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Crisis as an Institution: The Expediency Council

From your comments during the Friday prayers it would appear that you don't believe it is correct [to characterize] the state as an absolute trusteeship which God conferred upon the noble Prophet . . . and that the state is the most important of God's ordinances and has precedence over all other derived ordinances of God.¹

Khomeini in response to Khamenei (Friday Sermon, January 1, 1988)

Where, in the history of Islam, could you find a parliament, a president, a prime minister, and a cabinet? Indeed, 80% of what we do actually does not have anything to do with the history of Islam!²

Hashemi-Rafsanjani to the Majles

Introduction

The first part of this book dwelt on the trajectories that animated the history of narcotic drugs and state-led attempts at drug control. This *interregnum* – a time in between two eras – stops the historical flow to reflect on one especial institution, the Council for the Discernment of the Expediency of the State (*majma'-e tashkhis maslahat-e nezam*), which was established during a transitional phase at the end of the 1980s. Through the example of this institution, I bring under scrutiny some of the important structural changes of the post-war era. The *interregnum* also enables a pause on the broader question of what is crisis and how crisis works in the context of Iran (and of drugs politics). Many see the Reformist period as a breakthrough in Iran's post-revolutionary history, a moment when a new language on politics and an alternative way of organising society comes into being.

¹ Asghar Schirazi, *The Constitution of Iran: Politics and the State in the Islamic Republic* (IB Tauris, 1998).

² Jean-François Bayart, *L'Islam Républicain: Ankara, Téhéran, Dakar* (Albin Michel, 2011), 240; also in Abrahamian, *Khomeinism*, 15.

Yet, what *follows* reformism is truly unprecedented, a breakaway from the way government worked since 1979. This *interregnum* comes as a prelude to Part Two, where the book discusses crisis and drugs politics under the post-reformist state, headed by Mahmud Ahmadinejad (2005–13). To understand where crisis stands in post-revolutionary politics, one needs to start from its institutional organ: the Expediency Council.

On the theoretical level, the Expediency Council embodies the governmentality of the Islamic Republic on issues of crisis. Its importance stems from its role in the framing and governmental intervention in disputes, conflicts and situations that, in the words of Khomeini himself, ‘could not be solved through *normal* means’.³ The birth of this institution – which is unique to the Islamic Republic – opens up a phase where the *art of managing disorder and governing crisis* is the overarching governmental paradigm.⁴

The case of drugs policy is of especial importance to this institution, which simultaneously performs executive, legislative, and consultative tasks. All Iranian legislation is debated and, initially, formulated in the parliament (*Majles*), except for drug laws that are debated and formulated in the Expediency Council. From a political standpoint, after 1988, and more clearly since reformism, this contributed to the making of the ‘drug problem’ into a permanent crisis for the Islamic Republic. A permanent crisis which the state governs and manages through this unique political organ.

Without tackling the complex and sophistic arguments arising from the interpretation of religious law and state formation, this chapter discusses the notion of crisis in the establishment of the Expediency Council. It examines the structure and powers of the Council within the political order and analyses a few paradigmatic interventions. Finally, it considers the Council’s role and effect on drug policy, a sphere so far absent in the scholarly literature. Indirectly, the arguments presented in this *Interregnum* (Chapter 5) provide an alternative interpretation to the classical interpretation of the Islamic Republic’s politics as characterised by the rivalry between two poles of power: Ali Khamenei *versus* Hashemi Rafsanjani. By going beyond the politics of political

³ Seyfollah Sarrami, *Abkam-e Hokumati va Maslahat* (Tehran: ‘abeir, Center of Strategic Studies, 2001 [1380]). Emphasis added.

⁴ A similar institution might be the French *Conseil d’état*.

leaders, the chapter unveils processes of state formation that are at odds with the reading of Iran's politics as divided into personalities belonging to the reformist, moderate/pragmatist and fundamentalist camps.⁵ Instead, it unpacks the state's logics on crisis and its political practice, the way power operates in laws and society. In this way, the chapter provides a new frame of reference to discuss how politics works in Iran, one that goes beyond the factional frame dividing personalities into 'conservatives' and 'reformists', 'the regime' and the rest.

Where Does Expediency Stand? Constitutional Revisions and Governmental Ordinances

It is unclear when the Expediency Council was first established. Complex but less ambiguous – albeit ambiguous nonetheless – is its place within the institutional framework of the Islamic Republic starting from the post-war period. In synopsis: the maximum authority in the Islamic Republic is the Supreme Leader and *vali-ye faqih*, who oversees all branches of the state; the head of the executive branch – the president – is elected through popular vote whereas the elections are scrutinised and 'filtered' by the Guardian Council. The latter is also charged with evaluation of all laws voted in the legislative branch, the parliament (*Majles-e Shura-ye Eslami*). The composition of the Guardian Council is made of six clerics appointed by the Supreme Leader and six jurists selected by the Parliament. When the legislative process is bogged down by a clash between the laws proposed by the Parliament and the Guardian Council – as has historically happened – the matter is referred to the Expediency Council. Although conflict resolution between Parliament and Guardian Council was the initial duty of the Expediency Council, the latter have expanded its authority to other influential domains, which include executive, legislative and supervisory powers. I shall trace how the Council acquired such powers:

The constitutional changes that took place at the end of the 1980s exemplify the political transformation occurring at the heart of the Islamic Republic. On April 24, 1989, forty days before his death, Khomeini sent a letter to the then-president of the Republic Ali Khamenei requesting the creation of

⁵ With all the variations of the case depending on the lexicon adopted by different authors. See Anoushiravan Ehteshami and Mahjoob Zweiri, *Iran and the Rise of Its Neoconservatives: The Politics of Tehran's Silent Revolution* (IB Tauris, 2007).

a Council for the Revision of the Constitution (*shura-ye baznegari qanun-e asasi*). Khomeini's decree addressed two main questions: leadership; and constitutional recognition of the Expediency Council of the State, the latter having been created in 1986 as a temporary institution to solve the stalemate between the Parliament and the Guardian Council.⁶

