

## A state which claims its supreme leader is 'discovered' has a very difficult time running itself by and through law

By Haider Hamoudi

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"The supreme leader is discovered, not elected." Such was the mantra of many of those who opposed the recent efforts of the Assembly of Experts, led by its president Ali Akbar Hashemi Rafsanjani, to evaluate the supreme leader, Ali Khamenei. The discovery was the latest turn of events in the enduring saga of political turmoil brought about by the recent, highly suspect, presidential elections in Iran.

As expected, the Assembly ended up pledging "firm support" for the supreme leader, but the more interesting dimension was the nature of this particular form of opposition. It revealed the constitutional schizophrenia surrounding the nature of the Islamic Republic, or indeed any state that imbues its leadership with some notion of divine selection.

At its core, the claim that a state's leader is "discovered" by humanity (after having been chosen by God or his representative, we must assume) is a metaphysical claim of religious truth. As with any other religious truth-claim, from "Christ died for our sins" to "an angel of God spoke to God's Messenger in a cave," it bears significance only to those who believe it, and carries no legitimacy beyond the believers. Under such a theory, one must accept the decision of the anointed, or "discovered," leader, or renounce a central truth-claim.

Recent statements that a challenge to Khamenei is ultimately an act of apostasy that merits death, are consistent with this notion of a truth-claim.

This is not the only theory under which the Islamic Republic seems to operate. The Iranian government mixes central truth-claims with the machinery of the modern nation-state, including positive law, democratic rule, and checks and balances among government institutions. There are elections, parliamentary and presidential, and their winner is obviously not "discovered" but effectively elected, however flawed the system may be. Parliament clearly does not "discover" law, it creates it. And mantras to the contrary notwithstanding, the Assembly of Experts is permitted to remove the supreme leader.

Moreover, the Islamic Republic does refer to law when it attempts to justify itself, as much if not more than it refers to truth-claims. Quite often over the past several weeks we heard that the protestors were acting “beyond the law.” To adjudicate election fraud, it is said, “legal procedures” must be followed.

And most tellingly, in order to justify the repression that followed the contested June 12 election, the supreme leader himself argued that “nobody was above the law, our law.”

These are the positive laws promulgated by a Parliament, not discovered by a jurist. Positive law claims are of a very different sort. Here the protester is not accused of denying a truth-claim, of failing in his adherence to a metaphysical set of beliefs concerning “discovery” of the supreme leader, here he is a lawbreaker, and as with any lawbreaker, the state may demand, and coerce, obedience or exact punishment. The problem is that these two theories, one grounded in metaphysical truth-claims, the other in positivist theories of law and the state, lie in profound tension with one another.

Parliaments do not “discover” law, they create it. “Discovered” supreme leaders should face no reckoning before an Assembly. Indeed, beyond rules discovered by jurists and supreme leaders, as the case may be, laws seem fundamentally unnecessary and extraneous if God were truly guiding the leader. States organized and administered through law may well be challenged for having poorly organized laws or having misapplied them; a state run by a divinely anointed leader who has blessed a government procedure or process cannot be so challenged without coming dangerously close to the denial of the truth-claim, potentially rendering one an apostate.

These tensions, which lie at the heart of any country that claims to be guided by both Divinity and law, exploded with some force in Iran with the June 12 elections. The protestors, it was clear, were focused on questions of law and compliance therewith – in election mechanisms, in recounts, and even in the severe repression that followed. While the authorities in the Islamic Republic did also call upon law to defend themselves against charges of fraud, their own commitment to it seemed, by virtue of the truth-claims, incoherently bounded. Limited recounts, or at least a request for them as per legal process, seemed harmless enough for defenders of the regime, surely divine selection of a supreme leader does not render every government worker infallible. Yet once the legal processes for reviewing the elections ended, they were blessed by the supreme leader, and suddenly acquired a patina, not only of legal legitimacy, but of a truth-claim. Repression became far more acceptable, because protest against the law became synonymous with protest of the truth-claim, rendering one a denier of metaphysical truth and a lawbreaker all at once.

Yet on what basis can a law promulgated by Parliament and administered by government officials, be sensibly considered equivalent to a metaphysical truth-claim? If only the imprimatur of the supreme leader separates them, then the entire election seems a waste of time – one should simply ask the supreme leader to take over all government functions, delegate them as he sees best and respond to complaints about administration in any way he determines satisfactory. This is faith, not law.

I leave to others any discussion of whether or not democratic Islamic government is possible, certainly any answer would require far more nuance than I am able to provide here. But it is clear now, to the extent that it wasn't before, that a state which claims its supreme leader to be “discovered” has a very difficult time running itself by and through law.

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