AUTHOR: Güneş Mural Tezcür
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ABSTRACT

This article reconsiders the relationship between secularism, liberalism, and democracy in non-secularized societies by focusing on judicial activism. The goal is to identify the forms of constitutionalism and judicial review that are necessary for the sustainability of democracy in societies where exclusive and holistic interpretations of religion remain pervasive. How is it possible to prevent majority rule from decaying into the tyranny of the majority in such societies? Neither the guardianship regimes embodied by the Iranian and Turkish republics nor Islamic democracy provide viable models that overcome the tension between constitutionalism and democracy. However, a conflict between these two principles in Islamic societies is avoidable. Judicial review, sanctioned by democratically written liberal constitutions and not guarded by non-elected institutions such as military, would be a guardian of individual and minority rights in Islamic societies. Polity (2007) 39, 479-501. doi:10.1057/palgrave.polity.2300086

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Günes Murat Tezcür is an assistant professor of Political Science at Loyola University Chicago. He is the author of a forthcoming book on Muslim democrats in Iran and Turkey. He can be reached at gtezcur@luc.edu.

INTRODUCTION

The resilience of religion and authoritarianism in Muslim-majority countries raises important questions about the relationship between secularism, liberalism, and democracy. Which forms of secularism can sustain constitutional democracy in countries where religious beliefs remain passionate and prone to radical interpretations? How is it possible to prevent majority rule from decaying into the tyranny of the majority in such societies? In particular, is Islamic democracy an oxymoron? This article addresses these questions by discussing the Iranian and Turkish regimes in comparative perspective. Government by guardians, identified by Dahl as a perennial alternative to democracy has characterized both the Islamist Iranian and the secularist Turkish regimes. The notion of guardianship is based on the assumption that a group of elites has the right to govern by reason of its unique knowledge, wisdom, and virtue.(FN1) Judicial activism in these two regimes, which combines claims of popular and transcendental ideological legitimacy reflects guardians' determination to regulate public participation in politics and exposes the incompatibility between democratic rule and guardianship. The comparison of constitutional politics and judicial activism in these regimes leads to a more refined understanding of the tensions between democracy and secularism in non-secularized societies.

This article first offers a brief discussion of the relationship between political beginnings (i.e. revolutions) and political obedience. This discussion is informed by Hannah Arendt's work on the act of foundation, and provides the conceptual framework for the comparative analysis of Iran and Turkey The third and fourth sections provide summaries of the constitutional politics and judicial activism in the Islamic Republic of Iran (IRI) and the Turkish Republic. The courts have prioritized transcendental sources of legitimacy over popular sovereignty. The fifth section introduces the notion of Islamic

democracy and argues that it would decay into the tyranny of the majority unless the constitution curtails the legislative power and empowers the judiciary In the sixth section, the possibility of liberal judicial review is explored. The article reaches three conclusions. First, secular guardianship does not necessarily contribute to the formation of a liberal-democratic regime. Second, Islamic democracy does not offer any institutions to prevent the tyranny of the religious majority. Finally judicial review that is sanctioned by democratically written constitutions, not subject to control by military elite, and provides open access to citizens, offers the best protection of individual and minority rights in Islamic societies.

REVOLUTION AND THE QUESTION OF SECULAR AUTHORITY

The rise of a political authority that is independent from otherworldly norms and goals has been one of the defining aspects of European modernity Over time, this secularization of political authority paved the way for the emergence of popular sovereignty as the sole legitimate basis of power. Accordingly, in democratic theory power emanates from below — the consent of the governed — rather than descending from a supernatural entity Salvation religions are irrelevant to the claims of rule. Political rights are no longer based on religious faith, and the link between temporal and spiritual authority has been severed.

The process through which political authority was emancipated from religious auspices reached its culmination with the French Revolution. In her work on revolutions, Arendt identifies the loss of religious sanction as the greatest challenge to modern political authority. Revolution destroys traditional authorities built on religious legitimacy and promises a totally new political order. Yet, what would guarantee that this new political order would endure? For Arendt, revolution creates its own dilemma of authority.(FN2) On the one hand, it creates a definitive rupture with all remnants of the past order including organized religion. On the other hand, revolutionary regimes desperately seek sacredness that is bestowed by transcendental norms and goals for purposes of political stability A revolutionary regime falls victim to vicious cycles of upheaval and instability, unless the act of revolutionary foundation is defined as sacred and hence immutable.

In her comparison of the American and French revolutions, Arendt identifies the act of constitution making as the reason for the American success. The American Revolution is crowned with a lasting document that sets the parameters of political life. The power of the democratic legislative organs is considered legitimate as long as they do not challenge the authority of the constitution and its guardian Supreme Court.(FN3) The authority of the American constitution has given a sacred appearance to the American act of foundation.(FN4) Furthermore, the amendments to the constitution are testimony to the inherent capacity of the American republic for self-augmentation.(FN5) The centrality of the constitution to the American revolutionary tradition stands in sharp contrast to the notion of “popular will” that was the banner of the French Revolution. In practice, either the majority or powerful minorities ruled in the name of popular will. Consequently, the French Revolution succumbed to periods of instability followed by tyrannical rule in the absence of a stable constitutional authority.

The dilemma of revolutionary authority identified by Arendt is central to the evolution of political rule in post-revolutionary Iran and Turkey. In both countries, monarchies were overthrown by revolutionaries who aspired to nothing less than a complete social restructuring. Mustafa Kemal (Atatürk) and Khomeini, both staunch opponents of monarchical rule, led nascent revolutionary movements to power. Their ideological visions have left lasting legacies on the regimes they founded: the goal of reaching the “status of modern and advanced civilizations” in the case of Kemal, and the

establishment of clerical and Islamic rule in the case of Khomeini, These visions would have been extremely difficult to accomplish in pluralistic and competitive political environments. The revolutionary projects were too important to be left to the vagaries of public opinion. People might be misled by groups whose loyalty to the revolution was dubious at best. The revolutionaries had to establish a form of regime that allowed them to rule in the name of the people without actually empowering the public. The republican form of government was appealing to them because of its limits on the legislative organ and its delegation of power to the ruling elite.(FN6) Consequently, these republican regimes have enshrined popular sovereignty as a basis of their legitimacy while actually denying popular rule.

ENEMIES IN THE MIRROR

The term "dual sovereignty" captures political configurations that have been central to both the Iranian and Turkish republics,(FN7) despite their noteworthy differences. Dual sovereignty implies that political power emanates from both the popular will and a supra-democratic source that represents the revolutionary ideals. Whereas the first source of power entails electoral competition through which public preferences are revealed and governments are formed, the second notion of sovereignty justifies political involvement of non-elected and publicly unaccountable institutions. These institutions supervise the popularly elected organs to ensure that they do not deviate from the fundamental revolutionary principles. These institutions act as "guardians" of the regime and forcefully interpret the constitutional doctrines.

