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What is This?

Democratic authority, public Islam, and Shi'i jurisprudence in Iran and Iraq: Hussain Ali Montazeri and Ali Sistani

Babak Rahimi

Abstract
This article compares the democratic thought and practice of two influential Shi'i Muslim theologians in Iran and Iraq. It argues that a new conception of Shi'i traditional authority has been developed by senior clerics Hussain Ali Montazeri and Ali Sistani offering a new model of clerical authority closely connected to the democratic values of popular sovereignty and accountability: 'democratic *Usulism*.' Such a new paradigm envisions a form of religious legitimization that is led by elected rulers who are ultimately 'guided' by the sacred law of Islamic legal norms, while being held accountable to the people. The paradigm operates either as a counter-discourse to theocratic authoritarianism, currently prevalent in Iran, or as a democratic theology of citizenship and electoral participation, as in the case of Iraq. In broad terms, the two cases represent a major trend in Shi'i political theology that can be viewed as part of the global upsurge of public religions, some of which serve to counter authoritarianism (both secular and theocratic) and promote democratic rule.

The rise of democratic-minded Islamist movements in Indonesia, Iran, Iraq, Jordan, and Turkey has strengthened the view that a new kind of public Islam could emerge to promote democratic politics in Muslim societies (Bayat, 1991). While illiberal Islamism has historically demonstrated its hostility toward pluralism and popular sovereignty, democratic Islamist forces have generated the perception that religious trends could engage in electoral politics and embrace accountability based on the democratic concept of political rights (Barsalou, 2005; Nasr, 2005). Electorally, democratic Islamism has enhanced the agonistic force of political contestation by competing with secular parties, as in the case of the Dawa party in post-Baathist Iraq. At the civic-associational level, it

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has bolstered civil vitality through communal activities and by advancing civic debates in the public sphere, as in the case of the reformist movement in Iran (Ghamari-Tabrizi, 2004).

The reality is, as José Casanova (1994) has shown, that public forms of religiosity, such as represented by various Islamist political movements, can carry the potential to promote modern individual freedoms and democratic rule. The mobilization of religious groups, at times led by charismatic visionaries or intellectual innovators who help shape a new public consciousness of how religion can play a dynamic role between society and state, opens up new possibilities of post-secular democratic governance that defy an easy differentiation between the religious and political spheres of life (Salvatore and Eickelman, 2006). As the case of the Islamic modernist Fethullah Gülan movement in Turkey has shown, Islamism can not only promote democracy, but, in many ways, redefines democratic politics, normatively defined in secular terms (see Yavuz and Esposito, 2003). What lies at the heart of democratic Islamism is the reinvention of democracy as a political project that involves the public presence of religiosity aimed at bolstering popular sovereignty.

Within this dynamic political process, this article examines two leading (Twelver) Shi'i Muslim clerical discourses and practices of democratic governance in contemporary Iranian and Iraqi politics.[1] This new model of specifically Shi'i traditional authority was advanced in the wake of the 1997 presidential election and was further strengthened by the toppling of the Saddam regime in April 2003. I argue that this democratic Shi'i approach to Islamism has been under construction by two senior Iranian *ulama* (scholars), Hussain Ali Montazeri (1922–2009) and Ali Sistani (born 1930), who have promoted democratization in the two countries on both discursive and institutional levels. This model is based on a new paradigm of Islamic governance that conceptualizes legitimate rule in terms of popular sovereignty and limited clerical authority. In this regard, the term 'democratic *Usulism*' refers to the contours of a new democratic Shi'i tradition that has become manifest in a transnational political process, though distinctively shaped within Iraqi and Iranian contemporary history, promoting the rights of citizenship and electoral participation, in the case of Iraq, and challenging authoritarianism, in the case of Iran.

As two of the most revered clerics in the Shi'i world, Montazeri and Sistani share a conception of Islamic governance that parts ways with an ideological reading of Islam. It opposes the centralization of political and spiritual authority vested in the person of a senior cleric, while emphasizing the necessity of democratic will in everyday political processes. Advocating a democratic discourse of spiritual politics, the two clerics have articulated a new frame of Shi'i jurisprudence that entails a paradigm shift in the cohesive structure of traditional authority in relation to state and society. Such a shift entails a religious legitimization of a pluralistic and self-regulated society 'guided' by the sacred law of Islamic legal norms, and coupled with a shared sense of civic solidarity grounded in a normative vision of the common good.

Between 'activism' and 'quietism'

Since the *ghayba* (disappearance) of the Twelfth Imam (Muhammad al-Mahdi), Shi'i Muslims have wrestled with the question of who should be given the reins of community leadership in terms of both political and spiritual authority. This is so because, unlike Sunni Islam, which lacks a cohesive authority structure, Shi'ism has built its distinct other-worldly mission on the doctrine of the Imam, a leader who is not only the source of religious knowledge for the community, but also a descendant of the Prophet with legitimacy to exercise political rule. As the final successor to divinely ordained guardianship (*vilayat*), the doctrine of the Imamate has signified the basic ethos of the Shi'i tradition since early Islamic history (Dakake, 2007: 15–31). When the Mahdi did not reappear, however, the Shi'i community had to form a new conception of political authority.

