and Ayatollah Ali Sistani, who in both explicit and implicit language and body of practices advance a Shi'i normative theory of what authentic Islamic governance should be like in terms of an inclusive and pluralistic idea of political community. In what will be referred here as "democratic *Usulism*," this article primarily aims to describe such democratic-minded tradition by focusing on its two leading figures who both in theory and practice attempt to revive an older tradition of democratic politics grounded in the Shi'i ethos of equality and justice.

Notwithstanding variation of views, clerics like Montazeri and Sistani share a conception of common good that inherently rejects a theocratic political order by seeking to protect the right of a democratic society to exist against an authoritarian state. Through rational discourse grounded in political-theology, dating back to the early twentieth century in the course of the Constitutional Revolution of 1906-09 in Iran, these two clerics have pushed for a shift in the conception and the institutionalization of new religious politics in Muslim-majority public spheres embedded in symbolic and culturally shared senses of self and community. While these shared senses of civic solidarity are grounded in a normative vision of common good, the two thinkers under study provide a sort of political legitimation for the creation of a pluralistic and self-regulated society that is "guided" by the sacral laws of Islamic wisdom.

The present article is divided into three sections. The first part provides a brief historical and theoretical description of "democratic *Usulism*" as a distinct mode of Shi'i modernist thought that innovatively links sacred normativity with democratic governance. The following two sections give account of the role of (post-1989) Montazeri and (post-2003) Sistani in advancing this school of thought, independent from each other and yet in the context of distinct political circumstances that has forced them to articulate a new sense of Shi'i political order. My focus here is to describe political-theology of two connected yet different democratic *Usuli* clerics who both in theory and practice have attempted to revise Shi'i authority in terms of democratic norms and practices. In conclusion, the study considers the potential perils and promises of democratic *Usuli* thought, while emphasizing that the tradition should primarily be recognized as a critical response to current authoritarian trends by rearticulating normative judgments about political community through a transcendental ideal of divine law manifested in popular sovereignty.

Democratic *Usulism*: Between "Activism" and "Quietism"

Since its emergence as a religious minority community under the Umayyad Dynasty (660-750C.E.), the social status of Shi'i *ulamas* has been limited to how they can provide religious guidance to the public. A cleric of Shi'i scholarly training is a type religious leader who is obliged to refrain from participating in the everyday political affairs and avoid any claim to political authority and temporal rule within the state apparatus. Largely known as the "quietist" school of thought within Shi'ism, this traditional school advocates that the *ulama* should merely function as advisors for the public with a divine claim over issues related to moral and judicial matters. Based on the messianic doctrine in the

* The author would like to thank Professor Ali Gheissari and the anonymous reviewer for their useful suggestions and comments on an earlier draft of this article.

return of a redeeming Mahdi, the Hidden Imam in Shi'i Islam, who is believed to be presently in Occultation (*ghayba*) but who will reappear at the end of historical time to deliver the humanity to a just society, a cleric is limited in his political activities according to what he can authoritatively be declared right or wrong in light of the absence of a divine legislator as the infallible Imam who embodies divine light. During the period of absence, when the world awaits the return of Mahdi, the aim of the fallible leaders and imperfect humans, including the learned *mujtahids* (jurists) is to promote a morally mature society based on the prerogatives of the *shari'a* law, as interpreted and endorsed by the *ulama*.

By and large, all attempts to create an Islamic state led by the *ulama* are problematic since the aim to establish a Shi'i state carries a possible liability of being accused of as a usurper. It is only with the return of the Mahdi that a truly legitimate and a just Islamic state can be attained. Governments that attempt to implement Islamic law should only seek the support and the consultation of the jurist (*faqih*); meanwhile their moral task as a political institution should be to prepare the way for the eventual return of Mahdi. In this sense, a cleric should refrain from leading a political life. By using his knowledge as a trained scholar, he should participate in matters of political importance that may ultimately serve the common good of the community, specifically public activities focused on sacred shrines, educational centers of religious learning (seminaries), endowments, and the distribution of religious taxes to the needy and orphans.

Throughout Islamic history, especially since the second disappearance of the Twelfth Imam in 941 C.E., Shi'i *ulama* have been beneficiaries of religious taxes, responsible for distributing endowments (*waqf*), administering the alms (*khums* and *zakat*), leading religious ceremonies, and various activities related to private or public affairs of Shi'i communities. Since the tenth century, under the Buyid dynasty (945-1055), when Shi'is saw a century of empowerment through dynastic rulers, numerous Shi'i *ulama* carried the responsibility of legal and, occasionally, public administrative duties, activities that both overlapped and clashed with state institutions. They oversaw economic and social activities while maintaining independence from state control.

In advancing the principle of *ijtihad* and legal rulings based on rational inference and independent judgment, they identified their institution with the ability to provide moral guidance to the public through their scholarly trainings and years of study of sacred texts. They identified themselves, first and foremost, as public figures who served the Shi'i community by interacting with the imperial Islamic powers to enhance their community rights. It was largely with the help of *ulama* that Shi'is preserved their communal identity as a minority religious group under Sunni rule in later years of the Abbassid rule and after the Mongol conquest from the eleventh to the early sixteenth centuries.

Under the Safavids (1501-1722), the *mujtahids* gained considerable power by participating in the state apparatus of the first Shi'i empire since the collapse of the Fatimids (969-1171) in Egypt. But even with an increase of political involvement, the authority of the Shi'i jurists remained second to the Safavid Shahs, who legitimized political and spiritual authority based on the ancient Persian ideology of kingship, in terms of the 'Shadow of God on Earth,' and as supposed descendents of the seventh Imam, Mousa al-Kadhim, self-proclaimed representatives of the Hidden Imam on earth.¹ As a necessary evil, the limits of clerical involvement in political affairs during the period of absence of the Twelfth Imam has been largely limited to idea of protecting the interest of the Shi'i community and upholding the sixth Imam's dictum that "The atonement for participating in the government lies in satisfying the needs of the [Shi'i] brothers."² Political involvement is essentially a public affair and any attempt to attain power for the sake of personal interest or political prestige is regarded as the loss of divine grace.

With this limit of political involvement in mind, the quietist tradition nonetheless assumes certain "activist" features. This is so because the degree of authority that a *mujtahid* can exercise in matters related to political affairs has never been clearly defined in Shi'i history. What determines the level of political participation by a Shi'i jurist has been primarily contingent on changing historical and social

circumstances that a *mujtahid* willingly or unexpectedly confronts. It is with respect to these circumstances that a cleric can maintain a certain leeway to creatively overcome everyday problems of political significance by using his faculty of reason ('*aql*) and the guidance of the rigorous application of divine law.

It may also be the case that a *mujtahid* could become politically active because of a growing perception of injustice in the world or a pressing sense of clear and present danger of foreign invasion of the Shi'i domain, an acuity that could compel him to declare a *fatwa* for *jihad* or struggle against the oppressors or enemies of the community. As the two cases of the Russo-Iranian Wars of the early 19th century and the opposition to the Tobacco monopoly in 1891-92 under the Qajar rule demonstrate, clerics of largely conservative stance can abruptly become dissidents and even militant activists (as in the case of the 1979 Iranian Revolution) with the sudden change of political circumstances, particularly in face of political repression. In the early 1960s Ayatollah Kazem Shari'atmadari (1905-1986), a traditional type of conservative jurist, began to actively oppose the January 1963 referendum on Muhammad Reza Shah's economic and social reforms, which the clerics saw as a threat to the religious values of the country. In the case of Iraq, some of the outstanding clerics like Ayatollah Muhsin Hakim (1889-1970), who later became the grand ayatollah in Najaf, became an active participant in the 1920 revolt against the British rule in Iraq. Later in the 1958 revolution in Iraq, when Shi'i *ulama* faced major threats from economic and land reforms initiated by Abdul Karim Qasim, Hakim authorized the formation of clerical society (*Jama'at al-'Ulama*), whose objective was to challenge communism and modernization projects of the revolutionary regime.³

"Quietism," therefore, as a worldview grounded on eschatological notions of sacred time and mundane space entails the attentive involvement of jurists in the Shi'i communal life that may also include participation in matters of political affairs, though not necessarily state politics. Since the means of "satisfying the needs" of Muslim community in shifting circumstances has been difficult to determine, quietist clerics have had the liberty to occasionally intervene, and even at times fully participate, in matters of governance and political authority on behalf of the public. The intertwining of religion and temporal politics is normatively discouraged during the period of absence and yet encouraged when oppression, invasion and corruption has become the perceived norm. This ambiguity of political involvement contingent to the situation on the ground is central to the development of the Shi'i clerical authority in the political sense, defying a strict separation between activist and quietist practices of clerical authority in relation with political power.

