

Chapter 1 Introduction

1.1 Background

The election of Hassan Rouhani to Iran's presidency in June 2013 marked the beginning of a new era of confrontation and conflict between democratic and republican principles on the one hand and principles derived from Islam on the other. The first contradictory point was the appointment of the President by the Supreme Leader. While Hassan Rouhani was able to win the election with 50.71% of the popular vote, according to the constitution of the Islamic Republic of Iran, his victory was subject to the approval of the Supreme Leader. In other words, legitimizing the people's vote requires the approval of the Supreme Leader. Since the start of the Rouhani government, a variety of political, economic, and cultural issues at both the domestic and foreign policy levels have shaped the issues of this contradiction. These include the selection of ministers, the issue of negotiations with the United States, and the government's economic policies.

The root of this contradiction must be sought in constitutional politics- politics of the creation and reconstruction of political order (S. A. (ed) Arjomand, 2008, p. 1)- especially the political struggles after the victory of the 1979 revolution.. The process of constitutional politics "consists in the contention among social and institutional forces over political agenda set by the constitutional (re)definition of norms and consequent (re)distribution of legitimate authority"(S. A. Arjomand, 1992, p. 40).

From the first days after the victory of the 1979 revolution and the beginning of the power struggle for the definition of a new political order among social forces and political elite factions, the formation of the structure of political conflicts in the future regime was visible. After the establishment of the interim government of Iran by the order of Ayatollah Khomeini, the first manifestations of this contradiction appeared.

In the first month of the interim Government, on February 28, 1979, Ayatollah Khomeini issued a decree to the Islamic Revolutionary Council to confiscate all movable and immovable assets of the Pahlavi dynasty and its affiliates for the benefit of the needy. The Council of the Islamic Revolution was an organization formed by Ayatollah Khomeini to manage the Iranian Revolution on 12 January 1979. Its main and early members were students and clerics close to Ayatollah Khomeini. In the first step, the council suggested Mehdi Bazargan as prime minister of the interim government, and Ayatollah Khomeini appointed him. The important point in the above decree was that the management of all these assets was not entrusted to the government.

This letter hereby empowers the Islamic Revolutionary Council to sequester all movable and fixed assets of the Pahlavi dynasty, its relatives, lackeys and all those affiliated to it, who had embezzled the Muslims' treasury during the course of its illegal rule, (to be used) in the interests of the poor people, workers, and low-income employees. Their assets in banks must be deposited in my or the Revolutionary Council's name under a bank number. Fixed assets such as real estate and landed property that are sequestered and

registered will be utilized for the good of the poor individuals from every social class for building homes, generating employment and other purposes. I order all Islamic Revolutionary Committees all over the country to deposit all assets gained in this manner under a specific bank account number. You must also notify the government that these assets do not belong to it, and concern the Islamic Revolutionary Council. Whatever assets government agents have confiscated, or will confiscate, have to be delivered to the (Central) bank to be duly entered under the same account number. Those who have acquired any of these assets should immediately deliver them to banks or the committees; violators will be called to account(R. al-M. Khomeini, 1378b, p. 236).

In addition, following the signing of the Camp David Accords between Egypt and Israel, Ayatollah Khomeini wrote a letter to the Foreign Minister of the interim government on April 30, 1979, requesting the severance of diplomatic relations with Egypt.

With regard to the treacherous treaty of Egypt and Israel and the unquestionable subservience of the Egyptian government to America and Zionism, the interim government of the Islamic Republic of Iran should discontinue its diplomatic relations with the government of Egypt(R. al-M. Khomeini, 1378a, p. 152).

Although, the interim government did not come to power through elections and by direct popular vote, and the above decisions can be analyzed on the basis of the revolutionary and ideological character of the new political system, yet these cases reflected Ayatollah Khomeini's view on the guardianship of the Islamic jurist (vilayat-e faqih) and his authorities and relationship to the government as the executive body. With a wide interpretation, Khomeini considered Velay-e-Faqih to have all the political authority and powers that previously vested in the prophet and the Shia imams. "When we say that after the Occultation, the just faqih has the same authority that the Most Noble Messenger and the Imams had, do not imagine that the status of the faqih is identical to that of the Imams and the Prophet. For here we are not speaking of status, but rather of function. By "authority" we mean government, the administration of the country, and the implementation of the sacred laws of the shari'a"(Algar, 1981, p. 62). Finally, after the occupation of the US embassy by Muslim Student Followers of the Imam's Line, Bazargan, who had long been dissatisfied with the clerics' interference in government affairs, resigned his position after only nine months in office.

