



**SPECIAL FOCUS ROUNDTABLE: CONSTITUTIONAL CHANGE AND THE
RULE OF LAW**

Open Constitution: The Dilemma of Constitutional Stability and Adaptability Iran's 1906 and 1979 Constitutions: A Case Study

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Abstract

This paper introduces the term “Open Constitution” as a crucial element for fostering an “Open Society.” It explores the nature and adaptability of constitutions, emphasizing the balance between stability and the necessity for change. Specifically, it examines Iran's 1906 and 1979 constitutions, highlighting their initial lack of clear amendment procedures and the subsequent modifications aimed at addressing this issue. The 1906 Constitution did not establish a clear amendment process, which was only partially rectified in 1949. Similarly, the 1979 Constitution remained silent on amendments until Article 177 was added during its 1989 revision, outlining a heavily controlled revision process. Both constitutions contain principles deemed unchangeable; however, historical precedents indicate that such provisions are not immune to alteration. The paper concludes that the rigidity of these constitutions, coupled with the absence of practical mechanisms for public or specialized input, poses a risk to political stability and may lead to revolutionary changes. It argues that these constitutions, due to their stringent emphasis on stability and resistance to public demands for change, are inherently self-destructive.

Keywords: Open Constitution; 1906 Constitution; 1979 Constitution; Constitutional Revision; Self-Destructive Constitutions; Constitutional Stability and Adaptability

Introduction

A constitution is the aggregate of fundamental principles or established precedents that constitute the legal basis of a polity, organization, or other type of entity, and commonly determines how that entity is to be governed.¹

¹ *The New Oxford American Dictionary*, edited by Erin McKean (Oxford: Oxford University Press, 2005).



When these principles are written down into a single document or set of legal documents, those documents may be said to embody a *written constitution*; if they are encompassed in a single comprehensive document, it is said to embody a *codified constitution*. The Constitution of the United Kingdom is a notable example of an *uncodified constitution*; it is instead written in numerous fundamental acts of a legislature, court cases, and treaties.²

To expand on the idea of an open constitution, studying the evolution and processes of drafting, ratifying amendments, and introducing changes in constitutions of countries with strong constitutional traditions, such as the United States and France, would be highly beneficial. Since this article focuses on the two Iranian constitutions as case studies, those aspects of the research have not been included here.

Another important point: considering recent developments in the Middle East, such as the overthrow of the al-Assad government in Syria, which necessitates drafting a new constitution, and considering the eventual need for new constitutions in Libya and Yemen as well, the significance of an open constitution becomes even more evident. An open constitution ensures that even when drafters are selected through a fair and principled process consistent with constitutional law, and their final work is approved by the people in free and fair elections, the resulting constitution does not infringe upon the right of self-determination. A successful open constitution must provide a clear and reasonably accessible mechanism for modification, suspension, or even termination of its authority.

An Open Society Requires an Open Constitution

Many political philosophers – including Karl Popper, who introduced the concept of the “open society” in his two-volume work *The Open Society and Its Enemies* (1945) – have long defined democratic governance as a political system where citizens not only select their rulers but, more importantly, have the power to challenge, remove, and replace them through peaceful means. In other words, elections are a necessary condition for democracy but not a sufficient one.

This paper argues that for an “open constitution” to be legitimate and democratic, it is necessary – but not sufficient – that its drafters be elected and that the electorate vote on its final version. More crucially, the constitution must be open to free discussion and critique by the public. Additionally, accessible mechanisms should exist for citizens to demand amendments to the constitution or even advocate for its replacement.

Harmonizing Stability and Adaptability

In view of the malleability of ordinary laws, a constitution must possess stability and continuity to fulfill its function as the political and administrative wellspring of the country. If the constitution, which is a national covenant, could be altered

² *R (HS2 Action Alliance Ltd) v Secretary of State for Transport* (2014) UKSC 3.

as easily as other laws and regulations – for instance, with a 51% vote of the legislature – it would throw the political system of the country into chaos. On the other hand, making the constitution unchangeable, or its amendment extremely difficult, is problematic both theoretically and practically, if not outright crisis-inducing.