After the *ghayba*, the *ulama* served as a solution to this problem. As jurists with a legitimate claim to interpret the foundational texts and propagators of the Prophet's message, the learned status of the *ulama* allowed them to justify participation in public and legal affairs. It even licensed them to intervene in politics in the interest of the community. However, of paramount concern was the dilemma of how to identify the limits of religious authority, that is, the extent to which Shi'i jurists, as public figures with the responsibility to attend to religious matters, should avoid claim to temporal rule. Known as the 'quietist' school of thought, this tradition has historically emerged to establish a dominant view within Shi'ism, advocating that during the period of occultation the *ulama* should function merely as advisors to the community with the scholarly authority to supervise moral and judicial matters. The aim of imperfect humans, including the learned religious scholar (*'alim*), is, at best, to promote a morally advanced society based on the prerogatives of *shari'a* law, as interpreted and endorsed by the *ulama* and obediently followed by lay Shi'is.

For this reason, all attempts to create an Islamic state governed by the *ulama* are problematic, since the aim to establish a Shi'i polity carries the accusation of usurpation. It is only with the return of the Mahdi, which will herald the end of time and the triumph of justice on earth, that a legitimate and 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 engaging in morally ordained ways to ready the Shi'i populace for the eventual return of the Mahdi. In terms of public involvement, a cleric should therefore refrain from leading an *apolitical* life.

Historically, the *ulama* have served as guardians of the Shi'i community, though they were largely a minority under Sunni rule from the 11th to the early 16th century. With the advent of the Safavids in 1501, the institutionalization of a hierocratic order resulted in an enhanced status for the *ulama* and by the late 17th century the Shi'i dynasty was able successfully to convert the mostly Sunni population to Shi'i Islam (Abisaab, 2004). Despite an increase in political activism on the state level, however, the authority of the jurists remained second to the Safavid shahs (Arjomand, 1989).

By the 19th century, the quietist tradition gradually came to incorporate certain 'activist' elements because the degree of authority that a cleric could exercise in political matters became less clear. Also important was how particular historical and social settings came to determine the level of political participation of a Shi'i jurist, giving him a certain leeway in creatively overcoming problems according to his faculty of reason (*'aql*) regarding possible applications of divine law.

The increasing politicization of the clerical establishment occurred only after the passing of the most prominent cleric of the Shi'i world, Ayatollah Hussain Boroujerdi, in 1961. Boroujerdi discouraged the Qum seminarians from joining any political party, as he viewed clerical involvement in politics as an abomination. After his death, Khomeini and his revolutionary followers in the Qum seminary emerged to lead the charge against the shah's secular policies and strict centralization projects. Khomeini's advent as the foremost activist cleric became evident when he publicly opposed Muhammad Reza Shah's economic and social reforms, particularly the January 1963 referendum that granted women the right to vote. After the shah's crushing defeat by Khomeini's 1964 protest movement, which led to his exile to Iraq, Shi'i Iran saw the rise of a new ideological conception of Islamic law and politics that advanced the notion of just governance without the institution of monarchy (Gheissari and Nasr, 2006: 50).

In the case of Iraq, clerical activism was less evident, though it appeared largely in reaction to state-led secularist policies. As a prominent quietist cleric, Muhsin al-Hakim, who later became the grand ayatollah in Najaf, became an active participant in the 1920 revolt against British rule in Iraq. During the 1958 revolution, when Shi'i *ulama* faced major threats from economic and land reforms initiated by Abdul Karim Qasim, al-Hakim authorized the formation of a clerical society (*Jama'at al-Ulama*), which was established with the objective of challenging communism and the

secular modernization projects of the revolutionary regime (Abdul-Jabar, 2002: 251–2). Clerical involvement in Iraqi politics advanced in the Baathist period, when figures such as Muhammad Baqir al-Sadr shifted their apolitical scholarly activities of the mid-1950s toward political activism, largely in reaction to the rise of communism and secular nationalism between the 1960s and 1980 (when Muhammad Baqir al-Sadr was finally executed by Saddam) (Walbridge, 2001: 131–48).

In a theoretical sense, 'quietism,' as a theological world view grounded in eschatological notions of time and space, can be described as the attentive involvement of jurists in Shi'i communal life that may also include participation in political matters, though not necessarily state politics. Since the means of 'satisfying the needs' of the Muslim community in shifting circumstances have been difficult to determine, quietist clerics have had the liberty occasionally to intervene in, and even at times fully participate in, matters of governance and political authority on behalf of the public. The intertwining of spiritual and mundane authority is normatively discouraged, yet it is encouraged when oppression, invasion, and corruption have become the perceived norm. This ambiguity of political activism has played a critical role in the development of Shi'i juridical authority, defying a rigid conceptual separation between activist and quietist practices of clerical authority in relation to political power. In this sense, under the right circumstances a cleric could become an activist religious leader, and even claim to be the legitimate head of state, as the case of Khomeini in 1979 demonstrates.

In close correlation with similar state-led secularization patterns in Iraq, a number of clerics based in Najaf, and to a lesser extent Karbala, also became active in politics, forming political parties or producing discourses that resisted the authoritarian modernization policies of the Baathist state. As reformers, these clerics also sought to transform clerical authority into a less centralized system of financial and religious administration (Jahanbakhsh, 2001: 65–139). But their reformist and, at times, militant activist stances did not contribute to a democratic posture, as would emerge later in the 1990s in Iran and after the collapse in 2003 of the Baathist regime in Iraq.