In a sense, under the right circumstances, a cleric could become an activist religious leader, and even claim to be the legitimate head of the state, as the case of Khomeini in 1979 best demonstrates. Historically speaking, the tradition of political activism, especially the revolutionary type (as in the case of Ayatollah Khomeini), has been advanced by a small faction of *ulama*. Their activism has been most evident at times of war, invasion and perceived corruption at the state or society levels. This could be observed in the discourse and activism of prominent religious authorities like Ayatollah Seyyed Ali-Akbar Borghei, Ayatollah Khomeini and Ayatollah Mahmoud Taleqani in the 1950s and 1960s who were engaged in activist clerical circles that challenged the Pahlavi regime for its modernization projects that threatened the interests of the religious establishment and military dependence on the U.S. as a regional ally against the Soviets.

The internal radicalization of the clerical establishment occurred only after the death of the most prominent cleric of the Shi'i world, Ayatollah Hussain Boroujerdi (b.1875), in March 1961, a leading quietist figure for whom politics was an abomination that is to be avoided as much as possible and rigorously discouraged the Qom seminarians to join any political parties. But it was with the death of Boroujerdi and the loss of a single leading high-cleric that in 1962 Khomeini and his revolutionary followers in the Qom seminary were able to emerge as a leading Islamist group with the aim to topple the Shah's regime. Together with Shah's growing despotic rule and strict centralization of the state, the more traditionalist clerics saw the rise of a new group of activist clerics whose aim was not only to

reform the conservative clerical establishment based in Qom and Najaf, but in fact overthrow the monarchy as an illegitimate political institution.

The early 1960s experience brought a major transformation in the traditional Shi'i thought. The idea that least political involvement entails the highest form of religious piety testifies to a rationalist theological tradition, known as *Usuli* school of thought, long dominant in scholarly circles in Shi'i centers in Iraq and Iran. Since Shaykh Tusi (d. 1067), a leading Shi'i scholar who first began the systematic teaching of Shi'i scholarship and the emergence of the *hawza* seminary institution in the shrine city of Najaf, this tradition has advocated the use of reason to deal with practical necessities, and advanced the rationalist jurisprudence in determining education and law. In this regard the denial in the ability of ordinary Shi'is to understand and perform pious conduct based on traditional sources, directly and without the mediation of the *ulama*, plays a central role in *Usuli* thought, and hence its advocacy of clerical authority. Since revelation and reason are not mutually exclusive, the sole responsibility of the jurist to decipher, articulate and explain the traditional sources with the use of reason to the ordinary Shi'i followers, who are in return expected to emulate the cleric's conduct, sayings and interpretations of the Qur'an and the Traditions to attain virtue in the ephemeral world.

The relationship marks a set of social relations that places the jurists, limited to a small number of qualified specialists, to make legal rulings based on rational consideration, while leaving their followers, who lack training in scholarly study of jurisprudence, responsible to follow through their opinions on issues ranging from private to public affairs. Of paramount concern in the *Usuli* school is the practice of *ijtihad*. The *ulama*, who carry through the practice of *ijtihad*, play a vital role in understanding the sources and leading the Shi'i faithful toward salvation. Since it is through rational judgment that divine knowledge can be implemented in the correct manner, a cleric has the potential, though not necessarily an actual ability (since only Prophets and Imams have that power), to share divine knowledge and promote virtue to ordinary Shi'is. Central to this tradition is, then, the affirmation of a strong spiritual bond between *mujtahid* (who issues independent opinion based on reason) and *muqallid* (who emulates), together making up the Shi'i community in the form of social contract of spiritual quality.

Not until the seventeenth century, with the establishment of Shi'ism under the Safavids, did the *Usuli* clerics become economically and politically influential enough to put into practice this tradition in the Iranian and, to a certain extent, the Iraqi public spheres, under the rule of the Sunni Ottomans. By the eighteenth century the rationalist *Usuli* School had become the most dominant theological school of thought, when major jurists with economic and social prestige were developing Shi'i doctrines based on the argument that the application of reason by the jurists is equally significant to the Traditions (*sunna*) of the Prophet and the Imams. With the rise of Mohammad-Baqer Vahid Behbahani (1705-1790) as a leading *Usuli* cleric in Najaf, a religious elite known as *mujtahids* (or jurists who practice *ijtihad*) emerged by rigorously fighting off divergent theological traditions in Iraq and elsewhere in major Shi'i centers. By the nineteenth century they had become the dominant school of thought in the Shi'i world, establishing a school of orthodoxy that remains in power to this day.

However, the *Usuli* School experienced a significant transformation during the Iranian Constitutional Revolution of 1906-11. Advanced by leading *mujtahids* like Mohammad-Hossein Na'ini (d.1936), the *Usuli* thought advanced a distinct discourse of Shi'i governance that sharply challenged absolutism. In his famous tract, *Tanbih al-Ummah wa Tanzih al-Millah*, (Awakening of the Community and Purifying the Nation), Na'ini introduced a theoretical defense for a democratic and constitutional Shi'i polity in line with the *Usuli* rationalism. He upheld the creation of a constitutional regime with the support of the *ulama* as advisors to the community and the state as the custodian of social ties and executor of laws on behalf of the faithful. According to Na'ini, citizens of a Muslim country have the right to live under a just state, as long as the government is elected by the people and made accountable to them while protecting them against tyranny.⁴

The central feature of Na'ini's democratic thought is the emphasis on the popularly elected government against arbitrary power that allocates the role of public leadership to the *ulama* and designates the duty of day-to-day political affairs to the state. Such separation between clerical and state authority is crucial since such idea brought to light a new conception of *mujtahid-muaqallid* relations, which was virtually absent prior to the Constitutional Revolution of 1906-11. In this new set of relations, the duty of the *mutaqalid* is not merely to emulate the *mujtahid* in regard to matters related to private or public affairs, but to determine the government that represents to protect the community until the return of the Hidden Imam.

Accountability and self-determination are the key features here. The terms identify the principle ideals of democratic *Usuli* thought that distinguishes its world view from an absolutist conception of Shi'i statecraft, essential to the Khomeinist doctrine of the *velayat-e faqih* "Guardianship of the Jurist," which maintains that substantive authority (*vilaya*) lies with the jurist, pending the return of Mahdi. In the Khomeinist conception of authority, clerical and political powers are isomorphic. Accordingly, a jurist has the mandate to superintend all religious and social affairs, and at the same time the executive ruler, a status that goes beyond the mere traditional legal authority to supervise and represent the interest of public good, including the well-being of orphans and widows. But Na'ini's interpretation of authority restricts the jurist to a residual rather than substantive one in terms that the *ulama* have no independent authority to rule over the public in matters of governmental affairs. In his opinion, it is the *vox populi* that is the source of authority in the worldly setting of state mechanism in the time of Occultation, and divine authority can only be fulfilled through the will of the people.

With the radicalization of the *ulama* from the early 1960s to the late 1970s, in correlation with the growing popularity of various Marxist types of Third World ideologies among the new educated middle-class, the post-constitutional conception of Shi'i constitutionalism advanced by Na'ini was marginalized by a new group of activist clerics led by Khomeini. These new radical clerics saw divine and popular sovereignty as essentially distinct, arguing that while people (mostly male citizens) have the right to hold elections, the *ulama* are the sole representatives of the Hidden Imam who ultimately embodies legitimate rule on earth. These new clerics, best represented by Montazeri of pre-1989 period, can be regarded as radical in so far as challenging not only the traditionalist *Usuli* principle of political non-engagement but, more importantly, denying the legitimacy of all other forms of political order except the one led by a Shi'i jurist.