Democratic politics are by definition unpredictable and may bring to power groups of suspect loyalty in the eyes of guardians. Majorities might be swayed by populist politicians who seek to aggrandize their power while disregarding the ideological goals of the regimes. Guardians perceive themselves as the only force capable of containing and eliminating these "internal threats" before they irreversibly erode the revolutionary legacy. The guardians' fear of popular rule is also reinforced by ideological convictions that inspire social transformation projects. While revolutionary goals have gradually been eschewed under historical, political, and economic constraints, their legacy is strongly felt in Iranian and Turkish political cultures. Such goals still inform how the guardians distinguish between legitimate and illegitimate political action. The guardians — the military and the judiciary in Turkey, and hierocracy (clerical power holders) in Iran — have periodically been in conflict with the elected politicians during the last decade.

The constitutions of both regimes reflect the tension between the principle of popular sovereignty and transcendental ideological goals,(FN8) The long preambles of the 1979 Iranian constitution and 1982 Turkish constitution emphasize the centrality of the ideological goals. The preamble of the Iranian constitution, which reads as a short history of the revolution from the victors' perspective, asserts the indispensability of clerical rule for the realization of an immaculate Islamic society. The objective of the government is defined as preparing citizens for the establishment of divine rule. At the same time, the preamble defines the purpose of the constitution as "entrusting the destinies of the people to the people themselves in order to break completely with the system of oppression" and encourages broad public participation in politics. The preamble of the Turkish constitution defines the purpose of the Republic as "reaching the status of modern civilizations and the application of Atatürk's principles and revolutions." It also states that sacred religious beliefs are absolutely excluded from state affairs and politics by reason of the laicism principle. The preamble also states that sovereignty belongs to the Turkish people, affirms the principle of separation of powers, and expresses the Turkish nation's adherence to democratic rule. As the

constitutions enshrine conflicting principles of social engineering and popular sovereignty, they give rise to competing interpretations that prioritize one of these principles over the other. The guardians control the judicial institutions that are legally authorized to interpret the constitutions.

THE GUARDIANS OF THE ISLAMIC REPUBLIC

The constitution of the IRI was written by an assembly controlled by supporters of Khomeini and received public endorsement in a referendum in December 1979. Since then, the constitution of the Islamic Republic has remained at the center of political debates and has the unique character of combining popular and otherworldly sovereignty. In fact, the constitution reflects two conflicting ideals of Khomeini's vision.(FN9) Convinced that the ideal Islamic society can only be achieved under the rule of the clergy Khomeini developed the theory of velayat-e faqih to put absolute authority in the hands of the most learned clergy in Islamic jurisprudence. This theory is a major innovation within Shi'i theology and lacks historical precedent.(FN10) At the same time, Khomeini was an inspiring leader who mobilized people against a repressive regime through religious symbols and rhetoric. While he was by no means a democrat,(FN11) his unique combination of clerical rule with popular participation has left a lasting legacy in the IRI.(FN12)

Article 2 of the constitution explicitly states that the new regime is founded on the belief in "One God's exclusive sovereignty and right to legislate" and "divine revelation and its fundamental role in setting forth the laws," All laws in the country must obey Islamic criteria (Article 4), and the ultimate political power lies in the hands of a "just and pious" person (Article 5) who is given vast executive power (Article 110). This male person, the faqih, is elected by an assembly of clerical experts who are in turn elected by the people. By the amendments of 1989, a few months before the death of Khomeini, the requirement for the faqih to be a marja-e taqlid,(FN13) the most learned and leading member of the clergy, was dropped from the constitution. As a result, the political qualifications of the leader were given priority over his religious credentials and status in the clerical hierarchy This amendment was consistent with Khomeini's declaration that obedience to the Islamic regime has priority over all other obligations of the Islamic faith such as praying and pilgrimage.(FN14) According to Khomeini, the Islamic regime has even the right to sacrifice Islamic principles in order to ensure the security and the survival of the state. The consequence of this amendment was the de facto separation of temporal authority from spiritual authority.

Following Khomeini, Khamanei, who had impeccable revolutionary credentials but lacked the religious authority of senior clerics, was chosen as the new faqih by the Assembly of Experts. With his selection, it has become clear that revolutionary zeal and organizational skills count more than religious knowledge and expertise in the eyes of regime elites. The faqih is entitled to have the last word on all matters relating to Islam and politics despite the fact that he is not the leading religious authority. In this manner, the Islamic state is given primacy over the Islamic clerical hierarchy The Islamic Republic expects that all pious Shi'i Iranians will be loyal to the regime on the basis of their faith. According to the regime's interpretation of Shi'i Islam, piety translates into political obedience to the clerical regime. This claim, however, does not have any historical basis in Shi'i Islam and has been challenged by clerical opponents of the regime. Historically, the Shi'i religious authority has a plural structure that allows for the emergence of multiple sources of authority. In general, Shi'i believers are expected to choose one of the leading clerics (mujtahids) and follow their decisions. This institutional characteristic of Shi'i Islam creates an acute problem for the regime because some leading and high-ranking clerics deeply resent the ascendancy to the

position of faqih of Khamanei, whom they perceive as their inferior.(FN15) The IRI's attempt to link religious faith with political loyalty to the faqih has met with fierce resistance by some clerics. These clerics have argued that if the faqih does not need to be the most learned of all Shi'a clergy then logically he should be elected by people who can decide which religiously credentialed candidate is the most politically competent. The most prominent of these dissident clerics is Ayatollah Montazeri, designated as the successor of Khomeini until March 1989.(FN16) The Islamic regime's attempt to claim religious legitimacy has not gone unchallenged. While Arendt would have hardly predicted that a revolution would seek sanctity from traditional religion, she would recognize that an authority crisis confronts the IRI.

In addition to the position of faqih, the constitution creates a non-elected council formed by six clerics and six jurists whose function is to ensure that all laws are in accordance with the Islamic precepts and the constitution (Articles 91 and 94). The Guardian Council (GC) (shuray-e negahban) has the power to review all legislation passed by the parliament, authoritatively interprets the constitution (Article 98), and supervises elections to the assembly of experts, the presidency, and the parliament (Article 99). While the jurist members of the GC are elected by the parliament from among nominations by the head of the judiciary, the parliament does not have any power over the Council. The head of the judiciary is appointed by the faqih, who also chooses the remaining six members of the GC. In practice, the GC only reports to the faqih. The amendment of the constitution also depends on the faqih, who may decide to take the proposed amendment to a national referendum. The Islamic nature of the government and the principle of the velayat-e faqih are immutable.

As indicated, the principle of popular sovereignty is also central to the Constitution. The first article of the constitution refers to the popular endorsement of the Islamic Republic in March 1979. "Public opinion" is recognized as the basis of the administration of the country (Article 6) as well as the people's right to exercise divine right through legislative, executive, and judiciary branches and referendums (Articles 56-61). The popularly elected president is entrusted with almost all executive functions, while the popularly elected parliament is given the task of legislation. The president does not need to be a religious figure (Article 115) and is responsible to the people, the faqih, and the parliament. The faqih can dismiss the president only if he is found guilty by the Supreme Court of violating the constitution or if two-thirds of the parliament finds him incompetent. The constitution does not explicitly state whether the GC has the right to veto anyone from running in the presidential or parliamentary elections. Also, there is no explicit reference in the constitution to the Council's right to veto any legislation passed by the parliament. The Council can send all legislation it finds incompatible with Islam and the constitution back to the parliament for revision, but it leaves unspecified what happens if the parliament passes the legislation again. Inevitably the constitution's delineation of the balance of power between popularly elected offices and the supervising religious offices has been subjected to different interpretations. Former president Khatami declared the establishment of the rule of law (hokumat-e qanun) as one of his primary goats and formed a special commission on the Constitution. However, the GC has claimed a monopoly over constitutional interpretation and obstructed Khatami's attempts to augment the power of popularly elected offices and weaken clerical supervision of popular legislation. Furthermore, the GC still decides who is eligible to run in elections based on a peculiar reading of Article 99 and vetoes many candidates without making its reasoning public.