Even if all stages of the process – from the election of a constitutional assembly, to the drafting of the constitution, and the public referendum for its ratification – are conducted fairly and justly, the final outcome will be valid and binding for the people only if it has given them the right to determine their own destiny. However, imposing decisions on future generations lacks moral legitimacy and conflicts with the right of future generations to determine their own destiny.

To overcome the dilemma of a constitution's stability and adaptability – the two essential yet paradoxical characteristics of a constitution – some solutions have been suggested, including but not limited to the following:

1. **Flexible Amendment Processes:** One approach is to design an amendment process that is neither too rigid nor too flexible. This can be done by setting higher thresholds for fundamental changes while allowing simpler procedures for less significant amendments. For example, the U.S. Constitution requires a two-thirds majority in both legislative chambers and ratification by three-quarters of the states for an amendment to be adopted.³
2. **Sunset Clauses:** Incorporating sunset clauses into constitutional provisions can ensure that certain laws or regulations are revisited and reconsidered after a specific period. This allows for periodic updates and adjustments without compromising the overall stability of the constitution.⁴
3. **Judicial Interpretation:** Courts can play a significant role in interpreting a constitution in ways that adapt it to contemporary issues without formal amendments. Judicial review allows constitutions to remain relevant by providing interpretations that reflect current societal values.⁵
4. **Living Constitution Approach:** Adopting the philosophy of a “living constitution” suggests that the document should evolve with society. This approach argues that a constitution's meaning can change over time as society's norms and values shift, without the need for formal amendments.⁶

³ U.S. National Archives and Records Administration, “Constitution of the United States: Article V,” *Federal Register*, accessed June 17, 2025, <https://www.archives.gov/federal-register/constitution/article-v.html>.

⁴ Investopedia, “Sunset Provision,” last modified November 1, 2023, <https://www.investopedia.com/terms/s/sunsetprovision.asp>.

⁵ Bruce Ackerman, “The Storrs Lectures: Discovering the Constitution,” in *Constitutionalism and Democracy* (New York: Routledge, 2006).

⁶ Jack M. Balkin, “Framework Originalism and the Living Constitution,” *Northwestern University Law Review* 103, no. 2 (2009).

5. **Constitutional Conventions:** Holding periodic constitutional conventions can provide a structured opportunity to review and update a constitution. These conventions can be called at regular intervals or in response to significant societal changes, allowing for comprehensive reviews and updates.⁷
6. **Referendums and Plebiscites:** Utilizing referendums and plebiscites to involve the public directly in the amendment process can ensure that changes reflect the will of the people. This democratic approach can enhance the legitimacy of constitutional amendments and adaptations.⁸

These solutions aim to strike a balance between maintaining the constitution's core principles and allowing for necessary adaptations to address new challenges and changing societal needs.

In a letter written to James Madison from Paris just after the French Revolution had broken out, Thomas Jefferson (1743–1826) argues that any Constitution expires after 19 years and must be renewed if it is not to become “an act of force and not of right”:

The question Whether one generation of men has a right to bind another, seems never to have been started either on this or our side of the water... (But) between society and society, or generation and generation, there is no municipal obligation, no umpire but the law of nature. We seem not to have perceived that, by the law of nature, one generation is to another as one independent nation to another... On similar ground, it may be proved that no society can make a perpetual constitution, or even a perpetual law. The earth belongs always to the living generation... Every constitution, then, and every law, naturally expires at the end of 19. years. If it be enforced longer, it is an act of force and not of right.⁹

Although this idea was not approved as a specific principle in the U.S. constitution, it has been implemented in practice because there have been twenty-seven amendments in 225 years. That's one every eight years and four months.

⁷ This article, written by Mark Tushnet, examines the implications and political dimensions of Sanford Levinson's proposal to convene a constitutional convention to revise the U.S. Constitution. Mark Tushet, “The Politics of Levinson's Constitutional Convention,” *Harvard Law & Policy Review Online*, March 18, 2013.