The Accountable *vali-e faqih*: The Case of Montazeri

At his modest home on the shrine city of Qom, Iran, Ayatollah Hossein-Ali Montazeri, considered one of Shi'i Islam's highest religious authorities, is busy with books at his office, while his representatives manage his affairs next door. The neighboring large building is crowded with busy Shi'i clerics, at times managing their teacher's financial network and media outreach; at other times debating sections of the Prophetic Traditions relating to various questions relating to everyday conduct.

His dedicated seminarians and mid-ranking clerical representatives at the seminary represent a group of young and mid-aged men of various ethnicities and racial background from both rural and urban regions of the Shi'i Islamic world, making his seminary one of the most popular in Qom. They come to the shrine city not only to study their mentor's teachings, but also to form a network of religious association that stretches from Qom to the northern Indian city of Lucknow, from Isfahan to Karbala in Iraq. The center provides a network hub where Montazeri's rulings on religious and political matters are disseminated across the Shi'i world through cassettes, publications, propagation, and delegated clerical duties.

Once the heir to supreme leader of Iran, though dismissed by Ayatollah Khomeini in 1989 for criticizing the mistreatment and execution of political prisoners, Montazeri has emerged as a leading dissident figure in the postrevolutionary Iran. His sudden arrest on November 1997, for criticizing the spiritual authority of Ayatollah Ali Khamenehi, the successor to Ayatollah Khomeini and the current

Supreme Leader of Iran, ignited anti-government riots and sporadic skirmish between his supporters and the security forces in cities like Isfahan and the nearby Najafabad, Montazeri 's birth city. Montazeri's criticism provoked much controversy when in one of his lectures in October 1997 he accused Khamenei of despotic rule and unjustified interference in the seminary establishment. He then openly attacked Khamenei's scholarly status and stated, "Mr. Khamenei? Why *marja'iyat* ["source of emulation," the highest authority in Shi'ism]? You are not at the level of *marja'iyat*."⁵ As his former teacher in the Qom seminary, Montazeri questioned the most important aspect of Khamenei's political authority, that is, his ability to issue *fatwas* (religious rulings) and consequently undercutting his claim to be the legitimate head of the Islamic Republic.

Even after his release, Montazeri continued to candidly challenge the authority of Khamenei and his security forces that monitor and harass most of the activities of the more independently minded Shi'i jurists of Qom; and to this day he remains a most vocal opponent of the regime's excesses. He defies the Iranian state by joining voices with other prominent dissidents from both the secularist and reformist camps in the post-revolutionary political landscape. By contrast to the clerical official in Tehran, Montazeri advocates a more inclusive and pluralistic conception of the Iranian constitution by arguing that the people have the right to elect their leaders, including the Supreme Leader who is currently appointed by a body of high-ranking clerics, the Assembly of Experts. By advancing the idea that the clerics must defend the rights of people and seek to establish a government which is democratic and yet embodies the ideals of Islamic justice, Montazeri recognizes the idea that the way to establish a government is to acknowledge that people have the rational understanding of their interests and therefore he anchors his interpretation upon clerics as advisors (with the power to determine what is just or unjust) in quest of the common good rather than the authority to rule over the people. Likewise, *ulama* are equal to every citizen in the *umma* or Muslim community, but only first among equals due to his responsibility as a public leader and a scholar of religious laws that determine the good of the public. In other words, the *ulama* should participate in political affairs because of their moral obligation to the public, but not necessarily come to dominate the state.

Montazeri's seminarians, who back in the 1990s used to clandestinely read his banned books, are now openly spreading his ideas at mosques and public gatherings in cities like Isfahan, Qom and Tehran. Despite the gradual increase of censorship since the election of Mahmoud Ahmadinejad to presidency in the summer of 2005, some newspapers and journals publish Montazeri's opinions on matters such as theology and politics. His website continues with the propagation of Shi'i jurisprudence and theological issues on the cyberspace, serving as a means of communication for the ayatollah to express his personal views on current affairs and politics.⁶

Since 1997, the Qom-based grand ayatollah has become one of the most influential clerical figures in post-revolutionary Iran, whose ideas have had a serious doctrinal challenge to the conceptual foundation of the revolutionary state. His objection to Khomeini's version of *velayat-e faqih*, the official ideology of the Islamic Republic, reverberates in Iran's post-revolutionary society, especially among the university-educated population that experienced the impact of the reformist movement after the 1997 presidential election. Montazeri's students and followers, like Mohsen Kadivar, question the political theology of the Guardianship of the Jurist as the Islamist state strikes back by prohibiting the publications of their books, journals and newspapers in Tehran and Qom.⁷ These books on theological and political issues provide an alternative conception of Islam that is critical of authoritarian rule, marking a sharp contrast from the Khomeinist clerics who took up many governmental offices during the early years of the revolution.

The case of Montazeri best demonstrates the complexity of the political role of the jurist, and, accordingly, the relations of activist/quietist position in the context of changing political situations. As stated earlier, Montazeri was once a successor to Khomeini, a high-ranking cleric activist *par excellence* who endorsed a revolutionary conception of Shi'i Islam in the early 1980s. As a Khomeinist, who defended a revolutionary political theology of clerical guardianship and the governance of the *fuqaha* (jurists) in terms of *ulama* political authority, Montazeri was considered one

of the principal figures and amongst the most revolutionary clerics in the Iranian government. His statements were second in importance to Khomeini, and he remained a major clerical figure in the early years of the revolutionary period.

From his base in Qom after the revolution, Montazeri helped Khomeini with the management and administration of a vast religious network in Iran and abroad; his network of organizations exercised "informal political influence in both domestic and foreign policy."⁸ For nearly nine years (1980-89) he was responsible for the academic and personal well-being of foreign students, many of them were of Afghan, and Arab origin, who attended and studied at various places within the Qom seminary center. He was also the member of the Revolutionary Council, the Friday Prayer Imam of Tehran and Qom, and the head of the Prisoner Amnesty Council from 1980 to 1988, just to mention a few of his most significant positions in the early revolutionary state.⁹ In 1980 Montazeri was elected as the head of the Assembly of Experts and later in the same year he was addressed by the title of Grand Ayatollah (*Ayatollah 'Ozma*) by Khomeini, making him one of the high-ranking Shi'i clerics in the world.¹⁰ He was then voted to be the Supreme Leader by the Assembly of Experts in December 1982, designating him the highest status in the regime after Khomeini.

For his most important influence in the early stages of the revolutionary period, Montazeri played a central role in the Assembly of Experts for Drafting of the November 1979 Constitution, which institutionalized the office of the Jurisconsult (*faqih*) as advanced by Khomeini prior to the revolution. In fact, Montazeri was the most vociferous proponent of the office of Jurisconsult in the Assembly.¹¹ In one of his statements regarding the Constitution, he remarked that "if people voted for an Islamic state, then a *faqih* must be at the pinnacle to ensure that the regime is indeed Islamic."¹² After much debate in the Assembly, Montazeri's vision of the jurist at the "pinnacle" of the state was finally realized with the support of pro-Khomeini faction, despite efforts by laymen, such as Ezzatollah Sahabi and clerics such as Ayatollah Mahmoud Taleqani, who emphasized the notion of the "Republic" in the Constitution. The Constitution, which was finally passed in November 1979, therefore, institutionalized a theocratic order that recognized *faqih* as the central official in the country's combined political and legal system. By definition, Montazeri argued, this new Islamic Republic "entails the implementation of Islamic decrees... Only an expert in Islamic laws [a *faqih*] and not a Western-educated person can discern the Islamicity of laws."¹³ The law, interpreted and sanctioned by the Islamic "expert" should then be the source of authority in the new Iranian polity.