Democratic *Usulism*

The idea that the least amount of political involvement entails the highest form of religious piety testifies to a rationalist theological tradition, known as the *Usuli* school of thought, long dominant in scholarly circles in Shi'i centers in Iraq and Iran. This tradition, dating from the 10th century, has advocated the use of reason to deal with practical necessities, and advanced rationalist jurisprudence in determining education and law (Stewart, 1998: 128–33). In many ways, the denial of the ability of ordinary Shi'is to understand and engage in 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 in the public domain.

The status assigned to jurists, limited to a small number of qualified specialists, entailed the task of making legal rulings based on rational consideration. Such a legal process also required ordinary Shi'is, who lacked training in the scholarly study of jurisprudence, to follow through on the opinions of the jurists on issues ranging from private matters to public affairs. Since revelation and reason are not mutually exclusive, the sole responsibility of the jurist is to decipher, articulate, and explain traditional sources to ordinary Shi'i followers. Emulators are then expected to imitate the cleric's conduct, as well as his sayings and interpretations of the Qur'an and the Prophet's sayings and deeds, so as to attain virtue in the ephemeral world of the here and now.

The rational discourse of *ijtihad* is, therefore, of paramount concern to *Usuli* thought. The *ulama*, who gain their legitimacy through the practice of *ijtihad*, play a vital role in understanding the sources and leading the Shi'i faithful toward a pious life. Since it is in the course of rational

judgment that divine knowledge can be implemented through righteous conduct, a cleric has the potential, though not necessarily an actual disposition (since only Prophets and Imams maintain that ability), to share his knowledge of divine law and promote virtue among ordinary Shi'is. Central to this tradition is the affirmation of a durable spiritual bond between *mujtahid* (who issues independent opinions based on reason) and *muqallid* (who emulates), together shaping a Shi'i community in the form of a social contract based on spiritual norms of reason.

It took until the 17th century, with the establishment of Shi'ism under the Safavids (1501–1722), for the *Usuli* clerics to become economically and politically influential enough to put this tradition into practice in the Iranian public sphere. To a certain extent, the Iraqi public sphere, under the rule of the Sunni Ottomans, also experienced similar *Usuli* clerical influence. Likewise, the *Akhbari* (or traditionalist school) presented a formidable challenge to the *Usuli* clerics, opposing the jurists' ability to produce legal judgments. This ultimately led them to question the jurists' claim to be the legitimate spiritual authorities to be emulated prior to the reappearance of the Hidden Imam at the end of time (Cole, 2002: 58–77).

By the early 20th century, however, the *Usuli* school experienced a significant transformation, specifically during the Iranian Constitutional Revolution of 1906–11, when a new discourse of civil reform and political modernity in the idiom of *mashrutiyat* (constitutionalism) began to influence the works of some leading Shi'i clerics (Gheissari, 1998: 32).[2] Advanced by leading *mujtahid*s such as Akhund Khurasani and Muhammad Hussain Na'ini, these *Usuli* clerics developed a distinct discourse of Shi'i governance and defined the cleric's role in the political sphere in a way that moved sharply away from an absolutist conception. In his famous tract, *Tanbih al-Ummah va Tanzih al-Millah* ('Awakening of the Community and Purifying the Nation'), Na'ini, the foremost Shi'i constitutional thinker, introduced a theoretical defense of a democratic and constitutional Shi'i polity in accordance with the *Usuli* school of thought. He upheld the creation of a constitutional regime with 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, the citizens of a Muslim country have the right to a just state, as long as the government is elected by the people and made accountable to them while protecting them against tyranny (Bayat, 1991).

The central theme in Na'ini's thought is the legitimate authority of a popularly elected government. In sharp contrast to arbitrary power, a democratic government assigns the *ulama* the role of public servants, positioning them far away from the day-to-day political duties of the state. An institutional separation between clerical and state authority guarantees the independence of the hierocracy and also provides a new conception of *mujtahid–muqallid* relations, largely 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 leads the community until the return of the Hidden Imam.

Accountability and self-determination are key notions in Na'ini's thought. The terms identify the principal ideals of democratic *Usuli* thought that distinguish its world view from an absolutist conception of Shi'i statecraft, essential to the Khomeinist doctrine of the *velayat-i faqih* ('Guardianship of the Jurist'), which maintains that substantive authority (*vilaya*) lies with the jurist pending the return of the Mahdi. In his 1970s pre-revolutionary lectures while in exile, Khomeini had argued that the highest jurist has a mandate to be the supreme authority and at the same time the executive ruler in a Muslim state, a position that goes beyond the traditional legal authority of merely supervising and representing the interest of the public good and the well-being of orphans and widows (Arjomand, 1979: 59–109; Lambton, 1981: 220–41). For the most part, Khomeini's reinvention of Shi'i political theology identifies spiritual and political power as

isomorphic. However, Na'ini's interpretation of authority restricts the jurist to residual rather than substantive power in terms that give the *ulama* no independent authority to rule over the public in matters relating to governmental affairs.

In the early 1960s, the political landscape in Iran underwent a radical transformation. When the Pahlavi state unleashed a new set of repressive measures to limit the activities of civil society throughout the 1950s, a mid-ranking group of activist clerics led by Khomeini saw divine and popular sovereignty as essentially indistinguishable, arguing that while (mostly male) citizens have the right to hold elections, the *ulama* have the sole authority to represent the Hidden Imam, who ultimately embodies legitimate rule on earth.