The revisions of the Constitution included cosmetic/ideological changes, such as the re-labelling of the Parliament from *majles-e shura-ye melli* (national council) to *majles-e shura-ye eslami* (Islamic council), to more structural amendments, such as the abolition of the post of Prime Minister and the transfer of the latter's duties to the Presidency. In addition, the Supreme Judiciary Council, tasked with all matters related to justice, was replaced by the Head of the Judiciary, directly appointed by the Supreme Leader.⁷ The highest political authority in the Islamic Republic remained the Supreme Leader, who just before Khomeini's death had seen its office strengthened with new powers, upgrading it to the *velayat-e motlaq-e faqih*, 'absolute guardianship of the jurist'. This new attribute allowed the leadership to issue 'governmental ordinances' (*ahkam-e hokumati*) when the political order (*nezam*) experienced instability, crisis or disorder.⁸

Since the Parliament could not legislate outside the remit of the Constitution *and* of the official religion (i.e. Islamic law as interpreted by the Guardian Council), the governmental ordinances were meant to address those situations in which standard political intervention was problematic. The ordinances were based on two key elements: 'the *ejtihad-e mostamerr* (permanent interpretative effort of the jurist), expected to update its interpretation of religious laws according to the changing of times'; and 'the acknowledgment of advanced sciences [*'olum*], arts [*fonun*] and experiences [*tajarob*] of mankind and their effort towards progress'.⁹ In other words, the governmental power

⁶ Said Amir Arjomand and Nathan J Brown, *The Rule of Law, Islam, and Constitutional Politics in Egypt and Iran* (SUNY Press, 2013), 33. While Arjomand refers to this institution as 'Maslahat Council' and Schirazi calls it 'Assessment Council', I prefer to adopt the official jargon used by the Iranian authorities. In Persian, politicians and commentators usually refer to this institution simply as *majma'* (Council) or *maslahat-e nezam* (State Expediency).

⁷ Ibid.

⁸ *Nezam* is the Persian/Arabic word for 'system'. Its etymological origin however hints at the Arabic root 'nzm', indicating 'order'. As such, the word *nezam* could be interpreted as 'political order'.

⁹ Sarrami, *Ahkam-e Hokumati*.

brought in by the constitutional revision institutionalised the short-term political expediency that had characterised the management of the war and its politics of crisis, to which the creation and institutionalisation of the Expediency Council was the most paradigmatic response. I shall now provide a timeline of the birth of the Expediency Council and its relation to the idea of ‘state’ and ‘crisis’.

The Genesis of the Expediency Council

Not much has been said about the Expediency Council in the academic literature. Generally, reference to this institution is limited to a few lines, or a paragraph, detailing its birth in the late 1980s and its role as mediator between the *Majles* and the Guardian Council. Nonetheless, in the hierarchy of the Islamic Republic, the Expediency Council stands at the very top of the political machinery, in a symbiotic relationship with the Office of the Supreme Leader (*daftar-e maqam-e mo'azzam-e rahbari*), and has affected processes of state formation at fundamental historical junctures.

Schirazi holds that, in practice, the Expediency Council had existed since 1981 as ‘an authority that can go over the head of the official government and decide on the most important questions of policy’.¹⁰ Its *modus operandi*, behind the scenes, might have paralleled that of other unelected councils with legislative power in the early 1980s, such as the Supreme Council of the Cultural Revolution and the Supreme Council supporting the War and that of Reconstruction.¹¹ If this is the case – plausible given the practice of holding informal high-ranking meetings outside government venues – the Council started its activities coterminous to the critical period of state formation after the revolution. One could interpret it as the materialisation of state prerogatives amid the multiple moral and political constraints of the early 1980s.

It is worth noting that, up to the end of the war, the state-making approach accentuated, haphazardly, the notion of ‘rule of emergency’ in order to circumvent religious impediments. Based on the Koranic assumption that ‘emergencies make it permissible to do what is forbidden’, the Iranian state resorted, on a number of occasions, to this ploy to bring forth crucial political projects, not dissimilar to the way harm reduction would be introduced in the 2000s.¹² The rulings approved by the Parliament through this process were considered

¹⁰ Schirazi, *The Constitution*, 95. ¹¹ Cf. *Ibid.*, 64–5. ¹² *Ibid.*, 175.

zarurat, ‘necessity’, and implemented as an experiment without going through the vetting process of the Guardian Council.¹³ Yet, the use of emergency as a device of governance lacked institutional venues and it addressed mostly the demands, expectations and social vibrations following the revolution and the war efforts.¹⁴ Other issues remained blocked amid the stalemate between the Guardian Council and the Parliament. The three branches of the state eventually sent a letter to Khomeini requesting further clarification on how to enact a governmental ordinance. Khomeini, after having upheld that ‘government . . . is one of the principle rules [*ahkam*] of Islam and it stands above all other rulings including prayer, fasting and hajj’;¹⁵ responded with a groundbreaking paragraph in which he paved the way the establishment of the Expediency Council. The letter concludes with these lines:

bear in mind that the interest of the political order [*maslahat-e nezam*] is among the important issues that, if ignored, can cause the failure of our dear Islam. Today the world of Islam considers the Islamic Republic of Iran a universal sign for the solution of its problems. The interest of the political order and the people [*maslahat nezam-e va mardom*] is a fundamental issue that if opposed . . . might leave way to the American Islam of the arrogant and powerful with all the billions from within and without. (February 5, 1988)¹⁶

Khomeini, as such, claimed that governance was the core element of Islam, acknowledging the centrality of politics to the government especially in an *Islamic* state.¹⁷ This implied, as Saeed Hajjarian holds, acknowledging ‘the dynamicity of religious thought in its applicability with the requirements of the historical era and to the solution of problems and insufficiencies of society’.¹⁸ One could add that there is an apparent

¹³ *Majmu’e Mosavat-e Majma’e Tashkhis-e Maslahat-e Nezam* [Collection of Decrees of the Expediency Council], Directory of the Expediency Council (Tehran: Expediency Council, 1388 [2009]). I leave aside, begrudgingly, the political theological side of this debate, which is increasingly a matter of research. See Rejali, *Torture & Modernity*, 137–9.

