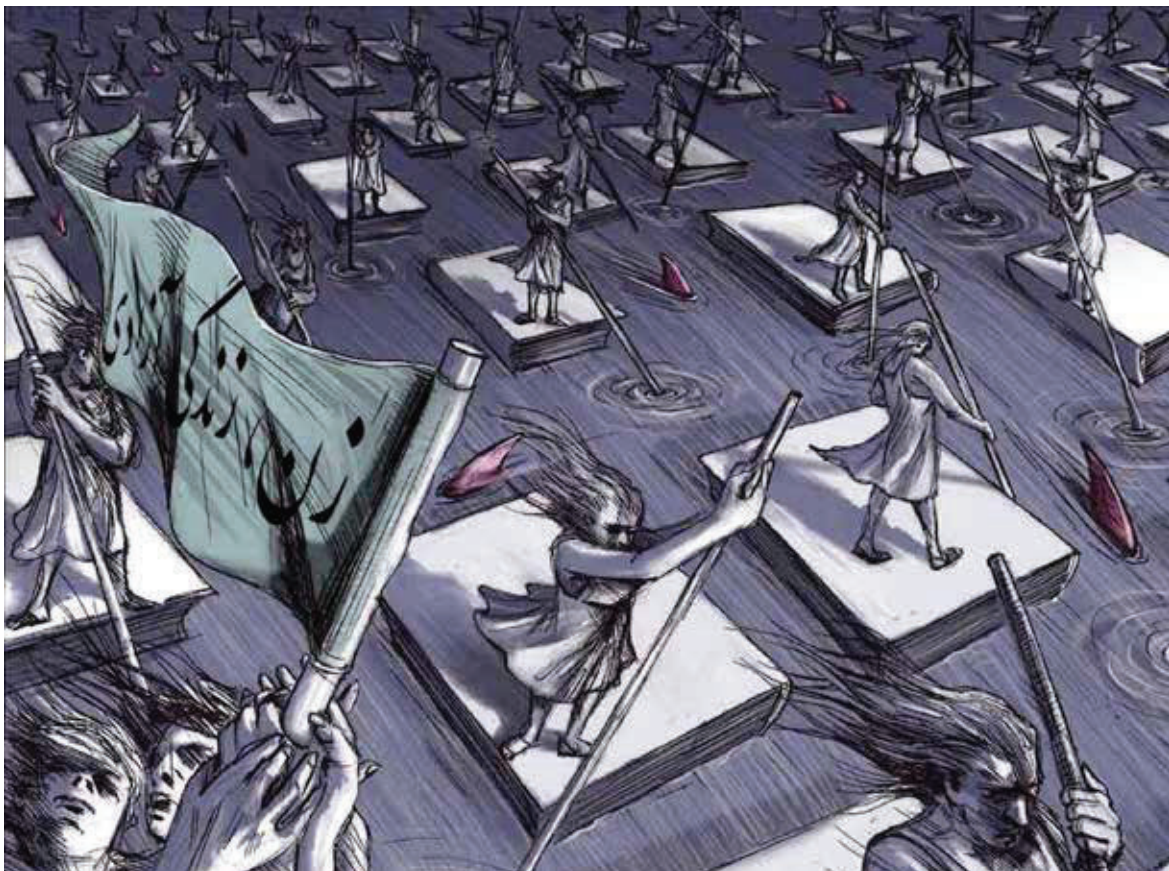


A COUNTRY THAT SEEKS ITS FUTURE IN THE PAST THE ISLAMIC REPUBLIC OF IRAN IN THE FACE OF THE PROTEST MOVEMENTS

Iran's protest movement "Woman – Life – Liberty" has turned into calls to end the Islamic Republic itself. In seeking new ways forward, some of Iranian civil society are considering returning to monarchy and the constitutional movement of 1906.

Shirin Naef



© Alireza Darvish

In memory of Mahsa Jina Amini dedicated to the 2022 movement of the Iranian women. The writing on the flag means "Zan – Zendegi – Azadi" ("Woman – Life – Liberty"). Drawing by Alireza Darvish, a German-Iranian animation filmmaker, painter and visual artist based in Cologne. Alireza Darvish, who has worked on social and political issues, including women's rights, for years, drew this painting 2014 for a collection of surrealist book paintings. Last year he reconnected this painting with the theme of woman, life, freedom.

“

My daughter asked me: ‘What is it that you were missing that led you to a revolution?’”, I was told by an Iranian friend who is an office worker and the mother of two girls. It is a question many Iranian parents are being asked today. Iran’s generation Z, which makes up more than sixty percent of the population, was not yet born when the Islamic Republic emerged from the 1979 revolution against the Pahlavi monarchy. It has only ever experienced life under the dominance of religion.