⁸ Laurence Morel and Matt Qvortrup, eds., *The Routledge Handbook to Referendums and Direct Democracy* (Abingdon, UK: Routledge, 2022).

⁹ Thomas Jefferson, “Thomas Jefferson on Whether the American Constitution Is Binding on Those Who Were Not Born at the Time It Was Signed and Agreed to (1789),” *Online Library of Liberty*, accessed June 17, 2025, <https://oll.libertyfund.org/quotes/thomas-jefferson-on-whether-the-american-constitution-is-binding-on-those-who-were-not-born-at-the-time-it-was-signed-and-agreed-to-1789>.

Iran's 1906 and 1979 Constitutions: Balancing Stability and Adaptability

Now we focus on the constitutions of Iran from 1906 and 1979 with the aim of finding answers to the following questions:

1. Was there a process or procedure for amending and revising these constitutions?
2. Were any principles and regulations designated as immutable and eternal?
3. What were the implications or results of the answers to the above questions?

Amendment and Revision Procedures of the 1906 Constitution

The first Iranian constitution (1906), known as the "*Mashruteh Constitution*" (hereinafter, "1906 Constitution"), originally comprised 51 articles, with an additional 107 articles added later. The 1906 Constitution did not include specific provisions for amending or revising itself, which could be considered a significant shortcoming. However, this omission was not due to the drafters' ignorance but rather their concern over potential governmental abuse. They feared that the king and his supporters might maintain the constitution's facade while altering its articles to continue absolute rule. The authors, drafting the constitution amidst the turmoil of a political revolution, were aware of the need for provisions allowing amendments but prioritized finalizing the text for approval by the ailing Mozaffar ad-Din Shah. Such provisions were approved on February 28, 1949.

The constitutionalists' efforts came to fruition, and on December 30, 1906, Mozaffar ad-Din Shah signed the fifty-one articles of the constitution approved by the National Consultative Assembly, establishing Iran as a constitutional monarchy. However, none of the articles indicated when, how, or by what means amendments to the constitution could be undertaken.

Very soon, there was a need to revise the constitution, and efforts were made to that end, culminating in the passage of a constitutional amendment on October 7, 1907. This amendment, however, still did not provide a clear path for revising the entire constitution. Other changes to the 1906 Constitution were made in the years 1925, 1949, and 1967.

Unchangeable and Eternal Principles and Regulations in the 1906 Constitution and Its 1907 Supplementary Law

Usually, in constitutions, a process for revising and adding articles, as well as protecting others from any change, is specified. For example, in the French constitution, the principles of the French Republic (such as the right to self-determination) and the prohibition of monarchy are non-amendable. Article 89 of the 1958 French constitution, which provides detailed provisions about the amendment process, states in its final sentence: "The republican form of government shall not be the object of any amendment."

In the Iranian constitutional amendment dated October 7, 1907, some principles were introduced as unchangeable. These principles are as follows:

The summary of Article 2 of the Supplementary Law of the Constitutional Law (not its word-by-word text) is as follows: In any era, the laws passed by

Parliament must not contradict the principles of Islam and the established laws of Prophet Muhammad. Therefore, in every era, a committee of at least five religious scholars and jurists, who are also aware of the needs of the time, should review parliamentary laws to ensure they do not conflict with the sacred principles of Islam. This article will remain unchangeable until the appearance of the Hidden Shia Imam.

Article 7 of this document states: “The essence of constitutionalism, in whole or in part, is not subject to suspension.” Although the phrase “the essence of constitutionalism” is ambiguous, it is rendered immutable.

Article 36 of this document states: “The constitutional monarchy of Iran shall be vested in His Imperial Majesty Sultan Mohammad Ali Shah and his descendants, generation after generation.”

Unchangeable and Eternal Principles and Regulations in the 1979 Constitution and Its 1989 Amendment

The current constitution of Iran was adopted by referendum on December 2 and 3, 1979 (1979 Constitution), replacing the 1906 Constitution. It has been amended once, on July 28, 1989. The constitution was originally composed of 175 articles in 12 chapters but was amended in 1989 to include 177 articles in 14 chapters.