¹⁴ Examples of these are the call for radical interpretation of Land Reform, Rent Reform, Domestic and Foreign Trade. See Schirazi, *The Constitution*, 185–202.

¹⁵ *Majmu’e Mosavat*, 13. The passage is quoted, similarly, in Arjomand, *The Rule of Law*, 33.

¹⁶ *Majmu’e Mosavat*, 13.

¹⁷ Cf. Naser Ghobadzadeh, *Religious Secularity: A Theological Challenge to the Islamic State* (Oxford University Press, 2014), 27.

¹⁸ Saeed Hajjarian, *Jomhuriyat; Afsunzodayi Az Qodrat* (Tehran: Tarh-e Nou, 1379).

oxymoronic value in this statement: in order to save Islam from the danger of the secular world (the *American Islam*), the Islamic Republic needs to think outside Islam. It needs to become profane, in the etymological sense of *pro-fanum* that is: 'to stand out of the temple' (of religion), in the form of a secular Islam, or of a religion that engages with the world and its time.

If one pays heed to the Articles of the Constitution as revised in 1988, references to the Expediency Council occur in sections in which a situation of urgency or crisis is contemplated. Article 112 legitimises its establishment and defines its main duties:

Upon order of the Supreme Leader, the Expediency Council should meet at any time the Guardian Council judges a bill proposed by the Majles to be against the principles of *shari'ah* or the Constitution . . . Also the Council should meet for consideration on any issue forwarded to it by the Supreme Leader.¹⁹

Article 110 lists the responsibilities of the Supreme Leader, among which stands out 'the resolution of the political order's problems which are not solvable in a normal way (*az tariq-e 'adi*), through the Council for the Discernment of the Expediency of the Political Order'.²⁰ This article enshrined the primacy of political reason in matters of statecraft and policymaking, the implication being that Islam *cannot* alone be the solution to all problems, very much opposite to what Islamists have historically held (e.g. 'Islam is the solution'). To further strengthen the contingency/crisis nature of the council, Article 111 establishes that,

If the leader is incapable of governing . . . a council is formed with the president, head of Judiciary, one of the jurists of the Guardian Council as chosen by the Expediency Council . . . If for any reason one of the members of this temporary council cannot fulfil his role, the Expediency Council will appoint another in his place, maintaining the majority of clerics in the council.²¹

Finally, Article 177 allows the revision of the Constitution only when the Supreme Leader, *after consultation with the Expediency Council*, indicates which parts of the text need to be amended.²² With the enshrining of this institution within the structure of the Islamic Republic, the state acquired the capacity to intervene in spheres that were religiously controversial, beside making space for a conflict management institution. More importantly, Khomeini did not bestow the

¹⁹ Sarrami, *Abkam-e Hokumati*. ²⁰ *Majmu'e Mosavabat*, 42–4. ²¹ *Ibid.*,
²² *Ibid.*

institution of the *velayat-e faqih* (and religious law more generally) with the ultimate power to rule over all matters of urgency that regard the state. It had made the state itself, through the Council, the ultimate authority on all matters.²³ Inevitably, this epochal transformation triggered criticism and a debate around the legitimacy of this paradigm of government.²⁴

‘Gazing Eye, Thoughtful Brain’: Structures & Powers

The Expediency Council can be described as the regime in a nutshell. It comprises the leading figures of the political order from all branches of the state. Every member is directly appointed by the Supreme Leader and holds a post for a renewable five-year term. There has been continuity in the membership of the Council, with a progressive increase of its size, although members who were at odds with the regime (e.g. Mir-Hossein Musavi) have not seen their posts renewed. Presidents of the republic have regularly been appointed to the Council, as well as the Heads of Judiciary, members of the Guardian Council, influential IRGC commanders, Directors of the National Security Council as well as Speakers of Parliament. Inevitably, clerical elements dominated the Council, although laymen have seen their numbers on the rise.²⁵ Read against the grain of its principle task – the interest of the political order (and not simply that of mediating conflicts between different state branches) – the presence of clerics may have contributed to a further secularisation of their attitudes when faced with political contingency of the profane type.²⁶ The Council’s interventions, too, are indicators of consistency and political logics governing the Iranian state over several decades and through different political

²³ Ayatollah Azari Qomi points to a similar dynamic when discussing the transformation brought about by the installation of the Council. See Schirazi, *The Constitution*, 231.

²⁴ See Sarrami, *Abkam-e Hokumati*, 149, 291; and *Fars*, November 30, 2015, retrieved from www.farsnews.com/13940908001164.

²⁵ It is no surprise that women have been excluded from the council’s assembly, since women have yet to occupy top offices such as the presidency, the judiciary, etc. Female ministers, judges and vice-presidents have taken part in the specialised meetings; female experts have also been invited to advise the Council on specific issues.

²⁶ The Council appointed by Khamenei in 2011 is made up of fourteen clerics and twenty-two lay members. Two of its non-clerical members have passed away since, reducing the number of laymen to twenty. See Expediency Council, ‘Shura-ye Majma’e’ <http://maslahat.ir/DocLib2/Irec%20Pillars/Irec%20council.aspx>.

