

Ayatollah Khomeini’s Political Theory and Public Interest

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Ayatollah Khomeini (1902-89) was one of the most influential Muslim leaders in the 20th century and one of the most significant Shi’ite figures in history. Although he was a mystic, philosopher, jurist, theologian, and poet, his major contributions were mainly in two other areas. First, he was a successful politician who led the Iranian revolution of 1979 - one of the most popular revolutions of 20th century, and ruled his country for a decade. He bolstered the self-confidence of Muslims, reconstructed a dynamic Islamic identity, and enforced cultural and socio-political independence in a postcolonial age. Second, he developed a new idea regarding the role of public interest in political Islam, by which I mean an Islamic state. Hence, in addition to being an important politician and religious ruler, he was an important political theoretician in Shi’ite Islam as well. In this paper I focus on the theoretical contribution of Ayatollah Khomeini, but I will not discuss his practical affairs in contemporary politics.

Although Khomeini’s theory of *al-wilayat al-mutlaqah lil-faqih* (the absolute guardianship of the jurist-council) was well known, he had experimented with three theories before crafting his ideal political theory. This process is called “the evolution of his political theory”. These four theories could be attributed to the cities in which he elaborated them: Qom, Najaf, Paris, and Tehran.¹

The Qom Theory

In *Kashf al-Asrar (Uncovering of Secrets)*, a book published in 1942 in Qom, the young Khomeini advocated the viewpoints of Shi’ite authorities of Najaf in the time of the Constitutional Movement, such as Mohammad Hosein Gharavi Na’ini (d. 1936). In the *Tanbih al-Umah wa tanzih al-Mellat*, a seminal book published in 1908, Na’ini

¹ I mentioned these four theories for the first time in July 1997. It was published as a chapter of my book in 2000: *Deliberation on the problem of wilayat al-faqih*, in *Daghdaghehaye Hukumat-e Dini (The Concerns of Religious State)*, Tehran, Ney publisher, pp. 144-167.

argued for the legitimacy of a democratically elected government and parliament with the permission and under the legal supervision of *faqih*s. The young Khomeini clearly elaborated on issues such as governance, *wilayat-e faqih*, the role of clergies in politics, the expectations of the believers from the governments, the understandings of jurists from the monarchy, constitutional state and so on. Here is the outline of major points of this book:

- *Wilayat al-faqih* is a juridical derivative (*al-far' al-fiqhi*), not a theological issue or a basic dogma of faith in Islam or Shi'a *madhab*.
- This juridical derivative is neither among the necessary issues (*al-darouriyyat*) in *fiqh* or *madhab*, nor among the issues, about which jurists have consensus. Instead, it is a controversial issue among the jurists with advocators and oppositions.
- The controversial points in *wilayat al-faqih* are in two areas: the first is its authenticity in *shari'a*; the second is about the limits of authority and domain of sovereignty of *faqih*. Many jurists believe in a minimum authority for *faqih* in public affairs that could not be suspended in any circumstances. This authority is called *wilayat al-faqih fi al-umur al-hisbiyya*. Some jurists believe in stronger authority for *faqih* that covers the whole public domain. It is called *al-wilayat al-'amma lil-fuqaha*.
- The meaning of *wilayat al-faqih* is not the ruling or direct administration of the *faqih*, but the supervision of the jurist (*nizarat al-faqih*).
- The constitutional monarchy would be acceptable religiously if its constitution is implemented and preserved.
- Islamic state (theocracy) in the absence of jurist-ruler (*wilayat al-faqih*) is possible, if the administration is based on Islamic law (*shari'a*), and mujtahids supervise the law making process, similar to the article two of the amendment of Iranian constitution of 1907.

We may call Khomeini's political theory in Qom period as the theory of constitutional government with the permission and supervision of the jurists, which is really far from the theory of the guardianship of jurists in public domain (*al-wilayat al-'amma lil-fuqaha*) or absolute guardianship of jurist (*al-wilayat al-mutlaqa lil-fuqaha*).

The Najaf Theory

This period started in early 1960s in Qom, continued to Khomeini's exile to Turkey in 1964 and went on to during his exile in Iraq , 1965-1978. His theory in this period is called Najaf theory, because he resided most of this period (about 14 years) in Najaf. He wrote several books in *fiqh* and the method of *fiqh* ('*usul al-fiqh*')². We may find a similar notion of *wilayat al-faqih* in two of his books before exile about the method of *fiqh*, al-Rasa'il and Tahdhib al-Usul both of them before his exile- the latter was his lessons that were written by Ja'far Subhani one of his students.