The accountable *vali-ye faqih*: the case of Montazeri

The case of Montazeri best demonstrates the fluidity of the boundaries of Shi'i jurists' involvement in politics and the complexity of activist–quietist relations in the context of changing political situations. Montazeri, who died in December 2009, was once a successor to Khomeini, the high-ranking cleric activist par excellence who endorsed a revolutionary conception of Shi'i Islam in the early 1980s. Montazeri defended a revolutionary political theology of clerical guardianship and the governance of the *fuqaha* (jurists) in terms of *ulama* political authority. His statements were second in importance to Khomeini's; he remained a major clerical figure in the early years of the revolutionary period. However, Montazeri was dismissed by Ayatollah Khomeini in 1989 for criticizing the mistreatment and execution of political prisoners. After his dismissal, Montazeri emerged as a leading Shi'i democratic thinker in post-revolutionary Iran. The shift in Montazeri's position from a theocratic revolutionary approach to one of democratic accountability marks a transformation in his political trajectory that brings to light the point that not all democratic *Usuli* thinkers are from the traditional quietist school of thought, and not all activist clerics adhere to the democratic ethos.

The early period of Montazeri's political development was shaped by political activities that bolstered the early revolutionary state. From his base in Qum after the revolution, Montazeri helped Khomeini with the management and administration of a vast religious network in Iran and abroad. This network of organizations exercised 'informal political influence in both domestic and foreign policy' (Fischer, 2003: 22; Hooglund, 1987: 5). In 1980, Montazeri was elected head of the Assembly of Experts and later in the same year was awarded the title of grand ayatollah (*ayatollah 'uzma*) by Khomeini, making him one of the highest ranking Shi'i clerics in the world (Kamrava, 1992: 99), voted supreme leader by the Assembly of Experts in December 1982. The position confirmed him as second in status, after Khomeini, in the regime.

Montazeri's most influential phase was informed by the ideological fervor of the early revolutionary period, when he played a central role in the Assembly of Experts for the Drafting of the November 1979 Constitution, a committee that institutionalized the office of the jurisconsult (*faqih*) as advanced by Khomeini prior to the revolution. In one of his statements regarding the constitution, Montazeri 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' (*Ettela'at*, 11 June 1979, cited Moslem, 2002: 27). 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 a pro-Khomeini faction.

In one of the most dramatic episodes in post-revolutionary history, threatening the stability of the Islamic Republic, on 28 March 1989 Montazeri was forced out of his position as the designated heir to the office of the guardian jurist by Khomeini (Kamrava, 2008: 15–6; Moin, 2000: 277). Several factors led to Khomeini's decision to denounce him as a successor. The most obvious was Montazeri's support of his son-in-law, Mahdi Hashimi, who had embarrassed Akbar Hashimi

Rafsanjani, the former first speaker of the Iranian parliament (*majlis*), by exposing his secret dealings with the Reagan administration during the Iran-Contra affair (Basmenji, 2005: 180). Rafsanjani's resentment of Montazeri drove a wedge between the two ayatollahs, especially after the execution of Mahdi Hashimi, which essentially prompted Montazeri to voice criticism of Khomeini's harsh policies (Baktiari, 1996: 136–8, 171). Notwithstanding personal friction between the two ayatollahs, the main reason behind Khomeini's decision to remove Montazeri from the position of designated successor was, however, more ideological, largely revolving around the scope of clerical authority in relation to the rights of citizens.

The act that ultimately led to his demotion occurred in July 1988, when Montazeri explicitly denounced the mass execution of a number of dissidents in prison in the following statement:

> 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 place], there must first be a political and ideological construction … This is something that the people expect of a leader. (Moin, 2000: 279)

Islamic government, he further argued, should not impose laws that would deprive citizens of their God-given rights, but find ways to protect them. These remarks were seen as a major defiance of Khomeini's rule. By acknowledging the responsibility of the state in terms of the protection of citizens' rights, Montazeri had directly challenged the clerical authority that he had espoused earlier in the revolution.

The 1990s marked a period when Montazeri distanced himself considerably from the state establishment. In response to an increasing sense of 'injustice' regarding the torture and execution of political prisoners carried out by the Iranian regime since the 1980s, Montazeri began to challenge the absolutist notion of Islamic governance. He advocated, instead, a democratic Islamic republic based on the notion of *velayat-i entikhabi-yi muqayyaadih* (elected conditional rule), a type of Shi'i clerical authority with limited power that is accountable to the people through the electoral process (Kamrava, 2008: 163). Montazeri's sudden arrest in November 1997 for criticizing the spiritual authority of Ayatollah Ali Khamenei, successor to Ayatollah Khomeini and the current supreme leader of Iran, ignited anti-government riots and sporadic skirmishes between his supporters and security forces in cities such as Isfahan and nearby Najafabad (the city of his birth). He then openly attacked Khamenei's scholarly status and stated, 'Mr. Khamenei? Why *marja'iyat* ['source of emulation', the highest authority in Shi'ism]? Why *marja'iyat*? You are not at the level of *marja'iyat*' (Khalaji, 2006: 24).

After his release, Montazeri continued openly to challenge the authority of Khamenei. His objection to Khomeini's version of *velayat-i faqih* reverberated in Iran's post-revolutionary society, especially among the university-educated population that had experienced the impact of the reformist repression after the 1997 presidential elections. Montazeri's followers and students, such as Muhsen Kadivar, launched a series of debates that questioned the political theology of the guardianship of the jurist, despite a hardliner backlash prohibiting the publication of their books, journals, and newspapers in Tehran, Qum, and other major cities. It was against this background of defiance, in the aftermath of the disputed presidential election in June 2009, that Montazeri spoke publicly against state repression and described the Islamic Republic as illegitimate.