In one of the most dramatic episodes in post-revolutionary era, which threatened the stability of the revolutionary state, Montazeri lost his position as the designated heir to the office of the Guardian Jurist after he was forced out of his position by Khomeini on March 28 1989.¹⁴ Several reasons led to Khomeini's decision to denounce him as a successor. The most obvious was Montazeri's outspoken support for his son-in-law, Medhi Hashemi, who had embarrassed Akbar Hashemi-Rafsanjani, the former first speaker of the parliament (*Majlis*) of Iran, by exposing his secret dealings with the Reagan administration during the Iran-Contra affairs.¹⁵ Rafsanjani's resentment of Montazeri drove a wedge between the two ayatollahs, especially after the execution of Mehdi Hashemi, which essentially prompted Montazeri to be critical of Khomeini's excessive policy.¹⁶ The main reason behind Khomeini's decision to remove Montazeri from the position of designated successor, however, was not solely a personal one. It was Montazeri's candid criticisms of the government's domestic and foreign policy, which he increasingly viewed as counter to the ideals of an Islamic political system he helped to create in 1979, that led to his demotion from the office of ruler *faqih*.

The first serious critique of the government made by Montazeri appeared in November 1987 when he called for a more open polity and the institutionalization of political parties, which he believed was central to the original ideals of the Islamic revolution.¹⁷ But what ultimately led to his demotion by Khomeini was articulated in the following statement, made in early 1989:

The denial of people's rights, injustice and disregard for the revolution's true values have delivered the most severe blows against the revolution. Before any reconstruction [takes places],

there must first be a political and ideological construction... This is something that the people expect of a leader.¹⁸

Here Montazeri is clearly recognizing the responsibility of state in the protection of the citizen rights, something which he saw lacking in the new Islamic polity led by Khomeini. Islamic government was not to impose laws that would deprive citizens of their God-given rights, but to protect them. Later that year Montazeri's political fate was finally sealed when he criticized Khomeini for his *fatwa* against Salman Rushdie by warning that "people in the world are getting the idea that our business in Iran is just murdering people."¹⁹ Such statements indicate how Montazeri was directly challenging the autocratic practices of the new Iranian polity, which marked his official departure from Khomeini's authoritarian version of Islamic government.

Since his fall from grace as a successor to Khomeini in 1989, Montazeri has considerably moved away from his original revolutionary zeal towards a more quietist, democratic position. As a result of an increasing sense of "injustice" with the use of torture and execution of political prisoners by the Iranian regime since the 1980s, Montazeri has come to challenge the absolutist notion of Islamic governance and advocated a democratic Islamic Republic. His first major move after the death of Khomeini against the authorities occurred in October 1994, when Montazeri issued a powerful warning to the regime in a twelve-page letter by stating that the Islamic government which he helped to set up in 1979 was managed by corrupt and selfish officials who are destroying the reputation of Islam for the believers. According to Montazeri, an Islamic government based on the principle of the Guardian Jurist "does not mean that the Leader is free to whatever he wants without accountability."²⁰ A leader is still held accountable to people, since it is because of them that he maintains his authority.

Furthermore, he explains that "the most important point to be highlighted here is that Islam supports the separation of powers and does not recognize the concentration of power in the hand of a fallible human being."²¹ No one person should have the power to rule; and that state authority should be shared by various branches of the government. While referring to the Iranian Constitution, he describes the role of the Supreme Leader as someone who "can never be above the law, and he cannot interfere in all affairs, particularly the affairs that fall outside his area of expertise, such as complex economic issues, or issues of foreign affair and international relations."²² With this statement Montazeri draws a clear line between political and religious authority, articulating a differentiation between temporal and sacred authority.

Such assertion is a sharp departure from Montazeri's views in the pre-revolutionary and early revolutionary eras, when he openly gave consent and even provided rhetorical and moral support to the meta-legislative authority of *faqih*, as advocated by Khomeini. His four volume work in Arabic on the general topic of the Guardianship of Jurist, titled *Dirāsāt fī Wilāyat al Faqīh al-Dawlah al-Islāmīyah* (Legal Foundations of the Islamic Government), published in 1964, for instance, offers a theological sophisticated justification of a jurist-dominated concept of state based on the theology of Shi'i juridical authority.²³ During the period of Occultation, Montazeri defined the office of the Guardian Jurist in strict terms of clerical authority over both religious affairs and matters pertinent to the political interests of the Muslim community—i.e. the type of authority spiritual and the legislative authority over the city of Medina. Political sovereignty, Montazeri argued, should rest with the highest jurist, who should be fluent not only in religious but also worldly affairs. The political leadership of an Islamic state cannot be designated to an elected official but only an expert in Islamic law who can interpret, institutionalize and implement the government of divine law, as opposed to democratic rule which its citizens can choose representatives and legislators who act according to the will of the people.

But according to Montazeri, his earlier interpretation of the doctrine of the Guardian Jurist, when he wrote his treaties on the subject in the 1960s, has not been changed. In one of his interviews posted on his website Montazeri explains, "I have not changed my views [on *velayat-e faqih*]. I have originally maintained the view that the basis of authority is the people."²⁴ In his memoirs, he also recalls that during the drafting of the constitution he objected to the idea of the Guardian of Jurist with

the “absolute” authority over the Islamic society.²⁵ These assertions could be backed by his pre-revolutionary writings that exhibit a unique understanding of the doctrine, which is not shared by many of the revolutionary advocates of the concept of Guardianship of the Jurist. In one of his pre-revolutionary works, titled *Az Aghaz ta Anjam: dar Goftogouy-e du Daneshjou*, Montazeri argues that “Islamic governance is not the government of one person who can rule in any way he wishes. Since the legal basis of Islamic government is elections and a social contract with the people, the ruler are therefore are determined through elections and a contract, and he cannot govern outside of such context.”²⁶

One can find a strain of democratic principle of popular sovereignty in Montazeri’s earlier interpretation of Islamic governance.²⁷ However, in the early years of the revolution, when participation in elections were limited to those who supported the Islamist government and opposition groups were crushed under the autocratic weight of new revolutionary regime, Montazeri continued to support the authoritarian institutions he helped to create. In fact, far from adhering to the democratic principle of right of oppositions, Montazeri failed to defend Ayatollah Shariatmadari, a leading quietist cleric, when Khomeini silenced him for criticizing the his interpretation of *Velayat-e Faqih*. For the most part, Montazeri actively participated in state institutions, for instance as the chairman of the Assembly of Experts that enshrined the Khomeinist version of *Velayat-e Faqih*, and further pushed for its institutionalization.

But since the death of Khomeini in 1989, Montazeri has radically revised his interpretation on the relationship between clerical authority and politics despite claims that he has maintained a consistent view throughout this intellectual career. In his most recent publication on law and Islam, such as *Resaleh-ye Hoqouq* (Treaties on Law), Montazeri boldly defends a quietist conception of spiritual authority with strong elements of democratic principles of human rights.²⁸ He now endorses the idea in the compatibility of human rights with Islamic law by arguing that Islam not only in principle defends human rights, but also advances the rights of women, elderly, children and even animals.²⁹ According to Montazeri, the Prophet of Islam and the holy Imams were the staunchest advocates of the sanctity of human rights that include activities from freedom of expression to holding rulers accountable for their actions. He argues, “Every person in a society, including those that are in favor or against the government, have the freedom of expression; they have the right to promote their particular ideals and reform programs or changes in the policies of the ruling regime on the basis of rationality, logic and law, and they can get involve in political participation and organization of parties...”³⁰ In other words, Islamic law accommodates democratic norms of action practiced by the citizens of a political community. Accordingly, there is no room for authoritarian rule in an Islamic political system; all authority rests on the people, who are elect rulers and remain the sole sovereigns of the state. Even the infallibles (the Prophet and the Imams) never claimed to be above the law, and they were also held accountable and subject to criticism by individual members of the Muslim community.³¹

Montazeri, arguably, offers the first systematic defense of the affinity between Islamic law and human rights in the history of Shi’i theology that encompasses the modern juridical conception of law as a protector of citizens’ rights against arbitrary power, a notion that corresponds to the writings of the pro-constitutional clerics of the early twentieth century. Although theologically he is still faithful to the traditional school of Shi’i political thought, he is a modernist insofar attempting to reconcile democratic discourse of civil rights with the Quranic and prophetic conception of ethical and moral well-being.