One provision of this constitution that is considered unchangeable is Article 12:

The official religion of Iran is Islam, and the Twelver Jaʿfari school. This principle will remain eternally immutable. Other Islamic schools, including the Ḥanafī, Shāfiʿī, Mālikī, Ḥanbalī, and Zaydī, are to be accorded full respect, and their followers are free to act in accordance with their own jurisprudence in performing their religious rites. These schools enjoy official status in matters of religious education, and affairs related to personal status (marriage, divorce, inheritance, and wills) and related lawsuits are recognized in the courts. In regions where followers of any of these schools constitute the majority, local regulations, within the bounds of the jurisdiction of local councils, shall be enacted in accordance with their jurisprudence, while respecting the rights of followers of other schools.

It is noteworthy that the phrase “remain eternally immutable” does not appear at the end, but rather in the second sentence. This placement suggests that, from the legislator’s perspective, only the first part (declaring the Twelver Jaʿfari school as the official religion of the country) is considered unchangeable, rather than all the rest of this provision.

The 1979 Constitution was silent on the process for revising or approving amendments. However, in the 1989 revision, Article 177 was added regarding this matter, which we will discuss later. At the end of this article, non-reviewable provisions were introduced. This part of Article 177 states:

The content of the principles related to the Islamic nature of the system, the compliance of all laws and regulations with Islamic standards and the foundations of faith, the goals of the Islamic Republic of Iran, the republican

nature of the government, the Imamate of the Ummah, and the administration of the country's affairs, relying on public opinion and Iran's official religion, is unchangeable.

The concluding phrase of this article could refer to these constitutional principles; in other words, the following principles are introduced as non-reviewable:

- **Islamic Nature of the System** - Article 1: The system of the Islamic Republic of Iran is based on Islamic principles, as generally mentioned in the preamble and principles of the Constitution.
- **Compliance of Laws and Regulations with Islamic Principles** - Article 4: All laws and regulations must be in accordance with Islamic principles.
- **Objectives of the Islamic Republic of Iran** - Article 3: This article refers to the objectives of the Islamic Republic of Iran, including the achievement of social justice, preservation of independence and freedom, and adherence to Islamic principles.
- **Republican Nature of the Government** - Article 1: The system of the Islamic Republic of Iran is a republic.
- **Wilāyat-e Faqīh and Imamate of the Ummah** - Article 5: This article refers to the role of the *Faqīh* (Islamic jurist) as the leader of the Ummah and emphasizes the leadership role.
- **Administration of the Country Based on Public Opinion** - Article 6: This article pertains to the principles of Islamic democracy and reliance on public opinion in the administration of the country.
- **Official Religion and School of Iran** - Article 12: The official religion of Iran is Islam, and the official sect is Ja'fari Ithnā 'Ashari. This article refers to the unchangeability of these principles.

These principles are clearly and precisely defined in the 1979 Constitution of the Islamic Republic of Iran and are considered non-reviewable.

The Consequences of Declaring Certain Articles of the Constitution Unchangeable

Has the unchangeability of a constitutional principle ensured its stability? The reality is that some constitutional provisions can be altered regardless of their intended permanence.

For example, despite the continuation of the Qajar monarchy with the opening of the first Constituent Assembly on December 6, 1925, Article 36 of the Supplementary Constitutional Law was amended and approved on December 13, 1925. It states: "The constitutional monarchy of Iran is vested in His Highness Reza Shah Pahlavi through the Constituent Assembly and will be established from generation to generation in his male descendants."

The end of the supplementary article to the Supplementary Constitutional Law of February 28, 1949, which defined the process for amending the constitution also stated:

This article (i.e., the possibility of revision) does not include any of the principles of the constitution and its supplements related to the sacred religion of Islam and the official religion of the country, which is the true Ja'fari Twelver Shi'a doctrine and its decrees, or related to the constitutional monarchy of Iran. These principles are unchangeable forever.