Montazeri's later theoretical position, which developed in the intellectual context of the post-revolutionary era, is based on the accountable leadership of the jurist, which rejects the notion that 'the Leader is free to do whatever he wants without accountability' (Brumberg, 2001: 215). He advocated the position that a leader is held accountable to his people, since it is through them that he maintains his authority. In a letter from October 1994, he explicitly warns against the 'political,

economic, and cultural damage inflicted upon the Islamic system … because of mistakes and excess by … selfish and incompetent individuals,' that he argued 'would weaken the religious beliefs of the faithful' (Brumberg, 2001: 215). In a just polity, according to Montazeri, 'Islam supports the separation of powers and does not recognize the concentration of power in the hand of a fallible human being' (Abdo, 2001: 19). No one person should have the power to rule, he posited, and state authority should be shared by various branches of the government. Referring to the Iranian constitution, he described 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 affairs and international relations' (Abdo, 2001: 17). With this statement, Montazeri drew a plain distinction between mundane and spiritual authority, accordingly undermining the clerical absolute claim to power and prominence in state affairs.

Such an assertion marks an apparent departure from Montazeri's pre-revolutionary and early revolutionary views that openly gave consent to and even provided rhetorical and moral support for the meta-legislative authority of *faqih*, as advanced by Khomeini. But as Shahrough Akhavi (2008: 646) has correctly argued, Montazeri had always understood *velayat-i faqih* as a 'legal doctrine' to guide Muslim society rather than as an absolute power to rule, impervious to supervision and accountability. His four-volume work in Arabic on the general topic of the guardianship of the jurist, entitled *Dirasat fi Vilayat al Faqih al-Dawlah al-Islamiyah* (*Legal Foundations of the Islamic Government*) and published in 1964, confirms this sophisticated theological justification of the supervisory rule of the jurists based on the theology of juridical authority (Montazeri, 1988). However, certain absolutist themes prevail in Montazeri's pre-revolutionary notion of the doctrine. During the period of Occultation, he argued, the office of the guardian jurist would have strict legal authority over both religious affairs and matters pertinent to the political interests of the Muslim community – a kind of spiritual authority that maintains legislative authority over the city of Medina.

According to Akhavi (2008: 647), it was the implementation of the doctrine under the reign of Khomeini that forced Montazeri to rethink his theoretical position, together with an attempt to move away from clerical leadership, especially after the refusal to vote for the 1989 constitutional referendum, which assigned absolute authority to the ruling *faqih*. This shift in political theology became more apparent in Montazeri's post-Khomeini writings. In his *Risali-yi Hoquq* (*Treatise on Law*), Montazeri boldly defended a conception of spiritual authority with strong elements of the democratic principle of human rights (Montazeri, 2004). He advocated the notion of compatibility between human rights and Islamic law by arguing that Islam not only defends human rights in principle, but also advances the rights of women, the elderly, children, and even animals (Montazeri, 2004: 130–4). According to Montazeri, the Prophet of Islam and the holy Imams were the staunchest advocates of the sanctity of human rights, from freedom of expression to holding rulers accountable for their actions. 'Every person in a society,' he argued, '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 involved in political participation and organization of parties' (Montazeri, 2004: 66). Since the infallibles (the Prophet and the Imams) never claimed to operate beyond the law, they were held accountable and subject to criticism by members of the early Muslim community. Hassan, the second Imam of Shi'i Islam, for instance, identified government as dependent upon the 'action of the Muslims and the vote of the people.'[3] Due to this democratic factor, the *vali-ye faqih* cannot claim to have absolute power over the community; his authority is also limited by the will of the people (Montazeri, 2008: 29). In its post-2009 election form, the Islamic Republic has become neither a republic nor a guardianship of the Islamic jurists, but rather a 'government of a military guardianship.'[4]

While encompassing the modern juridical conception of law as the protector of citizens' rights against arbitrary power, Montazeri's revised conception of Islamic governance corresponds to a pro-constitutional tradition of the constitutional movement, which continued to be echoed by a number of clerics during and after the post-election unrest in 2009. Although theologically Montazeri remained loyal to the traditional *Usuli* doctrine of clerical authority, he offered a modernist notion of legitimate rule that sought to reconcile a democratic discourse of civil rights with the Qur'anic and Imami conceptions of spiritual rule.

Shi'i constitutional democracy: the case of Sistani

In close proximity to Montazeri's home, situated in a narrow alley near Qum's main sanctuary, Ayatollah Ali Sistani's religious center (*hawzah*) holds one of the largest seminaries in the city. Some four to five times larger than Montazeri's center, Sistani's religious institution represents one of the largest *hawzah* networks in Qum and the Shi'i Islamic world, competing in size and wealth with that of the Ayatollah Khamenei'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 one of the most organized, well-funded religious associations, with offices, centers, and seminaries scattered throughout countries such as Afghanistan, Britain, Kuwait, Iran, Syria, and the USA (Khalaji, 2006; Louër, 2008).

With Najaf gradually regaining the reputation as a major center of Shi'i learning that it held in 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 underwent a sudden process of revitalization with the US-led invasion of Iraq in 2003. The income of Najaf-based Shi'i jurists, gained mostly through pious endowments and religious taxes, has increased rapidly on an annual basis (Louër, 2008: 268–70). The development can be largely credited to the eradication of Baathist state control, control that kept a vigilant watch over the clerics' activities. Scholars such as Ayatollah Mohammad Eshaq Fayyaz, Sayyed Mohammad Sa'id al-Hakim, and Ayatollah Bashir Hossein al-Najaf are currently three of the most senior clerics of the Shi'i world. Their base of support spans from Europe to Asia and from Africa to North America, bringing prestige and power to these Najaf-based clerics, who did not maintain such authority when Shi'i Iraqis lived under Baathist rule.