During the drafting of the constitution, although efforts were made to strike a balance between the Islamic and Republican principles of the new regime, nevertheless, the Islamic principles and dimensions prevailed in the post-revolutionary constitution. Accordingly, and influenced by the thoughts of Ayatollah Khomeini "the foundation of the Islamic Republic is Islam, in the sense that in the Islamic Republic the legal and moral foundation of state and society is based on Islam and on its laws and ethical precepts. In the Islamic Republic, sovereignty belongs to God and God is the supreme legislator. This view is clearly at odds with real republicanism in which sovereignty is located in the people as is political legitimacy and legislative powers. In other words, Khomeini had a very narrow view of the republican aspects

of the Islamic Republic, and hence of the role of the people in determining its legal and ethical foundations”(Hunter, 2014, p. 256).

One of the controversial issues during the drafting of the constitution in the Assembly of Experts for Constitution was the position of Velayat-e-Faqih. The focus of these discussions was two issues: the basis of legitimacy and the scope of the authority of Velayat-e-Faqih. Finally, despite some objections, the idea of Velayat-e-Faqih was included in the constitution. According to Article 5 of the Constitution, " In the Islamic Republic of Iran, during the absence (ghayba) of his holiness, the Lord of the Age, May God all mighty hasten his appearance, the sovereignty of the command [of God] and religious leadership of the community [of believers] is the responsibility of the jurispudent who is just, pious, courageous, knowledgeable about his era, and a capable administrator, and is recognized and accepted by the majority of people as leader. In case no jurispudent receives such a majority, the leader or the Leadership Council, consisting of qualified jurispudents, as mentioned above and in accordance with Article 107, assumes these responsibilities”(Papan-Matin, 2014, p. 167).

Another Islamic institution of the constitution was the Guardian Council. According to Article 91 of the Constitution, "In order to protect the command of Islam and the Constitution in terms of not contradicting the legislation of the National Consultative Assembly with them, a council called the Guardian Council is formed with the following composition: 1. Six just Islamic jurispudents, conscious of the issues and needs of the time. They are elected by the leader or the Leadership Council. 2. Six jurispudents specialized in different fields of law, from among the Muslim jurists who are presented by the Supreme Judiciary Council to the National Consultative Assembly and elected by the National Consultative Assembly vote”. Furthermore, according to article 96 of the constitution, “recognizing the non-contradiction of the legislations of the Islamic Consultative Assembly with the rules of Islam with the majority of the jurispudents of the Guardian Council and recognizing their non-conflict with the Constitution is the responsibility of the majority of all members of the Guardian Council”. In addition to the responsibility for interpreting the Constitution (in accordance with Article 98), article 99 of the Constitution states that "the Guardian Council is responsible for supervising the elections of the Leadership Council of Experts, the President of the Republic, the Islamic Consultative Assembly, and referrals to the public vote and referenda".

In association with the responsibility and participation of the people in the administration of the government, alongside with the above principles, Article 6 of the Constitution specifically states that: “In the Islamic Republic of Iran, the country’s affairs must be administered by reliance on the public vote, and through elections. These will include the election of the president, the deputies of the Islamic Consultative Assembly (Majles), the members of the councils, and other such institutions, or through a referendum in such instances as are determined in other articles of this document”.

Thus, despite efforts to strike a balance between the principles of Islam and the republican and democratic principles and dimensions of government in the constitution, “Shari'a appears as the basis of the constitution and the state rather than a limitation to them.”(S. A. (ed) Arjomand, 2008). But the contradictory relationship between these principles in the constitution did not end here. In the last days of his life and 10 years after the victory of the revolution, Ayatollah Khomeini issued a decree on April 24, 1989, ordering the president to revise the constitution. This was despite the fact that the constitution had not included any

mechanism for its subsequent amendments. “Selecting twenty of the twenty-five members, he identified the exact areas in which the new assembly was to revise the constitution. Without offering any specifics, he ordered that power in the executive branch be centralized and that the marjaeyat clause be removed”(Milani, 2018, p. 221).