These are clear examples that declaring a constitutional principle as unchangeable does not guarantee it is so. These provisions were unable to prevent the transfer of the monarchy from the Qajar dynasty to the Pahlavi dynasty, as well as the complete abolition of the monarchical regime with the 1979 revolution.

Evaluation of the Revision Processes of Iran's Constitutions: Historical Background and Legal Developments

An Introduction to the Revision of Iran's Constitutions

Both of Iran's constitutions were written after years of political and social instability and as a result of two revolutions: the Constitutional Revolution, which led to the drafting of the 1906 Constitution, and the Islamic Revolution of 1979, which resulted in the 1979 Constitution. Both constitutions – perhaps because their drafters were primarily concerned with political and social stability – were initially silent on any process of revision or amendment. However, such processes were later added to both constitutions.

The Revision of the 1906 Constitution

A process for constitutional revision to the 1906 Constitution was finally approved in 1949 by adding an article to the constitution. The informal English translation of that article reads:

At any time when the National Consultative Assembly and the Senate, each separately, whether independently or upon the suggestion of the government, approve the necessity of revising one or more specific articles of the Constitution or its supplement by a two-thirds majority of all their members, and if His Imperial Majesty also approves the opinion of the assemblies, a royal decree will be issued to form the Assembly of Founders and elect its members.

The Assembly of Founders will consist of a number equal to the total legal number of members of the National Consultative Assembly and the Senate. The election of the Assembly of Founders will be conducted according to a law that will be approved by the assemblies. The powers of this assembly will be limited to revising only those specific articles that have been approved by the assemblies and sanctioned by His Imperial Majesty.

Decisions of the Assembly of Founders will be valid and enforceable upon the approval of a two-thirds majority of all its members and after obtaining the consent of His Imperial Majesty.

This article does not include any of the principles of the Constitution and its supplement that pertain to the sacred religion of Islam and the official state religion, which is the true Twelver Ja'fari School, and its provisions, nor to the constitutional monarchy of Iran. These principles are eternally unchangeable.

The Revision of the 1979 Constitution

Ten years after the approval of the 1979 Constitution, in response to the needs of the rulers – mainly to remove some councils, such as the Leadership Council (which was ordained in the 1979 Constitution) – and to concentrate certain positions, including leadership, in one person, the process of revising the constitution was approved in 1989. The unofficial English translation of the text of that article (i.e., Article 177 of the Revised Constitution) reads:

Revision of the Constitution of the Islamic Republic of Iran, in cases of necessity, will proceed as follows: The Supreme Leader, after consulting with the Expediency Discernment Council, will propose amendments or supplements to the Constitution to the Constitutional Revision Council with the following composition:

1. Members of the Guardian Council
2. Heads of the three branches of government
3. Permanent members of the Expediency Discernment Council
4. Five members from the Assembly of Experts for Leadership
5. Ten members appointed by the Supreme Leader
6. Three members from the Cabinet
7. Three members from the Judiciary
8. Ten members from the Islamic Consultative Assembly
9. Three university professors

The method of operation, selection, and conditions will be determined by law.

Decisions of the council must be approved by an absolute majority of participants in a national referendum after being endorsed and signed by the Supreme Leader. Observance of the end of Article 59 regarding referendums is not required for the revision of the Constitution.

The content of the principles regarding the Islamic nature of the system, the basis of all laws and regulations on Islamic criteria, the foundational beliefs and objectives of the Islamic Republic of Iran, the republican nature of the government, the leadership, and Imamate of the Ummah, the administration of the country's affairs based on public opinion, and the official religion and sect of Iran are unchangeable.

Analyzing the Revision of Iran's Constitutions as Self-Destructive Laws

The 1949 Addendum to the 1906 Constitution was drafted and approved in such a way that the Shah had a decisive role in the revision process. Firstly, his approval became required to proceed with the process once it had been approved by the legislatures. That is, if all members of the National Consultative Assembly and the Senate approve the necessity of amending or adding articles to the Constitution, but the Shah does not, the process is halted. However, if he agrees to continue the process and elections for the Constitutional Assembly are held, the powers of this assembly will be limited to revising only the specific articles that were approved by the assemblies and endorsed by the Shah. Ultimately, the decisions of the Constitutional Assembly will be valid and enforceable only after the Shah's consent. Now, imagine a public demand and a request from the National Consultative Assembly and the Senate to revise articles of the Constitution related to the Shah's powers, with the aim of limiting the Shah's authority. Would he consent to initiate and continue this process?