The advent of Ayatollah Sistani as the leading *marja'* and locus of the Shi'i world marks a significant period in the revival of quietism in a city that once hosted major quietist clerics such as Akhund Khurasani, Sheikh 'Abdullah Mazandarani (who died in 1912), and Ayatollah Abul-Qasim Khu'i (Sistani's mentor from the 1950s to 1992). This historical phase sheds light on an alternative interpretation of Islamic governance advocated by Sistani that carries the quietist ideal of clerical involvement within the limits of serving the community's interest rather than promoting clerical control over the state apparatus (Baztab, 2007). This revival resonates with many of the ideals that were advanced by leading *marja'* during the Iranian Constitutional Revolution in the first decade of the 20th century, when a number of high-ranking clerics from Iran and Iraq played an active role in the revolution. Sistani's rise to prominence serves as another significant example of how a Shi'i jurist's stance can swing from political disengagement to a more activist position, though still maintaining a quietist philosophical outlook.

Sistani's political venture in the post-Baathist period can be outlined in two significant stages: the process of drafting the constitution (2004–05) and the democratic participation process through popular elections after 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 mainly indirect role in the drafting of the permanent constitution in 2005 clearly demonstrates how his influence over Iraqi Shi'i politicians has mobilized and continues to mobilize mass support for a democratic

transition (Walbridge, 2001: 237). Based on the democratic ethos of the social contract, Sistani's post-Baathist politics revolve around the notion of clerical involvement in the political sphere, especially electoral and legislative processes, with the aim of expanding pluralism and citizen participation.

In the summer of 2003, Sistani began to advocate the institutionalization of elections and the formation of political parties, while attempting to maintain a distance from direct involvement in day-to-day political affairs – save for important political events such as the drafting of the constitution. Perhaps the most significant contribution Sistani made to participatory politics in Iraq was his call for *active citizenship* (Rahimi, 2007). In 2004, he informally supported a Shi'i-led political party, the United Iraqi Alliance (UIA), which in both the January 2005 and December 2005 elections won a majority of the 275 seats available (Al-Rahim, 2005: 52). Although he later rejected the claim that he supported the UIA in the following elections, especially the 2009 provincial race, Sistani persisted in his call for electoral participation despite popular dissatisfaction with governance at the local level (see *Voices of Iraq*, 2008). He has also been a major advocate of government accountability 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 in Iraq (Cole, 2006).

Sistani's position on the institutionalization of democratic politics in Iraq resembles the democratic *Usuli* views of Ayatollah Na'ini, who, almost a century earlier, had defended democratic Shi'i governance against authoritarian rule. As explained earlier, according to this 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 in Islamic principles. He is responsible for advancing the cause of justice against oppression, while his guidance includes an effort to guard the community from arbitrary power by warning rulers of their contract with the citizens to rule with justice.[5] In this sense, Sistani's role in the democratization of Iraq has been the promotion of a type of government that protects citizens from arbitrary power and advocates a social contract approved and institutionalized by the elected officials representing the people. In contrast to Na'ini, however, Sistani has not endorsed 'a council of guardians to scrutinize the bills that would be introduced in the assembly,' a move that demonstrates his dislike of an official clerical institution operating within the state apparatus (Nakash, 2006: 9).

This democratic practice became evident during the first months following the US-led occupation of Iraq. The 15 November agreement between the Coalition Provisional Authority (CPA) and the Iraqi Governing Council (IGC), appointed by Paul Bremer, who was then the US representative in Iraq, called for a speedy transfer of power in the form of council-based elections by 30 June 2004. The CPA's vision was to establish a seven-step process in which Americans would maintain 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 participate directly 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' (Wong, 2004) were essential for the formation of a democratic Iraq, and a caucus system would only lead to the replacement of one illegitimate government by another.

Likewise, Sistani's June 2003 and November 2004 *fatwas* on the doctrine of the guardianship of the jurist further highlighted his innovative conception of democratic governance. According to

Sistani, guardianship of the jurist broadly signifies the 'rule of the jurisconsult', which is not merely limited to authority over religious matters such as the propagation of religious law, collection of religious taxes, and custody over an orphan or a minor, but, rather, encompasses 'general affairs on which the Islamic social system depends.'[6] Despite similarities with Khomeini's conception of *faqih*, Sistani's endorsement of increased clerical involvement in political affairs includes the explicit responsibility of the *ulama* to protect the community, while implicitly excluding absolutist rule of the supreme jurist at the state level. The authority of the *marja'* is limited to the defense of Islam and the community, and does not extend to state policies as in the case of Iran.