In the amendment of the Constitution, “to solve the problem of unsuccessful cohabitation of the President and the Prime Minister, the office of the Prime Minister was abolished, putting the cabinet directly under the President as the Head of the Executive Power. The office of the President was further strengthened by allowing him to appoint Deputy-Presidents (Article 124) and by the creation of a Supreme National Security Council (Shurā-ye ‘Āli-ye Amniyyat-e Melli) chaired by him (Article 176)”(S. A. Arjomand, 2009, p. 38). In relation to marjaeyat clause, the members of the revisionary council dropped the original prerequisite that the leadership of the republic had to be in the hands of either a paramount faqih or a council of senior faqihs. They decided that the Supreme Leader could be a seminary-trained cleric with the right qualifications—“honesty,” “piety,” “courage,” “administrative abilities,” and “versed in the political issues of the age.” Therefore, “the Leader ceased to be addressed also as the Supreme Faqih – he became simply the Supreme Leader”(Abrahamian, 2008, pp. 182–183).

The revisionary council for the Constitution made several changes into article 107 on leadership (Velayat-e-Faqih). They decided Khomeini's successors were to be indirectly elected by an assembly of jurists (assembly of Experts of the Leadership). As well as, the leadership council was eliminated.(Lolaki, 2019, pp. 156–157). Another important change took place in Article 110 regarding the duties and authorities of the Supreme Leader. In accordance with this change, wider authorities were given to the Supreme Leader including "determining the overall politics of the Islamic Republic system of Iran after consultation with the Expediency Discernment Council"; "supervising the proper implementation of the general policies of the system"; "coordinating the relationship among the three branches of the government and resolving any conflict among them"; "resolving issues in the system that cannot be settled by ordinary means through the Expediency Council"(Papan-Matin, 2014, p. 185).

Based on the amendment of Article 110 of the Constitution, a new Article (112) established the Council for the Determination of Interest of the Islamic Order as an organ of the state at the service of the Leader. Expediency Discernment Council was formed to determine the maslahah and resolve the dispute between the Islamic Consultative Assembly and the Guardian Council in cases where the decision of the Islamic Consultative Assembly is considered by the Guardian Council to be contrary to the Sharia rules or the Constitution, and the Islamic Consultative Assembly, taking into account the interests of the system, does not provide the opinion of the Guardian Council. The functions of the Expediency Discernment Council (Maslahah Council) were expanded beyond arbitration between the Islamic Consultative Assembly (Majles) and the Guardian Council. It was also to advise the Leader on “the determination of the general policies of the regime” (Article 110) and on any other matter he referred to it. In addition to these cases, the Supreme Judiciary Council was replaced by a single Head of the Judiciary Power to be appointed by the Leader for five years(S. A. Arjomand, 2009, p. 38).

Thus, the expansion of the powers of the Supreme Leader along with the structural contradiction of the Constitution led to a significant weakening of the position of the President and the Islamic Consultative Assembly (elected institutions) vis-a-vis the Supreme Leader and his subordinate institutions (unelected institutions). Based on these authorities and with a different interpretation of Article 99 of the Constitution, the Guardian Council has given itself the authority to disqualify candidates who do not have political and religious qualifications for the presidential election, the Islamic Consultative Assembly election and the Assembly of Experts election. In other words, the subordinate institutions of the Supreme Leader have acted as a political tool to control unelected institutions and eliminate political opponents. Accordingly, the effective components of the Iranian constitution shaped the political structure and framework of the subsequent political conflicts and crises.

Although the weakening of the position of the elected institutions vis-a-vis the Supreme Leader and his subordinate institutions has been visible at various times and in relation to various issues, the conflicting relations between these two groups of institutions during Hassan Rouhani's presidency led to several crises which have no precedent before. For example, the revoke of the votes of one of the elected members of the city of Isfahan in the Islamic Consultative Assembly election by the Guardian Council in 2016 was one of these cases.