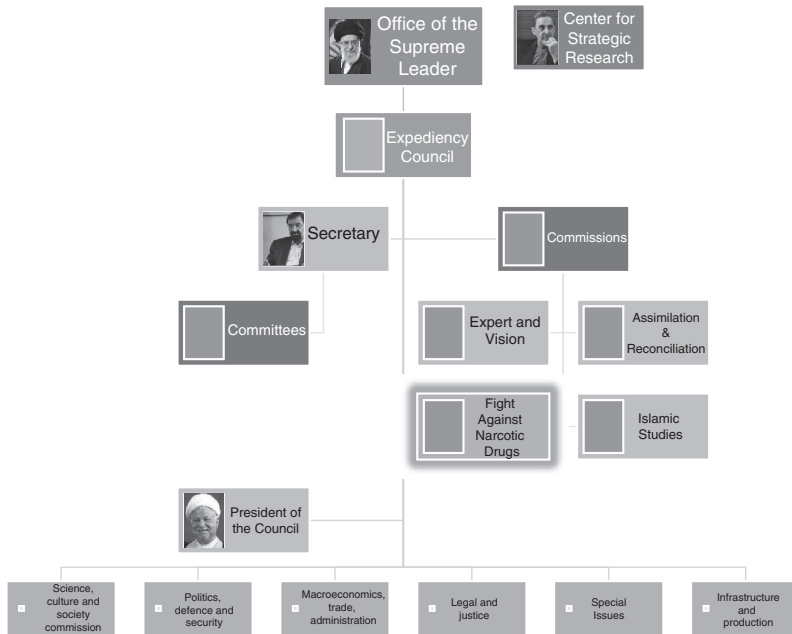


Figure 5.1 Structure of the Expediency Council

The current president of the Council is Sadegh Ardeshir Amoli Larijani, who succeeded Mahmoud Hashemi Shahroudi, appointed following Hashemi-Rafsanjani's death in 2017 and deceased in December 2018. The Table includes Hashemi-Rafsanjani's picture because he has been the longstanding figure at the head of the Council.

environments: reformism (Khatami), populism (Ahmadinejad) and centrism/pragmatism (Rouhani).

On February 20, 1997, Khamenei issued a decree in which he outlined the new duties of the Expediency Council, adding to the constitutional duties, 'the powers to determine the general policies of the state and major questions of the country; tackling of important issues on request of the Leadership as well as advising the Leadership'.²⁷ Since then, the Expediency Council has operated as a Leadership Headquarters on all political matters. In the words of its general secretary Mohsen Rezaei, 'the Leadership needs an expert institution *with a gazing eye and a thoughtful brain*',²⁸ and the Council has been unavoidably regarded as the only institution capable of operating as such (Figure 5.1).

²⁷ Hajjarian, *Jomhuriyat*, 414. ²⁸ *Ibid.*, 417. Emphasis added.

The Council adopts a secular structure divided into the following: presidency (Hashemi Rafsanjani: 1989–2017; Hashemi Shahrudi: 2017–2018; Amoli Larijani 2019–); secretary (Mohsen Rezaei: 1997–) under which operate several specialised commissions; six permanent commissions; and the Centre of Strategic Studies acting as a research tool to the Council.²⁹ Each permanent commission has a chairman, a deputy and a secretary, and is expected to examine bills and proposals from the specialised commissions.

They are divided according to the following fields:

- 1 Science, culture and society commission;
- 2 Politics, defence and security;
- 3 Infrastructure and production;
- 4 Macroeconomics, trade and administration;
- 5 Legal and justice.
- 6 Special Issues.³⁰

Four specialised committees operate instead under the Secretariat of the Council:

- 1 Experts and Visions/Prospects (*cheshmandaz*);
- 2 Assimilation/Reconciliation (*talfiq*);
- 3 Fight against Smuggling and Narcotic Drugs;
- 4 Islamic Studies.³¹

Overall, the only independent specialised committee dealing with a specific social and political urgency within the Expediency Council is the Drug Policy Commission. Beside the above-mentioned duty to solve those problems of the Islamic political order that cannot otherwise find a ‘normal’ solution, the Council performs its multiple duties according to an internal regulation which stresses, repeatedly, the use of ‘the most updated findings of expertise’, ‘the use of practical, developmental and foundational researches within the country’s research centres’, and ‘the use of experts from public and private sectors’ in the determination of its decisions.³²

²⁹ After Hassan Rouhani’s election to the presidency in 2013, Khamenei appointed his long-term advisor on foreign policy, Ali Akbar Velayati, as director of the Centre, before dismantling the Centre in 2017.

³⁰ *Majmu’e Mosavabat*. An additional commission is named ‘Special Affairs’.

³¹ Expediency Council, ‘Dabirxhane-Ye Majma’e’ <http://maslahat.ir/DocLib2/Irec%20Pillars/Irec%20Secretariate.aspx>.

³² Respectively Article 4 and 15 of the Internal Regulations of the Expediency Council.

Khamenei himself highlighted these aspects of the policymaking process at the heart of the Council. After the end of the war and the death of Khomeini, Khamenei revealed, the leadership sought to make use of the Council as 'a collection of thoughts, interpretative efforts [*ejtehad*], expertise [*karshenasi*], experiences and adherence to the traditions and observance of the interest [*maslahat*']'. The Leader invited those taking part in it 'to go beyond *factions* in the meeting of the Council. Here the question is the interest of the country'.³³ If one goes beyond the rhetorical aspects of this message, the lack of any direct or indirect reference (apart from an opening eulogy) to Islam, religion or, for that matter, moral codes is emblematic of the mechanisms embodied in this institutional body. Operating as profane venue of confrontation among long-term political figures of the Islamic Republic, the Council also enjoys especial powers in terms of policymaking, beyond that of resolving conflicts between the Guardian Council and the Parliament.

Between the year of its establishment and its formalisation in the Constitution, the Expediency Council was authorised to pass laws without mediation from other state institutions, including the main legislative body of the country, the *Majles*.³⁴ Thus, the Council entrusted itself with fundamental legislative powers, as an extension to the Supreme Leader's authority to solve problems *unconventionally*. The body had potentially far-reaching powers, exploited, however, only in times of policy bottleneck, urgency and crisis. Neither the Parliament nor the Guardian Council can modify laws approved by the Expediency Council. Once the Council approves a legislation, the only procedure through which the law can be updated, cancelled or reformed is another deliberation of the Council itself. Other state institutions cannot audit and investigate the Council's work without the Leader's consent, a fact that represents a strong exception given Iran's parliament *de jure* comprehensive auditing powers.³⁵ The Council being unelected, these issues hint at a fundamental democratic and republican deficit, which gains momentum in times of political crisis, and highlight the negligible checks and balances structure. But it also guarantees systemic harmony when the political order is under pressure.