Seen in this way, Sistani clearly rejected Khomeini's conception of the guardian jurist and placed the ultimate decision concerning political authority in the hands of the citizens. What Khomeini achieved by establishing the Islamic Republic was to take away this democratic spirit of Shi'i authority and inject it with the mundane activities of political life, including supervision over processes of governance. This crucial point reflects a deep tension between Khomeini's and Sistani's conceptions of clerical hierarchy based on how an ordinary Shi'i should decide to emulate a senior jurist. While Khomeini's (later) thought stresses the significance of emulating a single *marja'* who also maintains political influence, especially in the revolutionary sense, Sistani adopts a more pluralistic approach, much in line with traditional *Usuli* thought (Gleave, 2007). According to this traditional stance, it is the scholarly and pious qualification of a jurist that enables him to serve as a source of emulation and to be identified as a legitimate senior cleric. Khomeini's role as guardian jurist, however, grants a privileged position over that of other grand *marja*s, who would have to acknowledge his superior political status. This radical shift away from the *Usuli* system of spiritual authority led Sistani to assert boldly that he 'will not let the experience of Iran be repeated in Iraq' (Cole, 2006: 8).

Sistani's approach is original in another significant way. As explained earlier, by refusing to endorse a council of guardians or a body of clerics that would monitor the bills under consideration in a national assembly, Sistani advocates a political order that is run by a legislative body elected by participatory citizens. This deliberative conception of political participation brings Sistani closer to post-1997 Iranian clerical thinkers such as Mohsen Kadivar and Hasan Yousefi Eshkivari, who have developed a conception of Shi'i politics that recognizes freedom of thought and equal rights and protection before laws that are legislated by the people and congruent with the common good (Kamrava, 2008: 120–72; Mir-Husseini and Tapper, 2006). Sistani, who has studied the writings of Iranian religious reformists, including the lay intellectual Abdul Karim Soroush, shares a democratic vision of polity in which faith flourishes under transparent institutions elected by the people.[7] The role of elections and participatory politics are therefore paramount in Sistani's vision of constitutional democracy, guided (though not ruled) by a Shi'i authority who recognizes the basic rights of citizens and is knowledgeable of Islam as a legal source of legitimacy for the attainment of the 'common good.'

Conclusion: perils and promises

In a 2005 letter to Ayatollah Sistani and other high-ranking *ulama* in Najaf, 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 [the] 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 (*nizarat*) and guidance (*hidayat*) 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.[8]

With this statement, Montazeri urges the *ulama* of Najaf, especially Sistani, to consider two very important tasks. First, as spiritual leaders of Iraq, the focus of the *ulama* should be mainly to strive for a united Iraqi nation, a nation unified despite religious, sectarian, and ethnic differences. Second, and more importantly, Montazeri is indirectly appealing to the Najaf-based *ulama* to steer away from state affairs, as he emphasizes the terms '*nizarat*' (supervision) and '*hidayat*' (guidance) in his letter. According to Montazeri, such activities should be the limit of *ulama* involvement in politics, guiding and leading the community toward moral and national unity. In many respects, this orientation brings into view the classical *Usuli* ideal of political involvement in terms of guidance rather than rule. Spiritual leadership through supervision over the community's political affairs is vital to legitimate clerical authority.

Sistani's involvement in post-Saddam Iraq echoes Montazeri's democratic position on clerical authority in Iran. Since the US-led institutionalization of democracy in Iraq after 2003, Sistani has consistently presented himself as a scholar and councillor who largely plays the role of an advisory figure for an Iraqi state that is slowly regaining authority after the collapse of an authoritarian state. Unlike Montazeri, however, Sistani has been able to put into practice some of his democratic ideas, made explicit in various statements from his office in Najaf. He has been involved in monitoring the drafting of the provisional and permanent constitution in the Iraqi parliament and promoting popular elections in the Shi'i community, while his quietist posture has helped him maintain a distance from Iraq's day-to-day politics, though still publicly expressing his opinion on some of the country's most crucial decision-making processes. Sistani's public Shi'i Islam has been more operative on the electoral and constitutional front than at the state administrative level, which is what Montazeri envisioned in both his earlier and later works and political activities.

This letter also demonstrates an obvious attempt at an exchange of ideas based on traditional norms of Shi'i jurisprudence between Najaf and Qum. During his lifetime, there were efforts by Montazeri to advance Sistani's authority in Iraq in ways that were impossible for Sistani to carry out, as it would entail harming his religious and financial center at Qum, which is regularly monitored by the regime in Tehran. While denouncing young Islamists such Muqtada al-Sadr for their abuse of Islam for political ends, Montazeri had in turn repeatedly supported Sistani's efforts to advance democracy in Iraq. National unity through the institutionalization of democracy remains the key ingredient for future stability in Iraq – a process that has further potential for democratization beyond Iraq. By placing his weight behind Sistani in this statement, Montazeri indirectly undermined the legitimacy of Ayatollah Khamenei and the Islamist establishment in Iran.

However, does making authoritarian Islam illegitimate lead to democratic governance? The type of Islamic democracy advocated by the two ayatollahs emphasizes the ostensible tension between divine and popular sovereignties. But how are democratic rule and divine law balanced against each other in cases of divergence? In their non-secularist conception 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, coexisting with other legal sources such as civil law that provides protection for, rather than deprivation of, citizen rights. But in the instance of discord between these diverse sources of legislation, how is the judiciary of a democratic Islamic government able to issue rulings that do not violate either law?

For Montazeri and Sistani, this apparent tension is mainly a conceptual one; in practice, a crea-tive, judicious legislator would be able to reconcile sacred law with civil legislation. The key in this legal process is the *flexibility* of rational interpretation, one of the most prominent creeds of *Usuli* thought. Similar to the communitarian tradition, a *shari'a*-minded judge can reinterpret religious rulings in ways that can best accommodate sacred law while simultaneously respecting citizens' democratic rights in the interest of the community. So, for instance, although a Muslim woman is legally expected to obey her husband, she can disobey him if the husband forbids her from participating in popular elections (Nasr, 2006: 189; Al-Rahim, 2005). Divine law, as interpreted by democratic-minded *ulama*, not only coexists with popular sovereignty, but in fact reinforces it by making sure legislation is guided on a morally 'righteous' path.