The judiciary has been one of the principal organs sustaining clerical rule in Iran.(FN17) According to the constitution, the legal system has to be based on Islamic laws. However, Islamization of the legal system has been very selective and parochial,

and has served the interests of ruling elites.(FN18) According to Article 157 of the constitution, the head of the judiciary system has to be a qualified religious scholar (mujtahid) and is appointed by the faqih. The minister of justice is subordinate to the head of the judiciary, who also appoints the chief of the Supreme Court. During the tenure of Khatami (1997-2004), the judiciary was very aggressive towards reformists and dissidents. The Special Clerical Court, which is directly supervised by the faqih, tried and condemned dissident clerics, including former members of the parliament and the government.(FN19) The courts banned news outlets, critical of the regime on the basis of a highly restrictive Press Law enacted in 1995. The Press Law prohibits the questioning of the principle of velayat-e faqih and the promotion of the views of dissident clergy. In a particularly intense period of attack against press freedom, more than 30 newspapers and journals were closed from April to December 2000, The Islamic Revolutionary Courts, which deal with broadly defined "security issues," often bring vague and ideologically motivated charges against dissidents, in these courts, judges act as prosecutor and judge at the same time. According to a penal law enacted in 1995, insults against Khomeini and the faqih are punishable by death. While the constitution explicitly forbids the use of torture, security forces' employment of violent means against detainees has been an open secret. The GC vetoed the parliamentary ratification of the U.N. Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment in August 2003. In sum, the judiciary serves as the principal vehicle of the regime to suppress dissent.

In the IRI, the ultimate power lies in the hands of a segment of clerics who claim to have exclusive access to religious-political truths. Political rights are conditional on allegiance to the principle of velayat-e faqih, which is described as the most salient aspect of Shi'i religious identity by the ruling clerical elites. The constitution embodies an ideological understanding of Shi'i Islam, and the clerical elites show no tolerance for alternative interpretations. The guardians who control the most powerful political institutions are very unlikely to make any concessions to democratic and liberal principles as long as their ideological commitments remain firm. The theocratic notion of republicanism discriminates against groups and individuals who do not share the religious interpretations and assumptions of the ruling class. The IRI imposes a particularistic understanding of Shi'i Islam over society while making political obedience the most salient aspect of religious belief.(FN20)

THE GUARDIANS OF THE SECULAR REPUBLIC

The Turkish Revolution of the 1920s and 1930s entailed social reconstruction through secularization and nationalization.(FN21) The foundational ideological goal of this social reconstruction was the ascendancy of Turkey to the "status of modern and advanced civilizations." Secularism emerged among Ottoman intellectuals, who argued that popular religious beliefs and teachings were responsible for the backwardness of the Empire. They perceived secularism as the eradication of the pervasive and pernicious influence of Islam.(FN22) The secularism of the early Turkish Republic expressed the revolutionary tradition.(FN23) Until the late 1930s, the nascent republic engaged in a series of reforms that subordinated religion to the state and restricted the public role of religion. This secularization process involved the marginalization of religion in education, the legal system, and public ceremonies, the destruction of autonomous religious organizations, and the privatization of religious beliefs. The Caliphate was abolished in March 1924. On the same day the parliament passed legislation that unified all education in the country and put it under state supervision. Islam was given only a marginal role in the new educational system. In November 1925, all Sufi orders were declared illegal. In 1928, the laicism principle was added to

the constitution as one of the fundamental characteristics of the regime. Meanwhile, the legal system of the country was completely secularized during the 1920s and 1930s. A series of laws between 1926 and 1934 improved the legal status of women.

In general, these and related reforms represent the first dimension of Turkish secularization. Turkish secularism is not only characterized by the marginalization of religion's role in public life, but also the complete co-optation of religious organizations by the state. On the same day when the Caliphate was abolished, the parliament passed a law that created the Religious Affairs Directory (RAD), which has been responsible for assigning imams to mosques and regulating all public expressions of religion. The creation of this directory points to the fact that the state has not just been involved in privatizing religion, but also in shaping and controlling it according to its priorities and preferences. Over time, state elites have used the RAD for advocating certain versions of Islam at the expense of others.

The Turkish Revolution sought the secularization of society while at the same time creating a state organ responsible for religious affairs because the republic's founders feared that popular religion might serve the interests of the "reactionary forces." Like the Islamic Republic in the 1980s, the primary concern of the Turkish Republic in the 1920s and 1930s was to ensure the political loyalty of its citizens. In his Oration, Mustafa Kemal [Atatürk] expressed his fear of anti-regime "reactionary forces" that mobilize people under the banner of religion by exploiting the illiteracy, ignorance, and backwardness of the nation.(FN24) According to him, Islamic beliefs and the religious practices of the populace could be easily manipulated by ambitious politicians or religious figures to challenge the republican project of modernity(FN25) While Kemal had used Islam to mobilize support for the nationalistic struggle,(FN26) his republican vision had no place for it. Islam had been the pillar of the old order, and the rebellion against the Ottoman dynasty involved a complete rupture with the past.(FN27) Religious loyalties endangered the ideological foundation of the Republic,(FN28) as the notion of the "Turkish nation" irreversibly replaced the "Islamic umma" as the source of authority.(FN29) During the 1920s and 1930s, the Republic had to confront rebellions against its authority that combined religious and ethnic elements. In particular, the Sheik Said Rebellion of 1925 aggravated the fear of Kemal and his followers that oppositional forces would appeal to popular religious sentiments. Ultimately this fear was the decisive factor in the state's policies towards popular religion. While public expressions of Islam were highly restricted, the RAD was entrusted with the task of promoting a state-favored understanding of Islam.(FN30)

With the introduction of multiparty competition in 1950, the states efforts to secularize society gradually waned. The elected governments naturally became more responsive to popular religious demands. However, the ensuing political pluralism did not necessarily translate into state neutrality towards religion.(FN31) The RAD represented the Hanefi legal understanding of Sunni Islam and was given the task of delivering fatwas (religious edicts). The directory obtained an even more central role in the state bureaucracy after the 1980 military intervention. The military reasoned that pious people would be less likely to engage in disruptive political activity and saw in Islam an antidote against leftist appeals among the populace. Religious classes were made mandatory in public education, more schools were opened with extensive religious curricula, the budget of the RAD was greatly augmented, Sufi brotherhoods were increasingly tolerated, and Islam was seen as a remedy to Kurdish separatism.(FN32) These policies resonated well with the U.S. government's promotion of Islam as a barrier to Soviet influence in the Middle East and Afghanistan during the early 1980s.