³³ Ibid. Emphasis added.

³⁴ Silvia Tellenbach, 'Principle of Legality in the Iranian Constitutional and Criminal Law' in Arjomand, *The Rule of Law*, 104–6.

³⁵ Farideh Farhi, 'Constitutionalism and Parliamentary Struggle for Relevance and Independence' in Arjomand, *The Rule of Law*, 129.

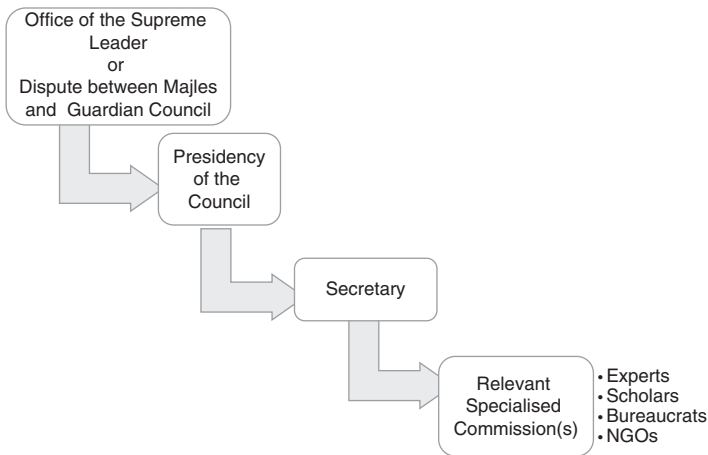


Figure 5.2 Policy Itinerary within the Expediency Council

But how does the actual process of policy formulation work within the Expediency Council?

At receipt of a request for intervention, whether by the Leader or by the Parliament (in case of stalemate), the presidency of the Council refers the dispute or the question to the secretary, which then introduces the matter to one of the relevant specialised commissions (under the Secretariat). The latter investigates the request in collaboration with the specialised independent committees (such as the Drug Policy Committee), which expresses its opinion after evaluation and assessment by inviting experts on the issue; it then sends back the issue to the permanent commission of the Council. The latter evaluates it and, if it deems the proposal relevant and solid, the question is sent to the Council's assembly for a final vote (Figure 5.2). The deliberations of the Council are on nominal majority vote and need the endorsement of the Supreme Leader, a procedure that has hitherto been a formality. The Expediency Council, indeed, is the arena of confrontation at the core of the Islamic Republic. The lower-level investigative commissions and committees operate through a bureaucratic apparatus made up mostly of officials connected through personal and/or professional networks to ministries and other institution of the state. In addition, each step of the evaluation happens with the participation of officials and personnel of relevant ministries, which can intervene even in the final vote of the Council. In this, the Council is characterised by

a certain flexibility in terms of its structure, membership and content of debate.

This fluidity and breadth of intervention has caused, as mentioned earlier, disapproval by members of the executive. For instance, president Hassan Rouhani criticised the interference of the Expediency Council, in which he is also an experienced member, on the drafting of the 6th Development Plan, which he argued was a priority of his government.³⁶ Similarly, the *Majles* repeatedly expressed concern over its incapability of legislating in areas in which the Council has already intervened, because other legislative branches cannot amend laws approved by the Council. Accused of having become a sort of upper house, a Senate – which in Iran’s political parlance is inherently pejorative and illegitimate (despite a revival of this idea amid the governance crisis of 2018) – the ambiguity of the Expediency Council (and its General Policies) within the political order are often questioned. At the same time, these accusations fall short when one considers the use of expert knowledge and scientific research in the justifications of the Expediency Council’s decisions. This gives further credit on the institutional consistency of the Council in spite of changing political environments from the 1990s to the 2010s.

One sector in which the Council has been permanently active and in charge is that of drug laws and drug policy.

The Expediency Council on Drug Policy

Between 1988 and 2001, the Expediency Council intervened in eight different circumstance on drug laws, marking drug legislation as the exclusive turf of this institution. While the Council has legislated on a wide spectrum of issues over the course of the last three decades, law-making has been ordinarily and legitimately carried out by the Parliament. For drug laws, in contrast, this exception has effectively been the rule. Towards the end of the 1980s, Khomeini spelled out clearly that ‘after the war, the most important question for the Islamic Republic is the problem of drugs’.³⁷ With the end of the war, state-making efforts and social intervention shifted towards the other

³⁶ *Fars*, December 20, 2015.

³⁷ Visible on posters and graffiti around the country.

'imposed war', that of drugs. As an epiphenomenon, drugs embodied a fundamental, political crisis. Instead of undertaking a standard legislative path through the *Majles*, which perhaps could have engendered mutual accusations of corruption, laxity, hypocrisy and anti-revolutionary behaviour, the Council, headed by then to-be Leader Ali Khamenei, presided over the first comprehensive draft of drug laws. It is emblematic that a most profane, yet ethically problematic, issue such as drugs became a question of *raison d'état* or *maslahat*.

On May 29, 1988, the Council approved the first Anti-Narcotics Law. This became a milestone determining the architecture of Iran's strategy on drugs for the years to come. The text included initially forty articles that systematically addressed issues of illicit drugs trafficking (opiates, cannabis, etc.), punishments and fines as well as measures of intervention for drug addicts. The text of the law did not produce a radical change in terms of measures against drug use and trafficking, but it reified a 'security and social necessity' for the state.³⁸ The objective was not to overhaul the security-oriented, punitive approach that had come into being following the Revolution. Instead, it was enshrining a legal frame for the state-led strategy on illicit drugs, updating the early 1980s approach characterised by great revolutionary zeal, but little systemic engagement. Even on this occasion, the Council's intervention was meant to be temporary and the Anti-Narcotics Law had a validity of only two years. Instead, six months after its approval, the Expediency Council abrogated the two-year validity and entrusted the execution of all drug-related matters to a newly created institution, the Drug Control Headquarters (DCHQ), established by Article 33 of the law.