In a critical light, it remains unclear as to who (or which religious jurist) determines a correct inter-pretation of Islamic law that can reinforce true democratic legislation. What are the guarantees that a less restrictive interpretation of Islamic law would empower citizens, especially women and religious minorities, to compete or interact and participate under the formal or informal rules embodied in demo-cratic institutions? The obvious danger here is the possible domination of a socially conservative interpretation of democratic norms and a potential abuse of clerical involvement in the juridical domain, which may or may not be sanctioned by a grand ayatollah of democratic inclination. Also, it is unclear what reform policies or institutional safeguards the *Usuli* democrats can endorse in order to protect a so-called Islamic democracy, especially from clerical monopolization of the judiciary manifested in a puritanical *shari'a*-oriented legal discourse. Here, the strain of clerical elitism in the *Usuli* conception of democratic governance poses a serious dilemma in the form of an unaccountable oligarchy.

Nevertheless, what the two religious figures share in their campaigns against arbitrary power is a vision of democratic practice backed by a reconstructed Islamic ideal of justice. By rearticulating normative judgments about political community through a transcendental discourse of divine law, authority is framed in multiple forms, highlighting a hermeneutic experience that requires a reflex-ive attempt to defend tradition by transforming it in a way that can be accommodated by different circumstances. The notion of democratic rule grounded in the interpretative practice of Islamic legislation can be viewed as a critical response to the specific circumstances under which *Usuli* traditionalism seeks to reconstruct its fundamental principles. But these circumstances are not independent of transnational processes, as the authority of Sistani and the legacy of Montazeri continue to be felt among Shi'is around the world.

The key idea, in many ways, is to identify democratic *Usulism* as a form of transnational tradi-tion aimed at either challenging authoritarianism or at promoting democracy in diverse local set-tings. It is for the virtue of a wider critical reinterpretation of Islamic authority that the strength of democratic *Usulism* should be recognized. Figures with diverse theological views on democracy such as Mohammad Hussain Fadlallah in Lebanon, Sayyid Morteza Qazvini (a student of Montazeri) in Iraq, and a number of Iranian dissident *ulama* such as Hussain Kazemeini Boroujerdi, Sayyid Mustafa Mohaqqiq Damad, Yusuf Sanei, Muhammad Mijtahid Shabistari, Jallal-i din Tahiri, and the late Mehdi Ha'eri Yazdi, among others, present a noteworthy shift in the discourse and practice of Shi'i authority. This reflects a gradual change that may eventually produce a long-lasting political transformation in the transnational Shi'i community. Although these thinkers vary in their conception of clerical involvement in politics and in their stance on how a just political order can be achieved during the time of Occultation, they all adhere, on some level, to the concept of popular sovereignty and elected institutions as an integral feature of Shi'i governance.

In broader terms, the manifestation of this type of Shi'ism is part and parcel of a global process of the deprivatization of religion, underway since the 1980s, which has identified secular democratization as a peculiar experience of European history and, hence, not a universal model of

democratic modernity (Hefner, 2001). What democratic *Usulism* represents, in this sense, is an example of a deprivatized Islam that is neither theocratic nor autocratic, but rather a modernist theology that pushes religion to play a political role in reshaping democratic norms. This role can be realized as its traditional authority actively encourages individuals, civic associations, and social movements to participate in the public sphere through discursive and agonic interaction in the affirmation of an imagined 'common good.' In many ways, democratic *Usulism* is an attempt at rethinking a liberal republican model of democracy and invites us to acknowledge how public religious currents can carve out new democratic spaces in a region known for its resistance to the so-called 'third-wave' of democracy since the early 1970s (Diamond et al., 2003). As an unfinished project, such a political tradition defies a singular image of authority related to society and the state, and accommodates plural forums of interaction for governance through a public presence for religious tradition. At work, therefore, is not the restoration of tradition, but the transformation of secular modernity into a new political imagining, an invented form of sacred modernity that recognizes the jurist as one among many competing (and compatible) sources of legitimate authority in the context of the democratization of Shi'i-majority Muslim societies.

Acknowledgments

Notes

1. By 'Twelver' Shi'ism, I specifically refer to Shi'ism (*Ithna Ashiri*) of the Jafari theological school of thought. For a general study, see Momen (1985).
2. As the case of Muhammad Kadhim Yazdi (who died in 1918) demonstrates, not all quietist clerics were in favor of the constitutional movement.
3. See Democracy and Constitution, 11 February 2000. Available at http://amontazeri.com/farsi/f1.asp.
4. See http://www.pbs.org/wgbh/pages/frontline/tehranbureau/2009/09/ayatollah-watch.html.
5. For Na'ini's theory of justice, see Hairi (1977: 165–9).
6. For an analysis of Sistani's statement on *vilayat-i al-faqih*, see Visser (2006: 14–15).
7. Interview with a representative of Ayatollah Sistani, Qum, 18 July 2006.
8. Letter sent from the office of Ayatollah Montazeri to Najaf, addressed to Ayatollah Sistani and other high-ranking *ulama*, on 2 November 2004. The extract is the author's own translation from the letter.

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