State promotion of a compliant version of Sunni Islam, however, had some unintended consequences. The early 1990s saw the rise of religious political activism

that explicitly threatened the secularist regime by promoting gender segregation, openly supporting Islamic brotherhoods, discriminating against non-pious personnel in the municipalities and broadly making Islamic identity more visible in the public sphere. This growing assertiveness of religious socio-political activity alarmed the military the judiciary and the secular civil society. The military ultimatum of February 28, 1997 identified religious radicalism as the greatest internal threat(FN33) and demanded the implementation of measures that aimed to eradicate its sources. The Constitutional Court banned Refah Partisi (the Welfare Party) in January 1998 and its successor Fazilet Partisi (the Virtue Party) in June 2001.

An analysis of the indictments put forward by the Principal State Counsel reveals the patterns of continuities in the political culture of the Turkish Republic, The Principal State Counsel's indictments against Refah and Fazilet(FN34) are based on Article 68 of the 1982 Constitution, which prohibits parties that violate the secular character of the state.(FN35) In the indictment against Refah, he argues that secularism in Turkey has some unique characteristics that set it apart from the Western experience. The major difference lies in the centrality of secularism to the survival of the Republic.(FN36) He characterizes public expressions of religion, such as the headscarf, as divisive factors in social life. He reasons that the public salience of religious identities undermines social harmony and cooperation, and results in sectarian conflicts. Consequently he crucially distinguishes the freedom of religious clothing in public from the freedom of conscience. Any actions that promote the former cannot be considered as a democratic right. Moreover, he accuses Refah of being a focal point of anti-regime activities because its prominent figures politicize public demands for greater religious education and freedom for religious clothing in their relentless pursuit of votes. In general, he echoes Kemal's fear of populists who manipulate the religious feelings of gullible masses to capture power. However, the second dimension of Turkish secularism, the statist desire to intervene in and regulate religious life, has not been explicitly expressed in the indictment. While the Principal State Counsel refers to practices in Western countries to argue for limits on religious expression, he remains silent on the educational practices of the Turkish state. Ironically he says nothing about the fact that the educational curriculum is heavily biased towards the Hanefi school of Sunni Islam and that the state sponsors a huge clerical bureaucracy to regulate religious participation.

In his case against Fazilet two years later, the same counsel reasoned that the party's espousal of the right to wear the headscarf in public institutions and universities violates the principle of secularism enshrined in the Constitution. He based his indictment on Article 24 of the constitution that prohibits "the exploitation and the abuse of religion, religious feelings or things held sacred by religion in any manner whatsoever with a view causing the social, economic, political, or legal order of the State to be based on religious precepts, even if only in part, or for the purpose of securing political or personal interest or influence." This article sets strict limits on the scope of political competition in the country. Any party group, or individual demanding permission for the greater manifestation of religious symbols, attire, or rituals in public can be accused of violating the Constitution. Accordingly the counsel argues that Fazilet's opposition to the ban on the headscarf exploits religious values for the purpose of making political gains. He interprets the party's stance on the issue as a systematic attempt to turn people against the state and a "clear and open threat" to the survival of the Turkish Republic. He argues;

the regulations that are brought up by the universities and aim to ensure harmony among students from different beliefs may restrict the freedom of students to express their religious faiths...; especially in countries where a majority belongs to a particular

religion, the unfettered display of religious rituals and symbols may put pressure on students who do not practice that religion or adherents of other religions....(FN37)

The Principal State Prosecutor maintains that women covering their heads on religious grounds would result in discrimination between pious Muslims, non-pious Muslims, and non-Muslims. In a Muslim-majority country, freedom from religion is sustainable only if Islamic symbols and rituals are not publicized. The wearing of the headscarf presents a threat to the rights and freedoms of others, and to public order. Hence, the prosecutor is pursuing two distinct goals by asking for the ban of Fazilet, Primarily he is defending the nationalistic and secular hegemony maintained by the state in public spheres like the universities against the challenge presented by the proliferation of Islamic symbols and rituals. Besides, he is concerned about the tyranny of the religious majority over secular and non-Muslim minorities. Meanwhile, the prosecutor ignores the fact that the state actively sponsors a particular school of Sunni Islam and that religious classes are mandatory in the education system. In sum, the republican fear of gullible and religious masses manipulated by populists for securing political power underlies the prosecutor's case against both Refah and Fazilet.

Refah and Fazilet leaders later applied to the European Court for Human Rights (ECHR). On July 31, 2001, the Court ruled that the ban on the Refah does not constitute a violation of Article 11 of the European Convention of Human Rights, which upholds the right to assemble and maintain political parties. Interestingly the court reasoned that the Turkish state has valid reasons to suspect that Refah planned to establish Islamic law and was inclined to use violence to come to and stay in power. In the Court's view, the Turkish state has the right to preemptively prevent a political project that jeopardized the democratic regime and internal peace. Consequently the Court upheld the dissolution of a political party on the basis of sheer suspicion.(FN38) The ECHR also decided in favor of the Turkish state on a separate case involving the ban on the headscarf. The Court ruled that the Turkish State's ban on the headscarf is legitimate as it pursues the aim of "protecting rights and freedoms and maintaining public order." This ruling is based on the recognition that the Turkish State is "better placed" to evaluate whether the wearing of the headscarf can be treated as a threat to individual freedoms and public order.(FN39) After the Refah decision, the ex-leaders of Fazilet decided to withdraw their application from the ECHR.(FN40)

The indictments shed light on the principle of secularism as understood by the Turkish judiciary. The Refah and Fazilet were banned because they blatantly challenged the state's nationalistic and secularist hegemony of the public sphere. The fear of the "religious majority" has been a central theme in its Republican ideology, and the state has had little tolerance for parties that pursue religious mobilization. Whether Refah and Fazilet have democratic credentials was simply irrelevant to the prosecutor's indictment and the Constitutional Court's decision. The parties were against the secularism of the Republic, but no conclusive evidence was presented to demonstrate that they were also against competitive elections, basic freedoms, and political pluralism. Both Refah and Fazilet had been vote-seeking parties, and their platforms were characterized by fluidity and ambiguity rather than ideological consistency and rigidity.

The central fear of the guardians has been the rise to power through elections of an "Islamic majority." This distrust of popular rule, which finds its parallel in the IRI, lies at the heart of the Constitutional Court's ban on Refah and Fazilet. A government based on the support of the Islamic majority would have democratic credentials but be illiberal. Vulnerable groups (e.g. women) and individuals (e.g. non-practicing Muslims) who do not share the life styles and religious values of the majority would become targets of discrimination. The Turkish form of secularism has been preemptive, is

indispensable for the goal of reaching the status of "advanced and modern civilizations," and has priority over the principle of democracy. Yet it is beset by a fundamental contradiction. On the one hand, it aims to create a public sphere that is free from any religious displays so that no one feels discriminated against. The state has shown no tolerance for the political articulation of religious demands by autonomous groups. On the other hand, it favors a particular understanding of Islam at the expense of other understandings and different faiths. This contradiction reflects the fact that the main goal of the republican ideology has been preventing religious faiths from breeding political disloyalty to the regime. Consequently, the priority of secularist modernity over democracy introduces non-negotiable limiting claims into politics as in the IRI. The secular republic behaves like the theocratic republic as it sacrifices the principle of pluralistic competition to its transcendental goal of secular modernity.