Montazeri has faced several attacks by the regime since his reemergence as a democratic-minded cleric, and in return he has fought back. For instance, in March 2000 Montazeri warned the conservative establishment with *jihad* if Ayatollah Khamenei dismissed the presidency of Mohammad Khatami and imposed martial law, which was rumored to occur after the assassination attempt against Sa’id Hajjarian, then, a reformist advisor to Khatami.³² In 2002, while still under house arrest,

Montazeri criticized Khomeini's call for the destruction of Israel and endorsed peaceful co-existence between Palestinians and Israelis.

The case of Montazeri serves as an example of a *Usuli* cleric with the ability to change his views and reinterpret Islamic doctrines, and accordingly alter the theological status of clerical authority in the political sphere as result of shifting political situations. In the pre-revolutionary period, Montazeri challenged the quietist position in response to changes in the post-Mossadeq politics of Iran, best identified with the modernization projects (known as the "White Revolution") unleashed by the Pahlavi regime in 1963, threatening the economic and political influence of the clerics, including American involvement in Iran's domestic politics, which was perceived by many clerics like Montazeri as an act of foreign invasion. Other societal factors, like urbanization patterns evident in Iranian society in the late 1960s and 1970s that involved the breakdown of older norms in place of newer ones in the form of consumerism and social liberalization in various urban sites in cities like Isfahan and Tehran, also played a role in the radicalization of the clergy. For the most part, Montazeri's political activism was a reply to a number of intertwining social and political transformations that occurred in corollary to state centralization policies and their impact on economic and social spheres of life. In the quietist phase, after his demotion, we can detect a new form of activism, perhaps a quietist activism, that identified the new threat as a tyrannical Shi'i state with an absolutist agenda. The flexibility of the *Usuli* position allowed a cleric like Montazeri to resituate his activism from revolutionary militarism in the pre-revolutionary era to quietist activism in the postrevolutionary period.

With his most recent objections, Montazeri's position underlines the extent to which the Islamic Republic has generated an increasing sense of popular dissatisfaction with the ideology of clerical rule since its institutionalization in 1979. The failures of the Khomeinist utopian ideology of an Islamist political order has made ostensible the popular disbelief in arbitrary exercise of power, particularly with the *ulama* operating as state officials. The election of Khatami in 1997 and that of the reformist parliament in 2002 made the first major indication of the setbacks of the Khomeinist project, as millions of Iranian voters demanded sweeping reforms on every level of governance.

The discourse to delineate the scope of authority vested in the clerics further highlights the disenchantment and even outright opposition of the democratic-minded clerics against the authoritarian ideology of divine-law-giver, which traditional *Usuli* clerics see as a major threat to their authority as public leaders. Such form of clerical dissent goes to demonstrate the intricate practice of redefining political activism in terms of a quietist conception of political aloofness. Applying the democratic frame of popular sovereignty, the new democratic jurisprudence enables Montazeri to re-orient himself as a cleric who is political active in the Shi'i public sphere and yet politically disengaged as a political actor in the state. The Montazeri of post-1989 is an odd type of *Usuli* cleric, the sort that aims to nudge the authoritarian system of the Islamic Republic and move forward apace with a revision of the *velayat-e faqih* ideology, and in the process re-identifying clerical authority as an active religious leader operating in a democratic Islamic state, accountable to those who follow him as a spiritual guide.

(Shi'i) Constitutional Democracy: The Case of Sistani

In close proximity to Montazeri's home, and situated in a narrow alley near Qom's main sanctuary, Ayatollah Ali Sistani's religious center (*hawzah*) holds one of the largest seminaries in the city. More than four to five times larger than the size of Montazeri's center, Sistani's religious institution represents one of the largest *hawzah* networks in Qom and the Shi'i Islamic world, competing only in size and wealth with that of the Ayatollah Khamenehi's *hawzah*, which is by far the richest of all seminaries in the shrine city. Since the fall of Saddam Hussein in 2003, Sistani's network has emerged as the most organized, well-funded religious association, with offices, centers and seminaries scattered throughout countries like Afghanistan, Britain, Kuwait, Iran, Syria and the United States.

With Najaf gradually regaining its reputation as a major center of Shi'i learning since the era of Ottoman rule when high-ranking Shi'i clerics were able to influence political affairs in various Shi'i communities, in particular Iran, the quietist position has now undergone a sudden process of revitalization with the U.S.-led invasion of Iraq in 2003. While the income of Najaf-based Shi'i jurists, made mostly by pious endowments and religious taxes, are rapidly increasing on an annual basis, due to the eradication of the repressive Baathist regime that kept a vigilant watch over the cleric's activities, scholars such as Ayatollah Mohammad-Eshaq Fayyaz, Sayyed Mohammad-Sa'id al-Hakim and Ayatollah Bashir Hossein al-Najaf are currently the three of the most senior clerics of the Shi'i world. Their base of support spans from Europe to Asia, from Africa to Northern America, bringing prestige and power to these Najaf-based clerics, who did not maintain such authority when Shi'i Iraqis lived under the Baathist rule.

The advent of Ayatollah Sistani, as the leading *marja'* of the Shi'i world, marks a new historical phase in the revival of quietism in a city that once hosted the likes of major quietist clerics like Sheikh 'Abdollah Mazandarani (d.1912) and Ayatollah Abul-Qasem Kho'i, Sistani's mentor from 1950s to 1992. This historical phase marks the reemergence of an alternative interpretation of Islamic governance that carries the quietist ideal of clerical involvements within the limits of serving the community's interest, rather than promoting clerical control over state apparatus.³³ The revival resonates much of the ideals that were advanced during the Iranian Constitutional Revolution by leading *marja'* in the first decade of the 20th century, which saw a number of high-ranking clerics of Iran and Iraq play an active role in the revolution. (I deleted Footnote 31) Moreover, Sistani's rise to prominence demonstrates, another significant example in how a Shi'i jurist's stance can swing from a mere politically disengaged to a more engaged position as a quietist cleric, depending on radical changes in the political sphere of a Muslim community and virtually unpredictable by a single jurist seeking to empower or protect his community against tyranny and chaos.

Sistani's political venture in the post-Baathist era can be outlined in two significant stages: drafting the constitution process (2004-05) and the democratic participation process through popular elections (2005). In contrast to his pre-2003 position, when he maintained a politically disengaged position due to the repressive nature of Saddam's regime, Sistani's indirect (and at times direct) role in the drafting of the permanent Constitution in 2005 clearly demonstrated how his influence over the Iraqi Shi'i politicians can mobilize mass support for democratic governance based on the ideals of equity and social contract, while discouraging the involvement of the clerics in politics at the state level, as is the case in Iran.

In the summer of 2003 Sistani began to advocate the institutionalization of elections and formation of political parties while he has attempted to keep a distance from direct involvement in day-to-day political affairs—save important political events such as drafting the Constitution. Perhaps the most significant contribution Sistani made to participatory politics in Iraq was his call for *active citizenship* (he helped form the United Iraqi Alliance, a major Shi'i-dominated political party that won a majority of seats in the 275-member body twice, in January 2005 and December 2005) in building a vibrant democratic polity. He has also been a major advocate of *accountability* of government and the formation of *legitimacy* based on the ideals of *popular sovereignty* as a way to challenge the Coalition Provisional Authority's insular plans for the promotion of a top-down model of democratization for Iraq.³⁴

Sistani's position with regard to transition to democratic politics in Iraq can be credited to his adherence to the democratic *Usulism* as advanced by Ayatollah Na'ini, almost a century earlier, who had defended democratic Shi'i governance against autocratic rule. As explained earlier, according to such tradition the role of the cleric is limited to guiding the Muslim community while securing a social contract between the ruler and the ruled and promoting a just society grounded on Islamic principle. He is responsible to advance the cause of justice against oppression which best describes a despotic regime that is guided by personal desire of the ruler, while his guidance includes an effort to guard the community from arbitrary power by warning the rulers of their contract with the citizens of their duties

to rule with justice.³⁵ Sistani's role in the democratization of Iraq, in this sense, has been precisely the promotion of a type of government that protects the citizens from arbitrary power and a social contract approved by the people and institutionalized by the elected officials representing the people.