While Minoo Khaleghi was qualified by the Guardian Council as a candidate for the Islamic Consultative Assembly elections and despite her victory, the Guardian Council declared her votes "null and void". It is while, according to the internal regulations of the Islamic Consultative Assembly, if after the election, the evidence is presented that one of the winners of the election is not qualified, the final decision about this person is the responsibility of the majority of members of the Islamic Consultative Assembly. In this case, while the President and a number of prominent members of Islamic Consultative Assembly declared the Guardian Council's decision illegal, this matter was referred by the Supreme Leader of Iran to the High Council for the Settlement of Disputes Resolution and Relationships Regulation of the three branches of the state. Finally, this council approved the decision of the Guardian Council.

Furthermore, the decision making to increase gasoline prices in 2019 was another case of weakening the role of elected institutions vis-a-vis unelected institutions. While government revenue was in short supply due to US sanctions, the government decided to countervail for part of the budget deficit by rising gasoline prices. The important point here was how to decide to increase gasoline prices. While such a decision should have first reviewed and approved by the Islamic Consultative Assembly, the decision was left to the Supreme Economic Coordination Council by the Supreme Leader of Iran. This council was formed a few days after the United States withdrew from the nuclear deal with Iran, on the advice and direct supervision of the Supreme Leader of the Islamic Republic of Iran to counter US sanctions. The announcement of this decision led to the formation of violent protests in various cities. In response to this crisis, a number of members of the Islamic Consultative Assembly prepared a plan to overturn this decision and return fuel prices to the past, but after the Supreme Leader of Iran supported this decision, this plan was removed from the agenda of the parliament.

These cases, along with numerous other cases, have weakened the position and role of elected institutions, especially the Islamic Consultative Assembly and the President. One of the important consequences of this phenomenon has been the reduction of citizens' political participation through democratic processes and the tendency to violent forms. In fact, due to

the lack of real elections and the lack of change in the general policies of the state in Iran, the citizens consider the election process in Iran as a show.

This study will simultaneously attempt to analyze the roots and consequences of this contradiction between elected and unelected institutions by using historical institutionalism theory. As Kathleen Thelen and Sven Steinmo have defined, historical institutionalism seeks to examine "how political struggles are mediated by the institutional setting in which [they] take place" because institutions shape the interests that political actors pursue and structure power relations among them (Steinmo et al., 1992, p. 2). Accordingly, this definition includes dimensions such as the relationship between the various branches of government and the contestation between formal and informal institutions that influence the formation of political priorities and strategies.

In order to understand precisely the roots of this contradiction, we need to know under what circumstances these institutions were created. This purpose leads us to examine constitutional politics-"the struggle for the definition of social and political order"-in Iran. During the process of constitutional politics, "the contending groups and organizations are forced to reconcile the respective logics of their principles through compromise, concession, and reinterpretation in order to translate them, more or less adequately, into an institutional order sustained by effective force" (S. A. Arjomand, 2009, p. 4). Accordingly, this dissertation will begin its study with the Constitution, as the first arena of struggle between socio-political forces for the definition of the new political order after the revolution. In this regard, the focus will be on the institutionalization of conflicting guiding principles/ideas in the process of constitutional politics and the formation of the constitution.

While other studies have examined the role and position of the Supreme Leader and the Guardian Council through the conceptualization of terms such as "dual sovereignty" and "dissonant institutionalization", this study will focus on examining the position of guiding principle/idea of *maslahah* in the Iranian constitution and its role in shaping this contradiction. In other words, the main hypothesis of this study is that the guiding principle of *maslahah* has led to the formation of contradiction and functional conflict between elected and unelected institutions in Iran.

After examining the guiding principle of *maslahah*, this study will examine the conflicts between elected and unelected institutions during Hassan Rouhani's presidency. For this purpose, the conflicts between these institutions in the four areas of foreign policy, domestic policy, economic policy, and educational and cultural policies will be examined. Finally, the consequences of this contradiction on strategies and political outcomes will be examined. As mentioned above, one of the most important consequences of this conflict has been the weakening of the position of elected institutions vis-a-vis unelected institutions and functional interference between institutions.