ISLAMIC DEMOCRACY AS AN ALTERNATIVE

The tension between the non-neutral, highly interventionist understanding of secularism and popular politics in Turkey derives from the fact that the Turkish society has not been secularized.(FN41) The fear of religious majority has been the primary justification for Turkish secularism. However, as argued above, this mode of secularism has a strong undemocratic characteristic that cannot be defended on liberal grounds. The notion of "Islamic democracy" has emerged as a major challenge to the idea that a certain degree of separation between the state and religion is necessary for pluralistic and competitive politics.(FN42) Islamic democracy can be best defined as a regime based on popular and free elections, and enacting laws that are compatible with both Islamic law (shari'a) and basic individual liberties. The discussion of the theocratic Iranian Republic and the secular Turkish Republic provides a valuable comparative perspective in analyzing the institutional framework of Islamic democracy. These two regimes represent the extreme poles of the state-religion relationship, while Islamic democracy appears to fall in the middle.

Islamic democracy has emerged as part of political discourse in many Muslim-majority countries, mainly after the demise of secular modes of governance. The lack of popular enthusiasm for secularism in the Muslim world is a historical result of Islam's inferiority vis-à-vis the West in the modern age. Secular thought in the Muslim world has its origins in the late nineteenth century when intellectuals of the time engaged in a soul-searching process to discover the reasons for Western superiority. The secularist response to the decline of the Islamic world identified religious dogmas and bigotry as the main reasons for the backwardness of Islamic societies, and espoused the adaptation of western thought, life-styles, and technology For most of the twentieth century then, secularism in Muslim lands has identified modernity as freedom from traditional religion, while secularism understood as state neutrality towards religion(FN43) has been notoriously absent. Consequently the classical liberal perspective on religion as a potentially disruptive and unmanageable source of conflict(FN44) has been not very relevant to the evolution of secularism in these countries. Even if liberal-secularism had been introduced in Islamic societies, its appeal might have been very limited. In the West, the liberal perspective of secularism has been criticized for not accommodating religious discourse and practices in the public realm,(FN45) discriminating against organized religions,(FN46) and reinforcing the existing inequalities and disadvantaging minority religions.(FN47)

Under these historical conditions, it is not surprising that secularism might have negative connotations for many pious Muslims. Accordingly, [s]amic democracy seems to have substantial appeal among the Muslim publics.(FN48) Also, experiments with

Islamic democracy have great relevance for the politics of many countries with predominantly Muslim populations. Religious Shi'i parties dominate post-Saddam Iraqi politics, Hamas swept the Palestinian elections in 2006, Hezbollah remains a potent force in Lebanese politics, and the Muslim Brotherhood presents the most organized opposition to the authoritarian Egyptian regime. According to its advocates, Islamic canon and traditions actually support democratic and liberal norms: popular sovereignty, free and competitive elections, and the inviolability of human rights. An Islamic democracy is not secular because all legislation is based on Islam, but it is democratic as rulers are popularly elected and basic rights are respected.

The proponents of Islamic democracy assume that moderate interpretations of Islam would ultimately prevail over radical ones. This assumption is appealing, as it offers a non-essentialist reading of Islam. Yet it does not necessarily reflect the current political realities in the Muslim lands, where radical Islamists compete with Muslim democrats over shaping Muslim public opinion(FN49) Voices of liberal Islam have proliferated in the recent years,(FN50) but they are far from being the dominant force in most Muslim countries. Conditions that favor Muslim democrats vary greatly from one country to another. While it is ahistorical to suggest that Islam is inherently anti-secular and undemocratic, it would be similarly fallacious to assert that Islam has some intrinsic democratic and liberal qualities.

The ways in which Islam is currently understood and practiced often create problems for liberal democracy These understandings do not always entail protection for minorities, gender equality, or freedom of belief and expression.(FN51) A liberal-democratic culture does not require religion to be either marginalized or privatized.(FN52) However, a religion threatens liberal democracy when it aspires to regulate social life according to its own precepts, and rejects modern values of human rights, political pluralism, and democratic governance.(FN53) Liberal democracy recognizes the public legitimacy of a religion only if that religion eschews holistic claims to regulate social life.(FN54) In a liberal-democratic system, the public legitimacy of religion is conditional on the respect of religion for inalienable individual rights. This conditionality also implies that religious demands be publicly justified according to reason instead of non-negotiable truths. Furthermore, believers should be free to leave religious communities.(FN55) If these conditions are not met, vulnerable members and minorities in religious communities will be left without any protection against the abuses of stronger members and majorities. Almost all liberal-democracies enshrine some institutional frameworks that regulate religious life, and distinguish between religions compatible with liberal democracy and those that are characterized by holistic claims.(FN56) By contrast, advocates of Islamic democracy have yet to specify how it will secure the rights of groups that are particularly vulnerable to the whims of a religious majority In general, theories of Islamic democracy offer little novelty in institutional and constitutional design.

The fear of the majority, which is central to the Iranian and the Turkish regimes, is absent in Islamic democracy It enshrines popular rule and does not compromise it in decisionmaking. However, in Muslim-majority countries where authoritative interpretations of Islam are not necessarily in liberal hands, the fear of the "tyranny of the majority" seems to be very relevant.(FN57) In the absence of constitutional and institutional limits on the legislature, Islamic democracy is most likely to decay into majority tyranny. Vulnerable individuals (e.g. women) and minorities who disagree with the religious majority may be stripped of their social and political rights. These problems are evident in the Iraqi constitution that was approved in a referendum in October 2005(FN58) and has characteristics of an Islamic democracy The constitution declares Islam as the official religion of the state and explicitly states that no law may

be enacted that contradicts the established provisions of Islam. While Article 93 empowers the Supreme Federal Court (SFC) with overseeing the constitutionality of laws and interpreting the provisions of the constitution, parties that dominate the parliament also control the SFC. Given the electoral strength of religious parties, it is highly unlikely that the SFC would be a defender of individual freedoms against rigid understandings of Islam.

One can argue that Turkey has become an example of Islamic democracy after AK Parti (the Justice and Development Party) came to power in November 2002. But this would not be a very accurate description. First, AK does not pursue a political agenda of rewriting the constitution on the basis of Islamic norms and teachings. At best, it espouses a liberal interpretation of secularism in place of the existing secular guardianship. Second, the rise of AK to government does not result in the reduction of guardians' power. Despite the institutional reforms demanded by the EU, the military and the judiciary have preserved their political influence. Finally, the party leadership argues that their political stance is informed by unique aspects of Turkish Sufism, which is characterized by moderation and toleration.(FN59) Hence, it does not provide a universal model for Islamic parties elsewhere.

LIBERAL SECULARISM AND JUDICIAL ACTIVISM

The problems identified with guardianship and Islamic democracy point to a dilemma in achieving liberal-democratic goals in deeply religious societies. On the one hand, ideological constitutions and judicial activism result in the curtailment of democratic aspirations.(FN60) As the Turkish experience demonstrates, it cannot be assumed that judges will be bound by liberal concerns. On the other, constitutions that empower majorities and weaken judicial control pose a threat to the rights of individuals and minorities. The core empirical question is under what conditions liberally oriented judicial activism can be achieved in Islamic societies.