This was mainly evident during the few months that followed the U.S.-led occupation of Iraq. The November 15th agreement between the CPA [Coalition Provincial Authority] and Iraqi Governing Council (IGC), appointed by Paul Bremer, who was then the U.S. representative in Iraq, called for a speedy transfer of power in the form of council-based elections by June 30, 2004. The CPA's vision was to have a seven-step process in which the U.S. maintained strict control over the transfer of power to Iraqis. Elections were to take place after a complicated succession of caucuses that would elect an assembly and design a Constitution that would inevitably be ratified by a national referendum.

However, Sistani was against the caucus plan for two main reasons: first and foremost, according to Sistani, the caucus system was not built around a "one man, one vote" paradigm that would immediately empower ordinary Iraqis to directly participate in the election of official representatives; and, second, the non-popular electoral system, regulated and organized by a foreign occupying force, would make the transition process illegitimate and even "disloyal" in the eyes of both the religious establishment and ordinary Iraqis. For Sistani, direct popular elections, "with an acceptable level of transparency and legitimacy,"³⁶ were essential for the formation of a democratic Iraq; and that a caucuses system would only lead to replacing one illegitimate government by another.

Likewise, his June 2003 and November 2004 *fatwas* on the doctrine of the Guardianship of the Jurist further highlighted Sistani's conception of democratic governance in a more innovative manner. According to Sistani, Guardianship of the Jurist broadly signifies the "rule of the Jurisconsult" that is not merely limited to have authority over religious matters such as propagation of religious law, collection of religious taxes, custody over an orphan or a minor, but "general affairs on which the Islamic social system depends."³⁷ In spite of similarities with Khomeini's conception of the authority of *faqih*, Sistani's promotion for an increased clerical involvement in political affairs entails the explicit responsibility of the *ulama* in protecting the community, while implicitly excluding the absolutist rule of the supreme jurist on the state level. The authority of the *marja'*, therefore, lies in the defense of Islam and community, not the supreme leadership in its authoritarian form practiced in post-revolutionary Iran. Sistani is clearly rejecting Khomeini's conception of Guardian Jurist by explicitly refuting the idea of an undemocratic governance of a cleric. This goes to show the extent to which Sistani finds Khomeini's idea of Islamic governance problematic. What Khomeini did by establishing the Islamic Republic was to take away the authentic spirit of Shi'i leadership and contaminating it with everyday affairs of political life. In this sense, Iraq should not become another Iran. As he once remarked, "I will not let the experience of Iran be repeated in Iraq."³⁸

Sistani's approach, however, is also original in another significant way. As described by Yitzhak Nakash, Sistani has refused to advocate a council of guardians or a body of clerics that would monitor the bills under consideration in a national assembly in order to examine their compatibility with Islamic principles.³⁹ This brings the grand ayatollah closer to the post-1997 Iranian reformist thinkers, such as Mohsen Kadivar and Abdol-Karim Soroush, who developed on the early twentieth-century Shi'i constitutional tradition further by emphasizing the importance of elections and participatory politics free from clerical domination. Sistani, who has studied the writings of many reformist thinkers, can be recognized as a major advocate of this later school of thought which found a more articulate voice in the Shi'i world after the election of Muhammad Khatami in 1997.⁴⁰

While denouncing young Islamists like Muqtada al-Sadr for their abuse of Islam for political ends, Montazeri has repeatedly supported Sistani's efforts to advance democracy in Iraq. "It is rational that under Ayatollah Sistani's direction and through a nation of Shi'ites, Sunnis and Kurds who are all Muslims, a stable government be established in Iraq," Montazeri stated in April 2004.⁴¹ National unity through the institutionalization of democracy remains the key ingredient for future stability in Iraq—a process which will have further potentials for democratization beyond Iraq. By placing his weight

behind Sistani, in this statement Montazeri undermines the legitimacy of Ayatollah Khamenei and the Islamist establishment in Iran.

Conclusion: Perils and Promises

In a letter to Ayatollah Sistani and other high-ranking *ulama* in Najaf, sent via email, Ayatollah Montazeri made the following remarks:

We are all paying attention to the current situation in Iraq and we know the sort of conspiracies that are in the process of unfolding. In such circumstances, according to reason and sound judgment, it is important to prevent all factions of Iraqi population, including the Shi'is and the Sunnis, Kurds and Arabs from being influenced by the propaganda of the enemies of Islam and Muslims. We must pay attention to the sacred [Qur'anic] verse that states "Cling firmly together by means of God's hope and do not diverge [Al-Imran-103] so that with the unity of voice and coordination of all parties and different classes under the supervision (*nezarat*) and guidance (*hedayat*) of the respective *ulama* and officials of the government, they can establish a compassionate, strong and just government as a result of a free and national election.⁴²

With this statement, Montazeri is urging the *ulama* of Najaf, especially Sistani, to consider two very important tasks. First, as communal leaders, the focus of the *ulama* should mainly be to strive for a united Iraqi nation, a nation unified under occupation, despite religious, sectarian and ethnic differences. Second, and more importantly, Montazeri is indirectly requesting the Najaf-based *ulama* to steer away from state affairs. With an emphasis on terms such as "*nezarat*" (supervision) and "*hedayat*" (guidance) in his letter, he is keen to distinguish political authority into two spheres of activity: public and governmental affairs. Guidance, however, should be the limit of the *ulama*'s involvement in politics, leading the communities towards moral, spiritual and, in the most practical sense, national unity. In many respects this orientation brings to view the classical *Usuli* ideal of clerical involvement in terms of guidance rather than governorship. Supervision of community's actions and religious guidance in case of misbehavior is vital to forge an effective leadership.

Sistani's involvement in post-Saddam Iraq serves as an intriguing echo of Montazeri's quietist depiction of clerical authority in the realm of politics, as described in his letter to *mujtahids* of Najaf. Since the U.S.-led institutionalization of democracy in Iraq after 2003, Sistani has consistently presented himself as a type of a scholar-councilor who would largely play the role of an advisory figure for the new state after the collapse of Saddam's authoritarian state. Unlike Montazeri, however, Sistani has been able to put into practice some of his democratic ideas, mainly made explicit in various statements made from his base in Najaf. He has been involved in monitoring the drafting of the provisional constitution in the Iraqi parliament, promoting popular elections in the Shi'i community and participating in the party politics by helping to create the United Iraqi Alliance (also known as the Shi'i House) from 2003 to 2005. His quietist posture has helped him keep a distance from Iraq's day-to-day politics while actively engaging in some of the country's crucial political.

For the most part, however, Sistani's ability to institutionalize the *Usuli* conception of Islamic governance has been limited to the uncertain political situation on the ground. Since the bombing of the al-Askariya Mosque in Samarra, in February 2006, Sistani's role as a moderating influence and a leading democratic figure in Iraq has been undermined by the popular Shi'i call for revenge against Sunnis. As the neo-Wahabi-led Sunni attacks on the Shi'i community grows with the indiscriminate bombings of places of worship, funeral processions and markets, concurrent with Shi'i retaliation through the Iraqi police force, Sistani's influence in restraining Shi'is has diminished. Despite the U.S. 'troop-surge' which has slowed down the speed of conflict, Sistani's realization of a democratic Islamic society faces a difficult future with the sectarian fervor and inter-Shi'i competition in the southern regions.