When young people look at photos from the time of the Pahlavi monarchy, they assume that their parents enjoyed cultural and social freedom, as well as economic stability – something they themselves can only dream of today. “I cannot forgive the 57-generation. They are to blame for ruining this country and they still do not accept their mistakes”, a Gen Z-girl said to me. “Because of their mistakes, my generation is being beaten and killed in the streets.” The term “57-generation” is a common term in Iran used for those who participated in the 1979 revolution – 1357 in the Persian calendar – to overthrow Mohammad Reza Shah, the second king of the Pahlavi dynasty. In recent months, I have heard many such statements either in direct conversations or through social media. These statements have caused many debates and conflicts between generations, even amongst families.

Since Mahsa Jina Amini died last September, at the age of 22, while she was detained by the country’s morality police for not wearing a proper hijab, mass protests in Iran have been ongoing. These protests under the slogan “Woman – Life – Liberty” (*Zan – Zendegi – Azadi*) constitute the largest anti-regime movement in Iran since the 1979 revolution. Women have played a leading role in these protests, which has generated a great deal of international attention. Social media has been flooded with scenes of school-girls tearing up pictures of the religious leaders of the revolution or showing up in public without hijab.

After the 1979 revolution the hijab became the foundational symbol of the Islamic Republic.

The reason why the protests centre around the hijab reverts to the political structures and power relations that were established in line with the 1979 revolution’s principles of Islamic republicanism. The compulsory

hijab was codified in law through a decision by the Islamic Consultative Assembly, Iran’s parliament, in 1983. As a consequence, Iranian women and girls were forced to cover their hair in public. Women protested against the hijab from the very first days of the revolution. However, these protests were considered bourgeois, anti-revolutionary and liberal and were suppressed by the authorities. The hijab carried more weight than any other change brought about by the Islamic revolution and became the symbol of the revolution’s struggle against imperialism, as well as the foundational symbol of the Islamic Republic.

Therefore, the Islamic Republic uses its full power to counteract the movement: it is faced with severe and systematic repression of protesters, including students, writers and political activists. The number of arrests and executions is soaring. The regime is even alleged to have carried out chemical attacks on girls’ schools. It has arrested lawyers who accepted the cases of arrested protestors, pushed for the expulsion of professors and students from universities, filed court cases against women who appear in public without hijab, and has closed stores and restaurants, as well as shopping and cultural centres that allow women to enter uncovered.

However, the backlash of the regime has not been able to quash the protests. What started as demonstrations against the compulsory hijab one year ago has evolved into calls to end the Islamic Republic per se and into the questioning the 1979 revolution and its left-wing Marxist-inspired content. The conflict between the rule of Shari’a law, the canon law of Islam, and the rule of law has caused Iran’s civil society – with its Generation Z as its spearheads – to rebel against the clerical class and all those defending the Shari’a law as a political force. Furthermore, there is an increasing number of voices in current academic and public discourse that compare this movement to the Iranian-Persian constitutionalist movement (*jonbesh-e mashruteh*), which took place between 1906 and 1911 and aimed to establish the rule of law and civil liberties. Indeed, these current protests have become a Renaissance movement advocating for a more human-centric approach and claiming the “right to life” and the “right to liberty”.

In this article, I shall examine the various phases during the establishment of the legal concepts of law, freedom and modern civil rights in the context of state-formation in 19th and 20th century Iran. By taking a closer look at Iran’s constitutional history, we might identify solutions for Iran’s future in a time of crisis.

The two concepts of law and freedom and the crucial role of constitutionalism

The theory of constitutionalism is one of the most important political theories in the history of modern Iran. It is based on the two concepts of law (*qanun*) and freedom (*azadi*), and results from the efforts of Iranian intellectuals seeking the rule of law, citizens' rights and national unity during the 19th century Qajar dynasty (1779–1925). In the face of the waves of modernity in the wake of the Russian and British expansion in Asia in the early 19th century, Iranians gradually began to develop these concepts further. Although there were differences and sometimes even contradictions in the way these terms were understood by scholars and social groups, there was one common denominator: opposition to tyranny.

The concepts of law and freedom eventually led Iranian decision-makers to accept a degree of political power distribution: a form of transferring the traditional absolute authority of the monarchy to new bureaucratic institutions. This distribution did not occur amongst traditional groups, such as other lineages, tribes and local communities that also claimed power. However, it did occur amongst new judicial and administrative institutions, such as the house of justice (*edalat khaneh*) in 1905. Part of said power was transferred to the ministers and bureaucrats who had close ties with religious scholars and merchants. Religious authorities and jurists (*fuqaha*), who were responsible for the education and training system, as well as the judiciary, played an important role in limiting the kings' influence, too. They also sought to expand their control over religious courts and various legal fields.