Recent studies of the global expansion of judicial review suggest some valuable insights.(FN61) Constitutional courts have emerged as institutions that resolve conflicts among different parts of government and as protectors of inviolable rights.(FN62) Furthermore, courts may "be the strongest advocates of the demands of democratic citizenries against governments that stray from their promises," as in the cases of Hungary and Russia.(FN63) Indeed, "the internal morality of democracy" requires constitutional protection of individual rights.(FN64) Estonia demonstrates that constitutional courts may also become domestic representatives of international demands for the respect of human rights.(FN65) In societies characterized by deep ethnic or religious divisions, constitutional courts may contribute to orderly democratic governance by both checking the excessive tendencies of majority power and avoiding the pitfalls associated with formal power-sharing arrangements, as in South Africa and Bosnia.(FN66) To be sure, this global trend of the "judicialization of politics" does not always augur well for the development of democratic commitments. Hirsch] characterizes the increasing political power of judges as "part of a broader process, whereby political and economic elites attempt to insulate policymaking from the vicissitudes of democratic politics."(FN67) According to him, judicial empowerment is best understood as a consequence of deliberate and self-interested action by hegemonic but threatened elites in countries such as Israel, South Africa, and Egypt.(FN68)

These opposing interpretations of the rise of judicial review demonstrate that whether court decisions will contribute to strengthening liberal democracy depends on a host of historical and institutional factors. Judicial review that effectively curtails the danger of majoritarianism in one context may principally serve the interests of the

entrenched elite in another. Three empirical conditions must be taken into account to assess the likelihood that judicial review in a given Muslim society will sustain liberal rights. First, as Arendt argues, there is an "enormous difference in power and authority between a constitution imposed by a government upon a people and the constitution by which a people constitutes its own government,"(FN69) Both the Iranian and Turkish constitutions were written without any regard to popular preferences under undemocratic circumstances.(FN70) They manifest ideological principles and contain articles that are hardly in accordance with liberal and democratic ideals. As a result, their legitimacy and authority have been often contested by discontented groups. While 49 of the 177 articles of the Turkish constitution have been amended to make it more democratic,(FN71) the text continues to be at the center of public debates. In Iran, reformists advocated constitutional amendments without success. The authoritarian tendencies of Turkish and Iranian judiciaries reflect the illiberal and undemocratic nature of the constitutions that they are supposed to protect.

Constitutions that are built on a broader consensus and contain unambiguous definitions of political and civil rights curb these authoritarian tendencies.(FN72) It may appear to be a remote possibility that democratic constitution making in Islamic societies will result in the acceptance of liberal constitutional values. However, there are historical examples to the contrary. The Iranian Revolution of 1905-1906, characterized by broad public participation, resulted in a relatively liberal and democratic constitution by the standards of the early twentieth century.(FN73) Moreover, empirical studies demonstrate that during orderly democratic transitions, political actors who are operating under systematic uncertainty and unpredictability have strong incentives to espouse constitutionalism and judicial review Judicial review becomes an "insurance" against the authoritarian tendencies of future electoral winners and majorities when actors are unsure about their and their opponents' strength.(FN74) The willingness to accept judicial review is strengthened by the fact that while constitutional courts have been highly successful in protecting freedom of expression, establishing procedural justice, and restraining arbitrary state power, they have been unwilling to accommodate claims towards social equality and redistribution.(FN75) For example, in South Africa, the white minority strongly supported a bill of rights and judicial review when it became clear that the apartheid regime could not survive for long. The black majority consented to the establishment of a potent Supreme Court to ensure the orderly transition of power and to attract foreign investment.(FN76) Similarly in democratic systems, ruling parties with low expectations of remaining in power are more likely to support an independent judiciary.(FN77) Hence,the real issue is not the difficulty of writing constitutions enshrining liberal values but the establishment of courts that will remain loyal to this liberal spirit.

Second, courts are more likely to illiberally restrain democratic rights if they are allied with or controlled by other powerful institutions such as the military. This is the case in both Iran and Turkey where anti-democratic judicial decisions are endorsed and supported by the other state institutions. In Iran, the judiciary's severe restrictions on freedom of the press during Khatami's tenure would not have been possible without the active backing of the faqih, the GC, and the security forces. Similarly the dissolution of Islamic parties in Turkey would have been very unlikely had the military not initiated a systematic campaign against Islamic activism in 1996. Constitutional courts, especially in transition and newly established democracies, are "constrained actors, those who must be attentive to preferences and likely actions of other relevant players."(FN78) Judges have high concern for maintaining legitimacy in the eyes of the public and other state actors.(FN79) Even previously obedient courts start to rule against the government once it starts to lose power(FN80) They have no coercive

mechanisms at their disposal and rely on other actors and some public support for enforcement of their rulings. Consequently, the judiciary could not be impervious to democratic preferences if the agenda-setting powers and guardianship powers of institutions such as the military are effectively curtailed.

The third condition is related to the policies that regulate appointment of the judges and access to the courts. Constitutional courts remain subservient to the government as long as presidents or parliamentary majorities have control over the appointment and promotion procedures.(FN81) Moreover, constitutional courts are more effective in protecting vulnerable minorities and individuals if these groups have direct and open access to courts. In Turkey this is not the case. Only lower courts, the president, political parties with at least twenty members in the parliament, and one-fifth of the members of the parliament can apply to the constitutional court. As a result, ethnic minorities such as the Kurds, who are not substantially represented in the parliament,(FN82) could not take discriminatory practices and laws to the Constitutional Court.(FN83)

CONCLUDING REMARKS

The persistence of exclusive and holistic understandings of Islam poses a unique challenge to the sustainability of liberal democracy Neither the guardianship regimes embodied by the Iranian and Turkish republics nor Islamic democracy provides a viable model that overcomes the tension between constitutionalism and democracy However, a conflict between these two principles in Islamic societies is avoidable. Judicial review that is sanctioned by democratically written, liberal constitutions, is not guarded by non-elected institutions, and provides open access to citizens, offers the best protection of individual and minority rights in Islamic societies.

ADDED MATERIAL

Güneş Mural Tezcür Loyola University Chicago

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FOOTNOTES

1. Robert A. Dahl, Democracy and its Critics (New Haven: Yale University Press, 1989), 52.
2. Hannah Arendt, On Revolution (New York: Penguin Books. 1963), 159-65.
3. Arendt, On Revolution, 185-205.
4. Mitchell Meltzer, Secular Revelations: The Constitution of the United States and Classical American Literature (Cambridge: Harvard University Press, 2005), 1-6.
5. Arendt, On Revolution, 202.
6. For a discussion of the differences between republicanism and democracy see Arlene W Saxonhouse, “Democratic, Republican, and Liberal Regimes — The One or the Many” presented at the European University, St. Petersburg, May 2001.
7. In a seminal essay Arjomand defines “ideological constitutions” as documents characterized by an inherent tension between popular sovereignty and transcendental ideas that justify the exclusive rule of the regime elite. Said A, Arjomand, “Constitutions and the Struggle for Political Order: A Study in the Modernization of Political Traditions,” European Journal of Sociology 33 (1992): 39-82, Also see, Hootan Shambayati, “A Tale of Two Mayors,” international Journal of Middle East Studies 36 (2004): 253-75.
8. According to Arjomand, “ideological constitutions” have been the most common outcome of the constitution-making activities that took place in the Third World from the Russian Revolution to the collapse of the Berlin Wall. Said A. Arjomand, “Law, Political Reconstruction and Constitutional Politics,” International Sociology 18 (2003): 7-32.