According to the 1988 law, 'addiction' remained a crime punished with incarceration and fines. The law did not envisage major changes from the previous sanctions. It enhanced and reaffirmed heavy sanctions for drug trafficking, cultivation and possession (above certain quantities), it maintained the death penalty for recidivist offenders (three times) of major drug crimes, and it legitimised confiscation of property for drug dealers. Those who introduced drugs into military barracks and prisons could see their penalties augmented severely, amid reports of widespread drug (ab)use among conscripts, veterans and prisoners.

³⁸ Qahr-farkhi, *E'tiyad*, 332.

As during the 1980s, drug crimes were judged by the Revolutionary Courts, together with blasphemy and crimes against the revolution, national security and the Islamic Republic. Among the features of the revolutionary court, there is the fact that its deliberations cannot be reassessed and revised. Inevitably, this has led over the years to harsher punishments, with a weak judgement process, even in the cases that lead to death sentences. Although this provision has never been uprooted in the national drug laws, over the 1990s and, especially the 2000s, the Council introduced a number of revisions to the drug laws, with important changes regarding sanctions and welfare provisions. Because the laws approved by the Expediency Council can be revised *only* by the Council itself, the issue of drugs – and drug policy – situated itself in a condition of permanent crisis. In other words, drugs became an especial question of political consideration for the Islamic Republic, one with which elected bodies could not interfere directly, and where the highest echelons of the state needed strategic evaluation and inter-institutional compromise. This condition can be called ‘dead-end law making (*qanungozari-ye bon-bast*)’. Among the key features of this model is the necessity of reproducing crisis in order to allow for the reconsideration of previously sanctioned laws. An interview with a long-term member of the Expediency Council’s bureaucratic machinery unveils this condition:

At times, a social question [*mo‘zal-e ejtema‘i*] is not so relevant to people up to when it is transformed into a social phenomenon [*padideh-ye ejtema‘i*] which grows and grows. When its limits go further, it becomes a concern to everyone . . . Sometimes, the worse it gets [*kharab-tar besbeh*], the more it is to our advantage because it gets to a point at which we have to take a decision and when the situation looks, or is, critical then we can actually make decisions that are innovative. At that point, in political terms, you can transform the threat into an opportunity.

In 2004, the Council modified the status of the Committee on Drug Policy into a Commission given additional tasks and duties. Today, the Commission is made up of four specialised committees dedicated to drug supply reduction, drug demand reduction, strategic policies, and international and transnational relations.³⁹ The Council’s meetings on

³⁹ Expediency Council, ‘Pishineh’, retrieved from <http://maslahat.ir/Commissions/AntiDrug/DocLib/History.aspx>.

drug policy, too, have increased from one meeting every two-to-three months to meetings on a fortnightly basis.⁴⁰ The commission for drug policy is headed by former IRGC commander Mohsen Rezaei, and the secretary/director is former DCHQ official Ali Hashemi who supervises the work of the four sub-committees, the most important ones being drug supply and drug demand reduction (Figure 5.3).⁴¹ Rezaei has been member of the Council since 1997, where he acts as Secretary General with duties of supervision of the various committees and commissions as well as referral of their findings to the president of the council during general discussions and voting. Appreciated as a military commander – his 2015 return to the IRGC was a clear sign of this – he made a good case for his pragmatism when, in 1981, amid the confrontation against superior Iraqi military forces, he stated, ‘We should accept that we are involved in a great revolution in which all the world has created an alliance against us, so we can’t overcome the war issue only by praying, we ought to increase our military science and technological power’.⁴² In 1988, he sent an open letter to Supreme Leader Khomeini affirming that the war against Iraq could not be won and that Iran should prepare itself for a negotiated settlement. As a director of the Council, he has given prominence to these same characteristics by coordinating the evaluation process in the lower committees with expert members of the research community. Known to be a pragmatist in the Western scholarly discourse, the interesting elements rest on the emphasis that Rezaei has put throughout his career on scientific and technological advancement, something that has been largely utilised in drug policy approaches.

His closest advisor in the Drug Policy Commission is Ali Hashemi, formerly at the head of the DCHQ. Hashemi is a high-ranking bureaucrat who has acted over the course of the last decades as advisor to President Mohammad Khatami (1997–2005), member of the National Security Council (1986–97) and member of the IRGC (1979–86). His contribution to the field of drug policy is guided by public health considerations and an understanding of national security, inclusive of public health matters. Indeed, under the reformist presidency, he actively supported the expansion of humanitarian and reform-oriented

⁴⁰ Interview with Said Sefatian, Tehran, September 20, 2015. This Commission has been headed by Ali Hashemi, formerly Director of the DCHQ.

⁴¹ ‘Rezaei Returns to His Military Roots’, *Al-Monitor*, May 13, 2015. ⁴² *Ibid.*

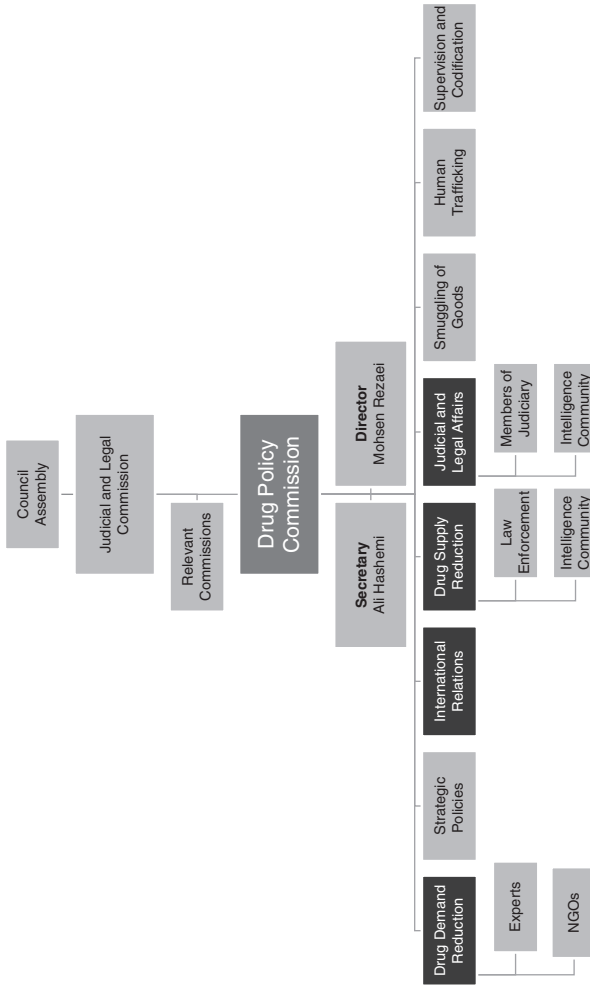


Figure 5.3 Structure of Drug Policy Commission

policies on drug (ab)use, justifying it in terms of social security and risk minimisation, including in national security terms.⁴³