What this letter demonstrates is an obvious attempt for an exchange of ideas based on traditional norms of Shi'i jurisprudence between Najaf and Qom. The affinity in opinion between the two high-

ranking *ulama* on the limits of clerical involvement in politics merits serious attention. Efforts made by Montazeri and Sistani to reinterpret Islamic governance based on the rule of law rather than the rule of a jurist, who claims to advocate the public good in the Islamic sense, can be recognized as an attempt to rescue the constitutional Shi'i tradition, dating back to the Iranian Constitutional experience of the early twentieth century that called for an end to arbitrary rule. The attempt here is to limit the authority of the senior jurist to merely an advisory role that could shed moral light on the path in which people democratically elect and govern their affairs.

An Islamic type of democratic governance, as advocated by the two ayatollahs here, accompanies the ostensible tension between divine and popular sovereignties. How is democratic rule and divine law balanced against each other in cases of divergence? In a non-secularist term, both Montazeri and Sistani envision a democratic state that embodies the spirit of Islamic legislation; and yet the *shari'a* is viewed as a source of legislation, co-existing with other legal sources like civil law that provides protection rather than deprivation of rights for the citizens. But in case of tensions between these diverse source of legislations, how is a judiciary of a democratic Islamic government able to overcome and issue rulings that does not violate either laws? For Sistani and Montazeri this apparent tension is mainly a conceptual one, and that in practice a wise legislator of highest training is creatively and judiciously able to reconcile divine law with civil legislation. The key in this legal process is its flexibility in terms of rational interpretation, one of the most prominent creeds of *Usuli* thought. A *shari'a*-minded judge can reinterpret religious rulings in ways that can best accommodate divine law with democratic rights. So, for instance, although a Muslim woman is legally expected to obey her husband, she can disobey him if the husband refuses her to participate in popular elections.⁴³ Divine law as interpreted by the democratic-minded *ulama* not only co-exists with popular sovereignty but in fact reinforces it by making sure legislation is guided on a morally "righteous" path.

However, what remains unclear is who (or which religious jurist) determines a correct interpretation of Islamic law that can reinforce true democratic legislation? What guarantees that a less restrictive interpretation of Islamic law would empower rights of citizens competing, interacting and participating under the formal or informal rules embodied in democratic institutions? The obvious danger here is the possible domination of a socially conservative interpretation of democratic norms possibly abused by clerical involvement in the domain of juridical institution, which may or maybe not be sanctioned by a grand ayatollah of quietist inclination. Also, it is unclear as to what reform policies or institutional safeguards they endorse to protect a so-called Islamic democracy from clerical monopolization of the judiciary in the form of a puritanical *shari'a*-oriented legal discourse. Here the strain of clerical elitism in the *Usuli* conception of democratic governance poses a serious dilemma of the unaccountable oligarchic rule--though not so essentially different from the practice of representative systems of established liberal democracies that also generate a degree of elitist institutions through indirect elections of officials (i.e. elected representatives).

In the case of Sistani, the Najaf-base grand ayatollah has been careful not to upset the state clerics in Iran, since many of his seminaries, as well as his financial center, is based in Qom. But he is independent enough not to appease the Iranian regime by indirectly challenging Ayatollah Ali Khamenei's authority in religious matters, though these confrontations have occurred in subtle ways. Nevertheless, this delicate rivalry between the two religious authorities has provided an opportunity for a camouflaged dissent through competing religious rulings and financial resources available to the two ayatollahs in Iran and abroad. This may not have any major consequences in the short term, but down the line it could pose serious challenges to the religious legitimacy of the Islamic Republic.

Nevertheless, what the two religious figures share, in their independent campaigns against arbitrary power, is a vision of democracy backed by the Islamic ideals of justice and piety, by which they understand them to be compatible and even necessary in empowering a just political community. By rearticulating normative judgments about political community through a transcendental ideal of divine law manifested in popular sovereignty, an authentic democratic society can be achieved, and the *ulama*, whose job is to supervise rather than rule, play a significant role in the realization of such

polity. The notion of a democratic rule grounded in the constantly interpretative practice of Islamic legislation can be recognized as a critical response to authoritarianism (both in its theocratic form manifested in Iran and secularist form, as envisaged by the Bremer government in 2003 in Iraq) rather than an attempt to institutionalize a utopian project of the theocratic type initiated by Khomeini after the 1979 Iranian revolution. It is in this force of critical counter-discourse and the reinterpretation of religious authority in the medium of language of popular sovereignty that the virtue of democratic *Usulism* should be recognized.

With figures such as Muahmmad Husain Fadlallah in Lebanon, Seyyed Morteza Qazvini (student of Montazeri) in Iraq and a number of Iranian dissident *ulama* like Hussain Kazemeini Boroujerdi, Seyyed Mostafa Mohaqqueq-Damad, Hassan Yousefi-Eshkevari Hojjat al-Islam Mohsen Kadivar (another student of Montazeri), Yosuf Sanei, Mohammad Mojtahid Shabestari, Jallal-e din Taheri and the late Mehdi Ha'eri Yazdi, lies a noteworthy shift in the discourse and practice of Shi'i authority, a gradual change that may produce long-lasting political transformation in the transnational Shi'i community. Despite arrests and persecution by the Iranian regime, their enterprise seeks to reconceptualize a political Islam that is neither theocratic nor autocratic, but pluralistic in the social domain that by playing a major role in the public sphere of a Muslim majority society without tampering with the rights of others in the public arenas of contestation. Seen in this way, this democratic *Usuli* revival could help challenge authoritarian political systems (Iran) and transition to democratic rule (Iraq) with prospects of accommodating new conceptions of democratic practice in non-Western settings.