9. Daniel Brumberg, Reinventing Khomeini: The Struggle for Reform in Iran (Chicago: The University of Chicago Press, 2001).
10. Said Amir Arjomand, "ideological Revolution in Shi'ism," in Authority and Political Culture in Shi'isms, ed. Said Amir Arjomand (Albany: State University of New York Press, 1988).
11. For instance, see his interview with Hamid Algar conducted after the revolution, in Ruhollah Khomeini, Islam and Revolution: Writings and Declarations of Imam Khomeini (Berkeley Mizan Press 1981), 329-43.
12. Yet the potential for conflict between the principle of clerical rule and the Islamic ideology that appeals to educated, professional, young revolutionaries has always been present and contributed to the formation of factions in the Islamic Republic. Hamid Dabashi, Theology of Discontent The Ideological Foundation of the Islamic Revolution in han (New York: New York University Press, 1993). 491-93.
13. Marja-e taqlid is a label used for the most prominent members of the clergy who gather a personal following and become a source of imitation.
14. His vision, the Islamic state has primacy over Islamic laws. Asghar Schirazi, The Constitution of Iran: Politics and the State in the Islamic Republic, translated by John O'Kane (London and New York:I.B Tauris, 1998), 64.
15. Olivier Roy "The Crisis of Religious Legitimacy in Iran," The Middle East Journal 53 (1999): 201-17.
16. See his remarks on the 24th anniversary of the Iranian Revolution, quoted by the Associated Press, February 1, 2003.
17. For a detailed analysis of the judiciary see Keyvan Tabari, "The Rule of Law and the Politics of Reform in Iran," International Sociology 18 (2003): 96-113.
18. In fact, Islamization has been equated with clerical rule. Mehran Tamadonfar, "Islam, Law, and Political Control in Contemporary Iran," Journal for the Scientific Study of Religion 40 (2001): 205-20.
19. The interior minister of the first Khatami government, Nouri, was tried by the SCC on very arbitrary charges and sentenced to five years in prison. Said A. Arjomand, "Civil Society and the Rule of Law in the Constitutional Politics of Iran under Khatami," Social Research 67 (2000): 283-301.
20. H.E. Chebabi, "The Political Regime of the Islamic Republic of Iran in Comparative Perspective," Government and Opposition 36 (2001): 48-70.
21. For an interpretation of Turkish Revolution, see Şerif A. Mardin, "Ideology and Religion in the Turkish Revolution," International Journal of Middle Eastern Studies 2 (1971): 197-211.
22. Niyazi Berkes. Türkiye'de Çagdaşlaşma [The Development of Secularism in Turkey] (Istanbul: Yapi Kredi Yayinlan, [1964] 2002).
23. Hanioğlu argues that the official ideology of the Turkish Republic was shaped in the period from 1889 to 1902. M. Şükrü. Hanioğlu. The Young Turks in Opposition (New York: Oxford Univeisity Press, 1995).
24. Ghazi Mustafa Kemal, Nutuk [Oration] (Ankara: [1981] 1999), 943; 1133-35.
25. For the defenders of the secularist Republic, secularism as practiced in Turkey, has to be different from the secularism of advanced countries because popular Islam is ridden with superstitions and falsities. Zafer Tank Tunaya, Türkiye'de Siyasal Gelişmeler [1876-1938] [Political Developments in Turkey (1876-1938)] (Istanbul: Bilgi Üniversitesi Yayinlan, 2002), 141-45. Also, see the comments of Kemal's characterization of the first organized opposition party of the Republic, Nutuk, 1185.
26. Kemal, Nutuk, 595.
27. Kemal, Nutuk, 21-23.

28. A powerful argument against the secular-nationalism modernization model has been articulated by Şerif Mardin, Din ve Ideoloji [Religion and Ideology] (Istanbul: Iletişim Yayinlan, 1997).
29. The idea of "popular legitimacy" had been the guiding principle and justification of Kemal's actions. Kemal, Nutuk, 589.
30. For a comprehensive study of the history of RAD, see Istar B. Tarhanh, Müslüman toplum "taik" devlet: Türkiye'de Diyanet Işteri Başkanhği [Muslim Society "Laic" State: Religious Affairs Directory in Turkey] (Istanbul: AFA Yayinlan, 1993).
31. Fora liberal interpretation of liberalism, see Ali Fuat Başgil, Din ve Laiklik [Religion and Laicism] (Istanbul: Kubbealti Nesriyati, [1954] 1998).
32. Ümit Cizre Sakalhoğlu, "Parameters and Strategies of Islam-State Interaction in Republican Turkey", International Journal of Middle East Studies 23 (1996): 231-51.
33. The 1982 Constitution institutionalized the military's power in security issues by creating the powerful National Security Council (NSC). See, Ümlt Cizre Sakalhoğlu "The Anatomy of the Turkish Military's Political Autonom," Comparative Politics 29 (1997): 151-66.
34. The case against Refah was first filed in May 1997, and the case against Fazilet in May 1999. The original documents of the prosecution, the defense, and the court decisions are available online at http://www.anayasa.gov.tr, in Turkish.
35. Article 69 empowers the Principal State Counsel to ask for the ban of political parties.
36. The Principal State Counsel of the Turkish Republic. Case against Refah Partisi, Ankara:May 21, 1997.
37. The Principal State Counsel of the Turkish Republic, Case against Fazilet Partisi, Ankara: May 7, 1999, emphasis added.
38. The European Court of Human Rights, Case of Refah Partisi and Others v. Turkey: Judgment, Strasbourg: February 13, 2003. Available at http://www.echr.coe.int/echr.
39. The European Court of Human Rights, Case of Leyla Şahin a Turkey: Judgment, Strasbourg: November 10, 2005. Available at http://www.echr.coe.int/echr.
40. Reported by NTV on April 27, 2006.
41. According to a survey conducted in Turkey in 2001, 96 percent of Turkish citizens declare Islam as their religious denomination, more than 90 percent of them derive comfort and strength from religion, and almost 80 percent claim that God is very Important in their lives. Available at http://www.worldvaluessurvey.org.
42. The notion of Islamic democracy Is articulated in Noah Feldman After Jihad: America and the Struggle for Islamic Democracy (New York: Farrar, Straus and Giroux, 2004).
43. Audi emphasizes the importance of freedom from religion and the divisive and polarizing nature of religious disagreements. Robert Audi, "The State, the Church, and the Citizen," in Religion and Contemporary liberalism, ed, Paul J. Weithman (Notre Dame; University of Notre Dame Press, 1997).
44. Bader suggests that religions that have became accommodative of secular reason and eschewed fundamentalist claims should be accommodated by democracy. Baders point inevitably makes it most germane to ask which religions qualify for this accommodation and how we can know this. Veit Bader, "Religious Pluralism: Secularism or Priority for Democracy?" Political Theory 27 (1999): 597-633.
45. Ronald Thiemann, "Public Religion: Bane or Blessing for Democracy?" in Obligations of Citizenship and Demands of Faith, ed. Nancy L Rosenblum (Princeton, Princeton University Press, 2000), 73-89; and Christopher J. Eberle, Religious Convictions in Liberal Politics (New York: Cambridge University Press 2002).
46. Philip Hamburger, Separation of Church and State (Cambridge: Harvard University Press, 2004).