Accordingly, the main question of this research is:

Why has the concept of *maslahah* in the constitution of the Islamic Republic of Iran led to a contradictory appearance between elected and unelected institutions?

1.2 Objectives

This study will attempt to analyze the conflicts between elected and unelected institutions during the presidency of Hassan Rouhani (2013-2021). To this end and in the first step, the roots of these contradictions will be explored in the process of constitutional politics. Accordingly, after referring to the struggles of the Iranian people in the last century to limit the power, this study will begin with a review of the text of the 1979 Constitution and its subsequent revision in 1989. In this context, first, the main institutions and elements of the constitution as well as its conflicting structure will be studied. Most previous studies have focused on the structural contradictions of the constitution resulting from the existence of Islamic elements, especially the Velayat-e-Faqih and the Guardian Council, alongside democratic and Republican elements. However, this study will focus specifically on the role of the element of *maslahah* in the political structure of the Islamic Republic and the power struggles between democratic institutions and institutions derived from Islamic rules. In the next step, the conflicts between the elected and unelected institutions in Hassan Rouhani's term, as well as, the consequences of these conflicts will be examined.

1.3 Scope of the study

After examining the concept of *maslahah* and the role of this principle in the creation and reconstruction of political order after the victory of the Islamic Revolution in 1979, this study will examine the conflicts between elected and unelected institutions under the influence of this principle during the presidency of Hassan Rouhani. To this end, four case studies will be examined to illustrate these conflicts. These 3 case studies are:

- The conflict between elected and unelected institutions on Iran nuclear deal case and negotiation with the United States after its withdrawal from the Iran nuclear deal (foreign policy);
- Disqualification of candidates for the Islamic Consultative Assembly elections by the Guardian Council (elections);
- Increasing the gas price by the Supreme Council of Economic Coordination in November 2019 and weakening the legislative position of the Islamic Consultative Assembly (legislation);

1.4 Definition of concepts

1.4.1 Constitutional politics

Arjomand (1992:39-40) defines "constitutional politics" as a struggle for (re)definition of a socio-political order that takes place among socio-political and institutional forces. In the process of constitutional politics, rival political paradigms are forced to reconcile the respective logic of their guiding principles through compromise, concession, and reinterpretation in order to translate them, more or less adequately, into an institutional order sustained by effective force.

1.4.2 Maslahah

maslahah literally means benefit, welfare, and goodness, and in Idiomatic meaning it refers to the acquisition of benefit and repulsion of harm. Within the framework of Islamic rules and

laws, the principle of *maslahah* establishes a link between the ideals of Islam and the realities of Islamic societies. The principle of *maslahah* was first used by Imam Malik to refer the public interest. "In this sense, *maslahah* has often been understood to mean “*maslahah al-ummah*,” or the benefit or welfare of the Muslim community as a whole"(Hakeem et al., 2012, p. 50). Later, the *maslahah* was developed by Imam Mohammad Ghazali. According to Ghazali, *maslahah* means the protection of the purposes of Sharia (preservation of religion, preservation of population, preservation of minds, generation preservation, and preservation of property).

1.4.3 Elected and unelected institutions

According to the articles of the Constitution, the main institutions of the Islamic Republic of Iran are divided into two categories: elected institutions and unelected institutions. As explicitly stated in Article 6 of the Constitution, "The country's affairs must be administered by reliance on the public vote, and through elections. These will include the election of the president, the deputies of the Islamic Consultative Assembly (Majles), the members of the councils, and other such institutions, or through a referendum"(Papan-Matin, 2014, p. 168). In addition to these elected institutions, there is a set of institutions that are under the control of the Supreme Leader of Iran. These institutions, which include a powerful set of military, economic, and political institutions, are beyond the control and oversight of popularly elected institutions. In this study, the concept of unelected institutions refers to this group of institutions.

1.5 published scientific works

Sheikhi, M., Nurmandi, A., Hidayati, M. (2023). Institutional Struggles Over Political Uncertainty Under a Religious Tutelary Regime; Iran Under the Presidency of Hassan Rouhani (2013-2021). *Journal of Namibian Studies: History Politics Culture*, 34, 6936–6959.