The constitutional movement led to the promulgation of the first Iranian Constitution (*qanun-e asasi*) and the establishment of the first Iranian National Parliament (*majles-e shora-ye melli*) in 1906. Despite many obstacles to legislation, this first parliament triggered the growth of a national consciousness based on the rule of law and the institutions of the new state (*dolat-e jadid*). This triggered a process of state-formation, resulting in the development of a modern legal system in Iran by the 1940s. Shia jurists and liberal constitutionalists were the main forces of the constitutional movement. In fact, this movement definitively invalidated the absolute and infinite power of the king and turned Iran into a constitutional parliamentary monarchy. The Pahlavi

dynasty (1925–1979) built a modern judicial system and largely replaced the Islamic and customary laws with state law. Iran stood on the threshold of a new era. Javad Tabatabai (1945–2023), a leading Iranian philosopher and historian of political thought, even considered this new legal system, based on Islamic jurisprudence (*fiqh*), and the first rule of law in an Islamic country as one of the most important achievements of constitutionalism.

The rise of Ayatollah Khomeini and his constitution of 1979

However, Iran's welfare state and national-capitalist policies established during Pahlavi's time were not very popular and the modernisation programmes, including women's education and family law reforms, were strongly opposed by the religious components of society, as well as by clerics, such as Ayatollah Khomeini. Moreover, the royal regime was depicted as a symbol of capitalism and Western values, and expressions such as "free market" or "private property" were regarded as insults. This led to the creation of a springboard for the rise of Khomeini and the 1979 constitution. It was a manifestation of his vision of an Islamic government (*hokumat-e islami*) based on the unity and primacy of the Islamic Ummah (*ommat-e islami*) that regulates every decision and action.

The concept of the Islamic Ummah, the Muslim community, dates back to the 1960s, when Islamic revolutionaries attempted to justify the theory of the authority of the Islamic jurist (*vilayat-e faqih*) and his unlimited power. This theory does not value the role of ordinary citizens in state-building processes, other than to be guided by a religious leader. This opposition between citizens and religious authorities caused many crises in Iran and hindered the prosperity of the Iranian people, as well as the social and economic development of the country.

In Khomeini's view, the Islamic government represents the rule of divine law over the people. The regime implements Islamic laws and regulations, absolute sovereignty belongs to God only. Therefore, according to his theory of the authority of the Islamic jurist (*velayat-e faqih*), the Supreme Leader (*rahbar*) of the Islamic government should be an expert in Islamic laws and regulations (*a faqih*). Consequently, he is responsible for the implementation of all public regulations and laws

related to state institutions. Following the revolution of 1979 and the subsequent referendum on the Islamic Republic, Khomeini himself became the first *rahbar*.

The concept of the republic was mainly borrowed from France and rooted in various political trends in Iran. These trends were mostly embedded in global Marxist-Leninist ideologies of that time, but it was unclear which institutions or values were related to said concept. In a television interview two days before the announcement of the referendum results on 1 April 1979, Ayatollah Motahari, one of the main theorists of the Revolution and a student of Khomeini, clarified the concept of the Islamic Republic as follows: “The Islamic Republic is a government formed by the election of the head of government by the people for a temporary period, and whose actions and principles are governed by Islamic law.”

In fact, the 1979 constitution contains major contradictions that make it difficult to understand the idea of the rule of law and the definitions of key terms such as “freedom” and “rights”. Theoretically, according to Article 4 of the Constitution, all civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic principles (*mavazin-e eslami*). Article 6 states that in the Islamic Republic of Iran, national affairs must be managed based on public opinion, such as the election of the president and members of parliament. Moreover, according to Article 57, the executive, judicial, and legislative branches are separate powers and must be supervised by the absolute leadership of the Ummah, the Muslim community. However, in practice, as one might expect, complying with these principles has not been an easy task. The development of the legislative process in Iran indicates that the Islamic Republic has constantly been faced with numerous weaknesses and challenges since its formation.

The return of the constitutional monarchy?

At the time of the revolution, supporters of the rule of law represented a minority, whereas a majority supported Shari‘a law. Today however, the Shari‘a law supporters are increasingly lacking in social power, whereas supporters of the republic and of the constitutional monarchy are respectively becoming more important political forces on the Iranian political

scene. Although they adhere to two different forms of government, both oppose Shari‘a law supporters and their power is rooted in their social popularity.

Recent reports indicate that the Pahlavi family is increasingly accepted amongst the people in Iran, especially amongst younger generations. “Reza Shah Rohat Shad/Reza Shah, may you rest in peace” is a famous slogan that is heard in many of the current protests all over the country. Reza Shah was the founder of the Pahlavi dynasty and the grandfather of Prince Reza Pahlavi. He is regarded as the founder of modern Iran.