Khomeini wrote his booklet of fatwa in two volumes in the name of *Tahrir al-Wasilah* in the time of exile in Bursa in Turkey in 1964-65. He put the forgotten chapter on enjoining good and forbidding wrong (*al-amr bil-ma'ruf wa al-nahie 'an al-munkar*) in the booklet of fatwa for the first time in recent centuries. This chapter sets the foundation for the ideology of the Islamic revolution. There are several conditions under which enjoining good and forbidding bad would be considered mandatory. One of these conditions is about the probability of effectiveness of this religious duty. Khomeini added an innovative point to this condition that is the base of his revolutionary theory: This condition of forbidding wrong (probability of effectiveness) is cancelled in those cases that the wrong targets the essence of Islam, and the silence of '*ulama* against these essential evils ruins the trust of the believers. At the end of this chapter of *Tahrir al-Wasilah* Khomeini expressed his new theory as a fatwa:

- In the time of the occultation of the hidden imam, the just jurists have been delegated (*al-mansoub*) to the guardianship (*al-wlayah*) of the people by the holy lawmaker (*al-shari' al-muqaddass*). The authority of these jurist-rulers in public domain is as much as the authority of prophet and imams. The governance in the absence of *faqih* or without his permission is the administration of devil (*taghout*).

² All of Khomeini's books in *fiqh* and '*usul al-fiqh*' could be found in Shia online library: <http://shiaonlinelibrary.com/>. Khomeini's work in English: Hamid Algar (editor and translator), *Islam and Revolution: Writings and Declarations of Imam Khomeini (1941-1980)*, Berkeley: Mizan Press, 1981

According to Khomeini all just jurists are qualified to rule. The holy lawmaker, in this phrase refers to God, His prophet and infallible imams especially the 12th Imam. The hidden Imam appoints the jurists to this prestigious job. They are representative of hidden imam and have all of his authorities in the public domain. The only valid Islamic state is a *faqih*-led theocracy.

Khomeini started teaching and writing on the theory of *wilayat al-faqih* in Najaf seminary. His lectures were published in Persian in the name of *Hukumat-e Eslami* (Islamic governance)³ in late 1970 in Beirut. One of the controversial points of this book is:

- The role of the jurist for the masses is exactly the role of custodian for the minors. No act or decision is accepted in the public domain except the decision is made by *faqih* himself or by his permission or confirmation.

One chapter of his five volume *Book of Business kitab al-Bai'* around 1973 specifically focuses on this issue. He elaborated the details about the guardianship of jurists in public domain (*al-wilayat al-'amma lil-fuqaha*) through the sayings of Shi'a imams and semi-reason-based argumentation. Scholars such as Mulla Ahmad Naraqi (d.1827) in *Awayed al-Ayyam*, Mohammad Hasan Najafi (d.1846) in *Jawaher al-kalam* and Seyyed Hoisein Borujerdi (d.1961) before Khomeini also believed in expanding the realm of the jurist's authority to public affairs. Ayatollah Khomeini reconstructed the theory of his predecessors as a political theory for an Islamic state. According to his major book:

- The jurists have the duty to manage public affairs as a collective obligation (*al-wajib al-Kifa'i*), and once one of them starts ruling the other jurists should support him and should not oppose his orders. The masses should follow as well, and obey the jurist-ruler as a religious duty.

³ An English translation of this book: *Islamic Government*, translator Joint Publications Research Service, Manor Books, 1979.

- The notion of the guardianship of jurists is self-evident. As soon as you conceive it, you will certainly agree with it.
- Islamic state is a law-based state. The law is nothing except shari'a. All juridical ordinances are elements of Islamic state that were originally made for establishing social justice. Justice is the goal of Islamic state, *fiqh* is its comprehensive manual, and *faqih* is its ruler.

There is nothing about people's rights, votes, representatives in the parliament, separation of the powers, and responsibility before the citizens in Khomeini's books in this period. Political theory of Najaf is about a real theocracy. This theory was very different from a modern state and much more backward than the semi-democratic theory of Qom. In Qom period he believed in the supervision of jurists on law making. In the Najaf period, instead, he argued for the guardianship and ruling of the jurists.