First relevant committees discuss changes within drug laws. For issues related to public health, such as prevention and drug (ab)use, discussions take place in the demand reduction section; for issues related to smuggling and trafficking, it is the supply reduction section. Once matured, a proposal or agenda of discussion (*dastur-e kar*) for policy change is sent to the Expediency Council's Judicial and Legal Commission, at the top of which sits the Head of the Judiciary. This is usually the litmus test for any new policy proposal where institutional vetoes play in. Views, according to my interlocutors, are generally security-oriented and punitive with regard to drugs policy, although important changes have taken place over the course of the last decade. The participation of expert panels, practitioners, scholars and civil society groups is standard practice of the evaluation process. For issues related to drug policy, well-known personalities from the medical community are generally invited to present on specific topics of interest to the sub-committees or the council. Prominent epidemiologists within Iranian universities and leading members of NGOs provide their accounts and analyses at this level, with a focus on tangibility of results and experiences rather than political readings and intellectual deconstructions. There is a general predilection for numerical reports and econometric results, which often facilitate the committees' making the case for or against a policy proposal. It is established practice to have the participation of experts known for their opposing views; although this could be complex to apply at all times, it is the norm in debates about drug law reform. Collaboration with research centres is instrumental to the policy debate within the Council. Evidence gathered from the 'field' of drug policy is mediated by researchers and put at the disposal of the bureaucratic apparatus to be prepared for the Council's debates. One research centre playing an important role in this is the Iranian National Center for Addiction Studies (INCAS). Created in 2004, amid the controversies around harm reduction practices, INCAS is a venue for research *and* implementation/design of drug policy. It had a central role in the pilot methadone programme in the early 2000s providing a scientific language and policy evidence for its

⁴³ Interview with Said Sefatian, Tehran, September 2014. See Hashemi's CV retrieved from <http://maslahat.ir/Commissions/AntiDrug/Documents.pdf>.

scaling up.⁴⁴ Based on its status as a policy and research centre, INCAS has contributed to policy design in the field of addiction not only in Iran, but also in Afghanistan and Pakistan.⁴⁵ Similarly, INCAS initiated Iran's (counterintuitive) programme for treatment of alcohol dependency, receiving final approval from the Ministry of Health on the advice of the Council.⁴⁶ The use of such a medical research centre hints at the traditional acceptance of medical expediency in Shi'ite religious jurisprudence, where substances and/or actions deemed *haram* (forbidden) can be reputed licit if they are proved beneficial to the believer's health.⁴⁷ The clergy's approach to birth control, research on stem cells and the right to use narcotic drugs for medical purposes are examples of this medicalised rationale at the base of jurisprudential arguments and policymaking.⁴⁸

Studies of the economic cost of drug (ab)use and the benefits of a reformed approach – such as decriminalisation of drugs – have also been submitted to the Council by independent researchers or affiliates to INCAS. For instance, a number of studies were provided in favour of harm reduction practices in reducing both costs and harms of drug (ab) use. Among these, Hooman Narenjiha and Roya Noori, two independent researchers, produced an influential comparative study on the pilot experiment programmes in Kermanshah and Tehran, where they argued that by introducing harm reduction, Iran could potentially save 400 billion *tuman*, equivalent to eight budgets of the DCHQ.⁴⁹ The proposals and reports sent to the Council can be accepted, rejected or sent back for revision – similarly to an academic peer-review process, although the Council's timescale might take fewer months. After this

⁴⁴ Interview with Hamid-Reza Tahernokhost, September 2012.

⁴⁵ MENAHRA website, retrieved from www.menahra.org/en/short-term-fundings/menahra-knowledge-hubs/incas/incas-about.

⁴⁶ See INCAS website, retrieved from http://incas.tums.ac.ir/page.php?slct_pg_id=309&sid=1&slc_lang=fa.

⁴⁷ Mazyar Ghiabi et al., 'Islam and Cannabis: Legalisation and Religious Debate in Iran'. *International Journal of Drug Policy* 56 (2018).

⁴⁸ I develop this aspect of contemporary polity in Iran in a side project, titled 'The Medical Republic of Iran', presented at the *International Conference of Iranian Studies*, Vienna, August 2016. For a journalistic account, see Maziar Bahari, 'Quarks and the Koran', *Newsweek* May 23, 2009, retrieved from <http://europe.newsweek.com/quarks-and-koran-irans-islamic-embrace-science-80063?rm=eu>.

⁴⁹ Hooman Narenjiha and Noori Roya, 'Methadone maintenance therapy outcomes in Iran [Farsi]' (2006), provided by the authors in a printed copy.

step, the proposal can be reviewed by other relevant commissions if it pertains to their field of intervention. The Expediency Council eventually puts the question to a vote. Given that members of the Council also sit on lower-level committees, proposals that arrive at Council level tend to be approved without major impediments and are sent for final endorsement to the Supreme Leader. The adoption and expansion of the harm reduction policy (*kahesh asib/zayan*) on a nationwide scale represented a first major instance of drug policy reform. The adoption of these measures, beside their phenomenological rationale and social root, casts light also on the practicalities of the policymaking process through which this institution formulates drug policy. Inputs from NGO workers, medical researchers and international experts, coupled with the perception and materialisation of a critical situation, engendered a reformulation process that also occurred within the Expediency Council.