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ENDNOTES

- 1 For a general history on the relationship between the Safavids and Shi'i Islam see, Moojan Momen, *An Introduction to Shi'i Islam*, New Haven: Yale University, 1985, p. 107 and Said Arjomand, *The Shadow of God and the Hidden Imam: Religion, Political Order, and Societal Change in Shi'ite Iran from the Beginning to 1890*, Chicago: Chicago University Press, 1984.
- 2 Heinz Halm, *Shi'i Islam: From Religion to Revolution*. Princeton: Markus Wiener, 1997, p.97.
- 3 Joyce N, Wiley, *Islamic Movement in Iraqi Shi'I Islam*, Boulder, Colo: Lynne Rienner, 1992, p. 34.
- 4 See Mongol Bayat, *Iran's First Revolution: Shi'ism and the Constitutional Revolution of 1905-1909*, New York: Oxford University Press, 1991.
- 5 Quoted in Mehdi Khalaji, "The Last Marja: Sistani and the End of Traditional Religious Authority in Shi'ism," *Policy Focus* 59, September 2006, p.24.
- 6 Montazeri's website, WWW.MONTAZERI.com has been filtered a number of times by the authorities in Tehran, according to an article in the statement and opinion section of his website, "*Pasokh-e Ayatollah Al-Ozma Montazeri be Chand Porsesh*". The site includes his biography, religious statements, scholarly texts, and topics on various issues are exchanged and discussed online. Perhaps the most intriguing section of the website is the photo gallery, where his photos from early revolutionary period to scenes involving his house-arrest are posted online.
- 7 Mohsen Kadivar [[b.1959] is a religious scholar of mysticism, Islamic theology and philosophy who received his permission to practice *ijtihad* (i.e. to give expert opinion in Shi'i jurisprudence), by Montazeri in 1997. He advocates the independence of clerical establishment from state rule; and his ideas inspired students and reformist clerics in the wake of Khatami's election in 1997.
- 8 Eric Hooglund, "The Search for Iran's 'Moderates,'" *The Middle East Report*, 144. January-February 1987, p.5. See also Michael M.J. Fischer, *Iran: From Religious Dispute to Revolution*, Madison, WI: University of Wisconsin Press, 2003, p.222.
- 9 For a list of Montazeri's positions in the government, which is numbered around 40, see Asadollah Badamchian, *Khaterat-e Montazeri va Naqd-e An* (Montazeri's Memoirs: A Review), Tehran: Andish-ye Nab, 2006, pp. 548-549.
- 10 Mehran Kamrava, *The Political History of Modern Iran: From Tribalism to Theocracy*, London: Praeger, 1992, p. 99. It is interesting to note that Khomeini later claimed that he was not originally enthusiastic about the appointment of Montazeri and thought of him as as 'lacking the stamina necessary for acceptance of this important, arduous and grave responsibility.' See Kaveh Basmenji, *Tehran Blues: How Iranian Youth Rebelled Against Iran's Founding Fathers*, London: Saqi, 2005, p.189
- 11 Mehdi Moslem, *Factional Politics in Post-Khomeini Iran*, Syracuse: Syracuse University Press, 2002, p.29.
- 12 *Ettela'at*, June 11, 1979, quoted in Mehdi Moslem, *Factional Politics in Post-Khomeini Iran*, Syracuse: Syracuse University Press, 2002, p. 27.
- 13 *Sourat-e Mashrouh-e Mozakerat-e Majles-e Barresi-ye Naha'i-ye Qanoun-e Asasi-ye Jomhuri-ye Islami-ye Iran* (Minutes of the Debates of the Council of the Final Review of the Constitution of the Islamic Republic of Iran), quoted in Mehdi Moslem, *Factional Politics in Post-Khomeini Iran*, Syracuse, NY: Syracuse University Press, 2002, p. 29.
- 14 See Baqer Moin, *Khomeini: Life of the Ayatollah*, London: Thomas Dunne Books, 2001, p.277.
- 15 Basmenji, *Tehran Blues*, p.180.
- 16 See Bahman Baktiari, *Parliamentary Politics in Revolutionary Iran: The Institutionalization of Factional Politics*. Gainesville: University Press of Florida, 1996, p, 136-138, 171.
- 17 Moin., *Khomeini*, p. 277.
- 18 Moin, *Khomeini*, p. 279.
- 19 Robin Wright, *The Last Great Revolution: Turmoil and Transformation in Iran*, New York: Vintage, 2000, p. 20.
- 20 "Montazeri on State's Road to Destruction", *Keyhan*, 10 October 1994, quoted in Daniel Brumberg, *Reinventing Khomeini: The Struggle for Reform in Iran*, Chicago: Chicago University, 200, p. 215.
- 21 Geneive Abdo, "Re-Thinking the Islamic Republic: A 'Conversation' with Ayatollah Hussain 'Ali Montazeri," *The Middle East Journal* v.55, no. 1 (2001), p. 19.
- 22 Ibid, p. 17.
- 23 See Hossein-Ali Montazeri, *Dirāsāt fi Wilāyat al Faqīh al-Dawlah al-Islāmīyah*. 4 vols. Beirut: al-Dār al-Islāmīyah, 1988. The book is translated by Mahmoud Salavati from Arabic to Persian into six volumes, Hossein-Ali Montazeri,

- Mabani faqhi-e va Hokumat-i Islami*, trans. Mahmoud Salavati, Tehran: Sarai-e, 2001 For the scholarly merit of the book see Mahmood T. Davari, *The Political Thought of Ayatollah Murtaza Mutaharai: An Iranian Theoretician of the Islamic State*, London: Routledge, 2005, p. 127.
- 24 “Newspaper article” section of his website, “*Mosahebeh-ye Doctor Diner Herman, Khabarnegar-e Nashriyeh-ye Frankfurter Algemayeneh ba Ayatollah al-Uzma Montazeri*,” in WWW.MONTAZERI.COM.
- 25 He also adds that the word “*motlaqeh*” (absolute) was later added to constitution. See Asadollah Badamchian, *Khaterat-e Montazeri* pp. 530-32.
- 26 The book was written in Tehran’s Evin prison in 1977. Hossein-Ali Montazeri, *Az Aghaz ta Anjam: dar Goftegooy-e Do Daneshjou* (From the Beginning till the End: Discourse between two Students), Tehran, 1356 [1977], p.181.
- 27 One could argue that Montazeri’s earlier interpretation of the Guardianship of Jurist entailed certain democratic themes even though he ultimately gave consent to Khomeini’s more autocratic version of the idea. In a sense, it can also be argued that he participated in the institutionalization of the democratic version of the Guardian of the Jurist while at the same time making efforts to challenge authoritarian tendencies of the political system advocated by Khomeini. The fact that he was eventually sidelined by the Islamist authorities does not necessarily validate the second argument, which would vindicate Montazeri’s democratic credential even during the heydays of the revolutionary period. However, one may find a dissident posture in Montazeri’s earlier Islamist position. In one of his most daring assertions made in the early years of the revolutions, Montazeri reminded the Iranian officials with the following remarks: “There is a famous saying in the world that ‘revolutions devour their [own] children.’ Today, I feel the same thing is happening to our society..., a gradual and creeping coup is under way..., free and independent individuals who are committed to Islam...[and who] are wise and capable..., are in danger of being eliminated...Today, I feel that weak and obedient individuals are more attracted to the government, to the Majles..., even to the religious seminaries.” Nikki R. Keddie and Eric Hooglund (eds.), *The Iranian Revolution and the Islamic Republic*, New York: Syracuse University Press, 1986, p.65-66. This statement serves as a testimony to Montazeri’s critical stance on the state’s authoritarian policies during the early stages of the revolution.
- 28 Hossein-Ali Montazeri, *Resaleh-ye Hoqouq*, Tehran: Saraie, 2004.
- 29 See Montazeri, *ibid*, pp.130-34.
- 30 See Montazeri, *ibid*, p. 66.
- 31 In fact Montazeri further argued that the Prophet and the Imams encouraged the faithful to criticize their actions because they believed that no one was above the law. See Montazeri, *ibid*, pp.70-71.
- 32 “Ayatollah Montazeri Warns Khameneh’i with Jihad,” *Iran Press Service*, March 14, 2000. See http://www.iran-press-service.com/articles/hajjarian_montazeri_14300.htm.
- 33 Baztab, “Khat-e Siyasi Ayatollah Sistani Chist?” April 1, 2007: <http://baztab.com/news/63904.php>.
- 34 See, Juan Cole, *The Ayatollahs and Democracy in Contemporary Iraq*, Amsterdam: University of Amsterdam Press, ISIM papers, 2006.
- 35 For Na’ini’s theory of justice, see Abdul-Hadi Hairi, *Shi’ism and Constitutionalism in Iran: A Study of the Role Played by the Persian Residents of Iraq in Iranian Politics*, (Leiden: Brill, 1977) pp.165-69.
- 36 Edward Wong, “Direct Election of Iraqi Assembly Pushed by Cleric,” *New York Times*, January 12, 2004.
- 37 For an analysis of Sistani’s statement on *Velayat al-Faqih*, see Reidar Visser, *Sistani, the United States and Politics in Iraq: From Quietism to Machiavellianism?* No. 700, Norwegian Institute of International Affairs, 2006, p. 14-15.
- 38 Juan Cole, *The Ayatollahs and Democracy in Iraq*, ISIM The International Institute for the Study of Islam in the Modern World, paper 7, Amsterdam: Amsterdam University Press, p.8.
- 39 Yitzhak Nakash, *The Shi’a in the Modern Arab World: Reaching for Power*, Princeton University Press, 2006, p.9.
- 40 Personal interview with a representative of Ayatollah Sistani, Qom, 18 July 2006.
- 41 Quoted in Michael Rubin, “**Dangerous Liaisons: Are we compromising with the enemy in Iraq?**” *National Review Online* April 15, 2004, see: <http://www.nationalreview.com/rubin/rubin200404150836.asp>.
- 42 Letter sent from the office of Ayatollah Montazeri to Najaf, addressed to Ayatollah Sistani and the other high-ranking *ulama*, on 2 November 2004. The above is the author’s translation of the letter.
- 43 See Vali Nasr, *The Shia Revival: How Conflicts within Islam Will Shape the Future*, Norton: New York, P.189.