The Paris Theory

Ayatollah Khomeini issued more public declarations and gave more speeches in 1977. The Iraqi government warned him to stay silent or rather face the risk of another exile. Khomeini went to Paris and continued his struggle against the monarchy internationally. The third period in developing his political thoughts covered the years of 1977-79, which includes the last months of Najaf exile, few months of Paris residence, few months in Tehran and finally the beginning of his return to Qom. I call it Paris period because of the importance of his international interviews in this period. His interviews and especially his message for changing the Iranian regime to an Islamic State were widely published in the international media. Here are the major points in this period:

- The monarchy is an illegal institution and the constitution of 1906 and its amendments were never implemented.
- The goal of the new regime is the implementation of *Shari'a* Law, which is the most perfect plan for a human society.
- The Islamic State will be an "Islamic Republic" (fall 1978, interview with Figaro).

- A republic in this new sense is the one that is also common in European countries such as France (where he was residing).
- Islamic Republic is a regime that the ruler's policies is based on Islamic law, and the citizens elect its ruler.
- The citizens have the right of criticizing, questioning and impeaching the ruler and governments of the Islamic Republic.
- Each generation and society has the right to determine their destiny and to make public policies. The consent of Iranians will be an important foundation of the Islamic Republic. (He generally talked about the combining the implementation of *shari'a* and the people's consent, but did not clarify the method or details of this combination.)
- Freedom of speech, the rights of minorities, and the rights of women are respected in Islamic Law – He articulated this position in response to the journalists' concerns.
- The regime change would occur through a national referendum.
- My role as well as the role of other clergymen would be supervision and spiritual guidance, not ruling and administration. My supervision is for preventing the state to go astray.

This is the schema of Islamic Republic that 98.2% of Iranians chose in the referendum for regime change in 1st April 1979. Any change in the principles of the regime requires another referendum and permission of citizens. Khomeini did never use the term “guardianship of jurist” (*wilayat al-faqih*) in this period until the summer of 1979. He did not state that the Islamic Republic meant a regime under ruling of *faqih*, and that the masses (republic) must accept it. Iranians were not aware of such a strange interpretation when they voted yes in the referendum.

It is interesting to know that there was not anything about “guardianship of jurist” (*wilayat al-faqih*) in the first draft of Iranian constitution, which was written according to Khomeini's order and was, also, approved by him. He did not object to the absence of this institution in the constitution. This draft was supposed to be the starting document in the constitutional assembly. The Assembly of the Experts of the

Constitution added the institution of “guardianship of jurist” (*wilayat al-faqih*) to the constitution and Khomeini strongly supported this decision. He used this term in his public speech for the first time in December 1979: “If you support the “guardianship of jurist” (*wilayat al-faqih*), there will be no harm for the country.”

The axis of Khomeini’s theory in this period is supervision rather than the ruling of the jurist. He was, however, referring to a strong supervision, with the right to veto, and to get involved in governmental affairs if necessary. The theory of Khomeini in Paris period is ‘Islamic republic under the supervision of jurist’, not the theocracy of the *faqih*-ruler or “guardianship of jurist” (*wilayat al-faqih*). This theory is very close and even a more developed version of Khomeini’s theory in the first period- constitutional government under supervision or with the permission of the jurists. These two theories are different and far away from the theory of Najaf period- the guardianship of jurists in public domain (*al-wilayat al-‘amma lil-fuqaha*).

The Tehran Theory

The fourth period 1979-89 covers about two months in Tehran in early 1979, less than one year in Qom 1969-80 and about nine years until his death in June 1989 in Tehran. Ayatollah Khomeini returned to Iran and the popular revolution succeeded in February of 1979. The Islamic Republic of Iran was established in April of that year, based on a national referendum as he had promised.

The first draft of the constitution of the Islamic Republic, which was prepared in Khomeini’s office by a committee of Iranian lawyers, was inspired by the Belgian constitution and the Iranian constitution of 1905. According to this draft the president and the members of the parliament would be elected directly by the citizens. A supreme council including five jurists (selected by the highest Shite authorities) and six lawyers (elected by the members of the parliament) had the right to monitor the parliament bills for consistency with Islamic norms and virtues and articles of the constitution. The Assembly of Experts, which was comprised of more than 80% clergymen, heavily revised this draft of the constitution, changed its political structure, and centralized the

position of the jurist ruler (*wilayat al-faqih*), ensuring that nothing could be done without his consent and permission.