What has been said about the 1949 amendment to the 1906 Constitution is also true for Article 177. According to this article, the process for amending or adding articles to the constitution essentially begins with the leader's initiative and action. It is the leader who, through a decree addressed to the president, proposes the amendments or additions to the constitution to the Constitutional Revision Council. It is clear the practical approach has been that the term "suggest" means "decree," as, for example, the president cannot add to or subtract from the articles designated for amendment or addition by the leader. Ultimately, the decisions of this group are put to a public referendum only after being approved and signed by the leader.

Now, imagine a public demand for revising articles of the constitution to limit the leader's powers or make the institutions under his oversight accountable to the parliament. Would the leader agree to initiate, continue, and ultimately approve this process?

The composition of the Constitutional Revision Council, as specified in Article 177, is such that many of its members are directly appointed by the leader. For instance, members listed in Clause 3 (permanent members of the Expediency Discernment Council) and Clause 5 (ten members appointed by the Supreme Leader).

Before presenting the final conclusion, two points need to be emphasized:

1. Neither the 1949 nor the 1989 amendments regarding the constitutional revision process provided a direct mechanism for the public to express opinions about which principles should be revised or added to the constitution. There are a variety of ways to enable the Iranian public to potentially place a specific principle or proposed article on the agenda of the Constitutional Revision Council:
 - Ballot votes of 20% of eligible voters,
 - Ballot votes of one million citizens, or
 - The approval by 90% of members of professional institutions such as the bar association, labor unions, teachers' unions, journalists' unions, or the Medical System Organization.
2. The processes outlined in the 1949 and 1989 amendments concerning constitutional revision are so inaccessible to citizens that their existence or

non-existence makes little difference. These amendments were essentially an exercise in of “Rule by Law” rather than the “Rule of Law”: tools for a ruling class to amend the constitution according to its whims – rather than tools by and for the citizens to amend it in accordance with their interests and welfare.

Conclusion

In conclusion, Iran’s constitutions – and similar ones – are not open constitutions, so they are self-destructive. They have not provided any means for the people and future generations to participate in peacefully updating the constitution. As a result, the only way to change the constitution is through fundamental actions with unpredictable consequences, such as the 1979 Iranian Revolution. When the majority of the Iranian people – regardless of the reasons – turned against the Shah’s regime, they could not pursue their demands within the framework of the existing constitution. Consequently, they overthrew the political system. Current trends – such as the lack of participation by more than 60% of eligible voters in the first round of the 2024 Iranian presidential elections – indicate that if appropriate and timely decisions are not made, the current Iranian constitution and the political regime based on it may face the same fate.

We conclude this discussion with a segment from Ayatollah Khomeini’s speech on February 1, 1979, at *Behesht-e Zahra* cemetery – the first day of his return to Iran after 15 years of exile. In that speech, he articulated a point somewhat similar to Thomas Jefferson’s argument that, since each generation has the right to determine its own destiny, every constitution should be valid for only one generation (19 years). He stated:

When the Pahlavi monarchy was first established, we assume it was based on the will of the people, and the Constituent Assembly was also established by the will of the people. This implies that – assuming this process was legitimate – only Reza Khan would have been the ruler; and that only for those individuals who were present at that time. As for Mohammad Reza, who now rules over a population where most – indeed, almost all – did not experience that period, what right did the people of that time have to determine our fate in this era? ... Each person’s destiny is their own. Are our ancestors our guardians? Can people who lived eighty or a hundred years ago determine the fate of a nation that was to emerge later?¹⁰

¹⁰ The full text of this speech, including the quoted part, is available in Farsi on the official website linked below. The author of this article has translated these sentences into English and is responsible for the translation. <http://emam.com/posts/view/1248>.

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