47. Veit Bader, "Religious Diversity and Democratic Institutional Pluralism," Political Theory 31 (2003): 265-94.
48. For Iraq, see Mark Tessler, Mansor Moaddel, and Ronald Inglehart, "What do Iraqis Want?" Journal of Democracy 17 (2006): 38-50.
49. Gilles Kepel, The War for Muslim Minds (Cambridge: Harvard University Press, 2004).
50. For instance, see Ahmad S. Moussalli, The Islamic Quest for Democracy, Pluralism, and Human Rights (Gainesville: University Press of Florida, 2001).
51. Fareed Zakaria, The Future of Freedom: The Illiberal Democracy at Home and Abroad (New York: W.W. Norton: 2003), 119-59.
52. Jose Casanova, Public Religions in the Modern World (Chicago: Chicago University Press, 1994), 55-58.
53. Gabriel A. Almond, Scott Appleby, and Emmanuel Sivan, Strong Religion: The Rise of Fundamentalisms around the World (Chicago: University of Chicago Press, 2003).
54. Casanova, Public Religion, 20-25.
55. Nancy L. Rosenblum, "Pluralism, Integralism, and Political Theories of Religious Accomodation," in Obligations of Citizenship and Demands of Faith, 3-31. 56. For a rich discussion of different models of secularism adapted by three liberal-democracies, see Gary Jacobsohn, The Wheel of Law: India's Secularism in Comparative Perspective (Princeton: Princeton University Press, 2003).
57. For instance, according to a survey conducted in Iraq in 2004, only 17 percent of respondents agree with "Islam requires woman to dress modestly but does not require cover face with veil" Fifty percent agree that only laws of the shari'a should be applied. Available at http://www.worldvaluessurvey.org.
58. An English translation of the ultimate draft of the constitution is available at http://www.niqash.org/content.php?contenrrypeID=81&id=1146. For a critical evaluation of the constitution, see Nathan J. Brown, "Is Political Consensus Possible for Iraq?" Carnegie Endowment Policy Outlook 23 (2005). Available at www.camegieendowment.com.
59. Güneş Mural Tezcür, "How do Political Religious Groups Develop Sustainable Democratic Commitments: The Cases of Iran and Turkey" (Ph.D. diss., University of Michigan. 2005); 250-51.
60. See Guillermo O'Donnell, "Why the Rule of Law Mattere," Journal of Democracy 15 (2004): 32-46, for a critical appraisal of "judicial independence."
61. For Latin America, see Patricio Navia and Julio Rios Figueroa, "The Constitutional Adjudication Mosaic of Latin America," Comparative Political Studies 38 (2005): 189-217; for China, Korea, and Mongolia see Tom Ginsburg, Judicial Review in New Democracies (New York: Cambridge University Press, 2003).
62. Martin Shapiro, "The Success of Judicial Review" in On Law, Politics, & Judicialization, ed. Martin Shapiro and Alec Stone Sweet (New York: Oxford University Press, 2002), 149-83.
63. Kim Lane Scheppele, "Constitutional Negotiations: Political Contexts of Judicial Activism in Post-Soviet Europe," Internationa) Sociology 18 (2003): 219-38.
64. Cass Sunstein, Designing Democracy: What Constitutions Do (New York: Oxford University Press, 2001), 6-7. Also see, Stephen Holmes, "Precommitment and the Paradox of Democracy," in Constitutionalism and Democracy ed. Jon Elster and Rune Slagstad (New York: Cambridge University Press, 1988), 195-240; and Aharon Barak, "The Role of the Supreme Court in a Democracy", Israeli Studies 3 (1998): 6-28.
65. Nancy Maveety and Anne Crosskopf, "Constrained Constitutional Courts as Conduits for Democratic Consolidation," Law and Society Review 38 (2004), 432-70.
66. Samuel Issacharoff, "Constitutionalizing Democracy in Fractured Societies," Texas Law Review 82 (2004): 1861-03. A successful federalism for ethnically divided societies

entails strong judicial review. Arend Lijphart, "The Wave of Power-Sharing Democracy", in The Architecture of Democracy ed. Andrew Reynolds (New York: Oxford University Press, 2002), 51-52.
67. Ran Hirschl, "The Political Origins of the New Constitutionalism", Indiana Journal of Global Legal Studies 11 (2004): 71-108.
68. Ran Hirschl, Towards Juristocracy: The Origins and Consequences of the New Constitutionalism (Cambridge: Harvard University Press, 2004). See also, Ran Hirschl, "Constitutional Courts versus Religious Fundamentalism: Three Middle Eastern Tales," Texas Law Review 82 (2004): 1819-60.
69. Arendt, On Revolution, 145.
70. For Iran, see Asghar Schirazi, The Constitution of Iran, 22-58.
71. After an amendment in 2001, the dissolution of a party now requires three-fifth of the votes in the Constitutional Court rather than a simple majority.
72. This is consistent with what Ackerman labels as "constrained parliamentarism." Bruce Ackerman, "The New Separation of Powers," Harvard Law Review 113 (2000): 633-729.
73. For the 1906 Constitution, see Janet Afary, Iranian Constitutional Revolution, 1906-1I Grassroots Democracy Social Democracy, and the Origins of Feminism (New York: Columbia University Press, 199b).
74. Ginsburg, Judicial Review in New Democracies, 25. Juan Linz and Alfred Stepan, Problems of Democratic Transition and Consolidation (Baltimore: John Hopkins Press, 1996), 10.
75. Hirschl, Towanls Juristocracy.
76. Ran Hirsch, "The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions," Law and Social Inquiry 25 (1990): 91-149.
77. J. Mark Ramseyer and Eric Rasmusen, "Why are Japanese Judges So Conservative in Politically Charged Cases?" American Political Science Review 331 (2001): 331-44.
78. Lee Epstein, Jack Knight, and Olga Shvetsova, "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government," Law and Society Review 117 (2001): 117-64.
79. Alec Stone Sweet, Governing with Judges: Constitutional Politics in Europe (Oxford: Oxford University Press, 200), 90, 200.
80. Gretchen Helmke, "The Logic of Strategic Defection: Court-Executive Relations in Argentina under Dictatorship and Democracy," American Political Science Review 96 (2002): 291-303.
81. For this reason, while many Arab regimes have constitutional courts, they have been very ineffective. Nathan J. Brown, "Judicial Review and the Arab World," Journal of Democracy 9 (1998): 85-99.
82. Parties that fail to receive 10 percent of the national vote are not allowed to have any parliamentary representation. This electoral law effectively disenfranchises a large segment of Kurdish voters.
83. This may prove to be futile in any case as the Constitution Court has dissolved nine Kurdish nationalist parties since 1980. See Dicle Koğacioğlu, "Progress, Unity and Democracy: Dissolving Political Parties in Turkey" Law and Society Review 38 (2004): 433-61.