The Council also promoted the inclusion of the harm reduction policy within the text of the Major Policies of the Islamic Republic, consolidating the legitimacy of this notion within Iran's legislation. Similarly, the 6th Development Plan, which for the first time was drafted by the Council, includes a reference to drug policy in Article 22. This article states that the target of the Islamic Republic within the next five years is to reduce the national rate of addiction by 25 per cent. The article also adds that, in furtherance of this objective, the government should seek 'the management of drug use in the country', a statement that could be a prelude to shifts towards depenalisation and regulation of certain types of drugs.⁵⁰ Indeed, there have been informal discussions within the Expediency Council, about 'heroin shooting rooms', regulation of opium and cannabis production, depenalisation of drug use and abolition of the death penalty for drug crimes, the latter having been approved in 2018.⁵¹ These debates are at times preceded by informal meetings in conference venues where

⁵⁰ 'Kahesh-e 25 Dar Sad-E E'tiyad Dar Keshvar Ta Payan-E Barnam-e Shishom-e Touse', Government of the Islamic Republic of Iran, retrieved from www.dolat.ir/NSite/FullStory/News/?Serv=0&Id=266177.

⁵¹ Interview with Said Sefatian, September 18, 2015. On the abolition of the death penalty, see Conclusions of this book. And *Sharq*, September 10, 2016. For an overview of the larger question of drug policy reform, see Ghiabi, 'Islam and Cannabis'.

leading members of the drug policy community meet and discuss together with representatives of the Expediency Council.⁵²

From a legislative viewpoint, the Council's strategy affects the rest of the political machinery. The Council has become the arena for confrontation and synthesis of different governmentalities with regard to crisis. In this, the logics of the Iranian state resides within this institution more than other specific agents that have traditionally been identified as 'the regime'.

Conclusions

The Expediency Council has been historically regarded as a conservative institution.⁵³ Yet, the debates within the Expediency Council reveal an underlying secular logic governing crisis, which often produces what, in the context of the Islamic Republic, can be described as profane politics with oxymoronic outcomes. Profane politics is a form of governance that steps outside its ideological and religious cadre in order to engage with worldly matters. Outside the temple, the *fanum*, the profane is concerned with a politics of the phenomena and with the time governing them (the *seculum* of secular). This oxymoronic dimension is empirically discussed in Part Two of the book, which dwells on the ethnography of policies about drugs. This *interregnum*, on the other hand, explored the genealogical origin and historical developments of crisis politics and its effect on an Iranian form of secularity, which is made of a cumulative effect of expertise, science, technology, security and governmental calculi – one could say *expedients*. The considerations proposed here are not exclusive to drug policy; they are part and parcel of the post-revolutionary process of state reformation at large, as evidenced in the intrusion of the Council in ever more numerous fields of public concern.

This proverbial secularity and holistic engagement is best captured by a paragraph in one of the Expediency Council's publications on the

⁵² It is sufficient to say that more than thirty leading figures of Iran's drug policy argued, albeit in confrontational terms, for plans for reforms.

See Mehr, December 12, 2015, retrieved from www.mehrnews.com/news/2995003.

⁵³ See, for instance, Farhad Khosrokhavar, 'The New Conservatives Take a Turn', *Middle East Report* 233 (2004), 24–7.

effects of subsidy reform on Iran's drug problem. The author of the paragraph is a leading administrator of the Islamic Republic on matters of illicit drugs. He says:

If one considers major drug traffickers and dealers, *from a Foucauldian analytical perspective*, their presence in the sphere of trafficking is motivated by the acquisition of a *power* which lies behind the veil of trafficking itself (as long as we see power as an expression of its three faces: capital, status and politics).⁵⁴

The normative limits that apply to politics and political rhetoric, dictated by religious, moral and political constraints, are set within the Expediency Council, as shown in the adoption of post-modernist language and the reference to harm reduction ethics. In Part Two this logic of power – this *governmentality* – is interpreted as an art of governing crisis and managing disorder, providing a new analytical lens to the politics of the Islamic Republic. This art has given way to oxymoronic conditions in which the state adopts *modi operandi* that would otherwise be inconsistent, incompatible and disconnected with each other. Drugs politics is an especial instance of the way this art works, for drugs and drug (ab)use have become a permanent crisis – in ethics, politics, and public health – following the Islamic Revolution.

The establishment of the Expediency Council institutionalises crisis within the Islamic Republic governmental machinery. The rule of emergency, used in the years of the war (1980–8), was constrained in its temporal application and dependent on a large majority in the Parliament. The Council, instead, stands at the highest core of legislative power, immune to the vicissitudes of electoral politics as well as unchained by the nuances of Islamic law: it intervenes in conditions judged – autonomously – exceptional and of crisis. This signature of power signified not only a reification of secular elements, such as the inviolability of the state and primacy of political acumen in place of revolutionary and spiritual leadership, as Khomeini himself had envisioned. It also meant that, in terms of political praxis, not the Supreme Leader, but the Expediency Council has had ultimate governmental

⁵⁴ Expediency Council, 'Asar-e Ejrai-ye Qanun-e Hadafmandi-ye Yaraneh-ha bar Eqtesad-e Mavadd-e Mokhadder' (Tehran: Expediency Council, undated). Emphasis added. Cf. with what Hajjarian names Iran's infatuation with supermodernism', in *Jomhuriyat*.

power. To paraphrase Foucault's *bons mots*: the Supreme Leader reigns, but the Expediency Council governs.⁵⁵

⁵⁵ In 1978, Foucault cited Adolphe Thiers in an article on Mohammad Reza Pahlavi, the last Shah of Iran, while he visited Tehran on behalf of the Italian newspaper *Corriere della Sera*. The original French version says: *que le roi règne, mais il ne gouverne pas*. In *Corriere della sera*, vol. 103, no. 230, 1 octobre 1978, p. 1.