“The Shah loved Iran. He tried to modernise the country, and we didn’t deserve this modernisation. I only hope for the return of the monarchy. I think that the ordinary people in Iran will preserve the monarchy”, I was told by a professor of law. “In our village, everyone wants the return of the prince”, said a civil engineer. “Reza Pahlavi is not against religion, which is better for many people. I am not a monarchist, but Prince Reza Pahlavi is the only person who can bring order to the current situation.”

Prince Reza Pahlavi is the eldest son of Mohammad Reza Pahlavi, the second king of the Pahlavi monarchy, and his wife Farah Diba. He became the crown prince when he was seven years old and was first in line to the throne. Today, he is a political activist and resides in Great Falls in the US State of Virginia. Reza Pahlavi is deemed acceptable because he has invited legal experts, lawyers, political elites and thinkers to present proposals for the judicial structure and the independence of the judiciary in a potential new Iranian government. He regards himself as a supporter of constitutionalism (*mashrutiyyat*), the aforementioned political movement, which many Iranians associate with the concept of law and freedom. As a writer and journalist stated: “Constitutional monarchy would be the best form of government for Iranians.”

Iran needs to revisit its history

The future seems dire. Not even a year after the start of the nationwide protests, the moral police are back. Its units are patrolling the streets of the country to enforce the hijab regulations, which have been imposed on Iranian women since the beginning of the 1979 revolution. Lives have been lost and many demonstrators are in prison. They have been interrogated, suffered inhumane

treatment and atrocities by a kleptocratic, religious and totalitarian state that lacks political legitimacy and social foothold – a state that even fears the bodies of the deceased and the influence of their funerals. People are devastated and anxious about where their revolution will lead to, as the country’s constitution, legal system, judgeship, and legal organisations are suffering.

In the current situation, the Iranians’ ability to compose an appropriate constitution and to design a practical ruling and political system seems to have been paralysed. Despite this, advances in the rule of law need to be prioritised over any other development. However, the current constitution and political system render it impossible to resolve any of the national crises and, as time goes by, the situation will only become more complicated.

According to Aristotle, freedom is always defined by law. Living up to this philosophical principle essentially requires improving the country’s legal and moral notions to achieve the welfare of the people during this transitional period. The events following the Mahsa Jina Amini protests demonstrate that the Islamic Republic has lost its political legitimacy and is collapsing from within. Contemporary Iranian society has various social groups, diverse civil and cultural institutions, and an awareness of liberal values and the importance of the rule of law. Moreover, Iran’s constitutional movement (*jonbesh-e mashruteh*) prevailed not so long ago. This entailed a peaceful transfer of absolute to constitutional monarchy and the respect of the rule of law, leading to the emergence of civil society and a fundamental change of social and legal structures. All of the latter points towards Iran’s potential to once again transform into a more progressive country.

Iran must revisit its history and avoid the recurrence of the 1979 revolution, which resulted in the flight of human capital and the return of religion to political and legal arenas, at all costs. Complex questions are arising, regarding how the centuries-long efforts of the Iranian people to establish freedom and the rule of law could lead to a democratic political order against the backdrop of this recent movement. How did the peaceful transfer of power become possible during the constitutional movement? What are the conditions for such a reconciliation between the Iranian people and the state? How could Iranians avoid further loss and damage? And how would the international and regional powers interact?

As previously mentioned, the opportunity to return to constitutionalism is being considered. Every inci-

dent that creates the possibility to return to its logic in Iran’s difficult current context should be taken as a good omen. Furthermore, events in Iran that aim to achieve social and political freedom extend beyond street protests. Indeed, this uprising strives for human dignity and individual rights. Reclaiming the right to life has brought different social groups and classes together. The future of Iran and the improvement of its long-term political, economic, and cultural relations with its regional neighbours and the West will depend on how well this is understood.

BIO



Shirin Naef is lecturer at the University of Fribourg and associate researcher at the University of Zurich. She is currently working on her habilitation project on the relationship between law, economy and religion according to the studies of culture in the context of Iranian history and politics.

FURTHER READING

- Roham Alvandi. 2019. *The Age of Aryamehr: Late Pahlavi Iran and Its Global Entanglements*. Gingko Library.
- Kevan Harris. 2017. *A Social Revolution: Politics and the Welfare State in Iran*. University of California Press.
- Iranica Online. 1992. “Constitutional Revolution”, online edition, New York.
- Afshin Matin-Asgari. 2019. *Both Eastern and Western: An Intellectual History of Iranian Modernity*. Cambridge University Press.
- Daniela Meier. 2002. *Helvetias guter Draht zum Pfauenthron. Die Beziehungen der Schweiz zu Iran (1946–1978)*. Orell Füssli Verlag.
- Shirin Naef. 2023. “Verfassung als gesellschaftlicher Prozess: Entwicklungen im Nahen Osten”. *SAGW-Bulletin* 2.