However, the constitution confirmed the public votes as the foundation of the Islamic republic and the government itself - the president, members of the parliament, city councils, and members of the Assembly of Experts on. The Guardian Council including 6 jurists appointed by the ruling jurist and 6 lawyers elected by the parliament would have the right to veto parliament's bills and to supervise all the elections. The constitution was based on dichotomous foundations, and was a manifestation of the contradictory essence of the Islamic Republic. Ayatollah Khomeini advocated the guardianship of the jurist as the core of the Islamic State, claiming that the government would be just evil without it. Although the Iranians approved the constitution of 1979, participation in its referendum (Dec. 1979) was 25% less than the first referendum (May 1979).

Ayatollah Khomeini's governance was based on all three forms of Weberian legitimacy: traditional Islamic legitimacy as a high Shi'ite authority, charismatic authority, and democratic legal authority. The former was the most important for him, the second was an initiative for the masses, and the latter could be the notion of the modern state. The origin of his final theory was the fact that he experienced the difficulties of direct administration in practice, and accordingly revised his political theory. It would have been impossible to reach this final theory without passing through these stages. One may distinguish four stages during his time in power:

He started ruling with this assumption that the Islamic *Ummah* could be managed by the primary *shari'a* ordinances (*al-ahkam al-shr'iyya al-awwaliyya*) such as alms (*al-zakat wa al-khums*), enjoining good and forbidding wrong (*al-amr bil-ma'ruf wa al-nahie 'an al-munkar*), Friday prayer, Islamic penal codes (*al-hudud wa al-tazirat*), retaliation (*al-qisas*) and so on.

He understood that implementing *shari'a* (as it is) would not work. In 1980, he assisted the parliament with his new *ijtihad* in *shari'a* rules. In 1982, he regarded the rules of necessity (*al-ahkam al-dharuriyya*) as secondary *shari'a* rules. It was the first time that many *shari'a* rules were ignored in the public domain by permission of a jurist

through parliamentary bills. Using secondary ordinances in the public affairs instead of personal affairs is another innovative aspect of this theory. The traditional Shi'ite authorities and their representatives in the Guardian Council resisted the implementation of formal *shari'a* ordinances.

Facing with administrative problems common to any country in the modern age and touching the shortcoming of the rules of necessity, Ayatollah Khomeini was eventually pushed to test the third step in his modern state theory. Around 1986 he realized that it is the time to make “public interest” the cornerstone of the Islamic modern state.

In his open letter (Nov. 1978) to Ayatollah Khomeini, the minister of labor asked about the challenging intersection of *shari'a* and public interest. In a clear response, Khomeini stated that the Islamic state had absolute rights to public interest. The president and the Friday prayer imam tried to explain his response in a traditional way. Ayatollah Khomeini was dissatisfied with this explanation, and clarified a new approach in his historical deceleration of Dec 1987.

- “The absolute guardianship of jurist (*al-wilayat al-mutlaqah lil-faqih*) is the same as the guardianship that God gave the Prophet [of Islam] and [Shi'ite] Imams. It is one of the most prominent *shari'a* ordinances (*al-ahkam al-ilahiyya*), that has priority over ALL *shari'a* ordinances. The framework of *shari'a* ordinances does NOT restrict the authority of [Islamic] state. Governance is one of the primary ordinances and is superior to ALL derivative ordinances (*al-ahkam al-far'iyyah*) such as prayer (*as-salat*), fasting (*as-sawm*) and Mecca pilgrimage (*al-hajj*). [Islamic] State has the authority to unilaterally cancel the religious agreements with the citizens, when those agreements are against the interest of the country or interest of Islam. [Islamic] State has the authority to stop ANY practice, regardless that is a ritual (*al-'ibadi*) or non-ritual, when its implementation is opposing the interest of Islam... These are the

authorities of the [Islamic] State, and there are other matters superior to these as well.”⁴

According to him, the jurist-ruler has absolute authority in the public domain. He argues that when *shari'a* ordinances and public interests contradict, public interest would gain dominance over *shari'a* ordinances. He called the rules based on public interest “governmental ordinances” (*al-ahkam al-hukumi*). These governmental ordinances have priority over the primary and secondary *shari'a* ordinances, both rituals (*al-'ibadat*) and ordinances on human interactions (*al-mu'amalat*). Issuing governmental ordinances is the exclusive responsibility of the jurist-ruler. Khomeini's innovative idea was the establishment of an advisory committee for determining public interest. According to traditional Shi'ite discipline, *maslahat al-'amma* (public interest) and *al-qiyas* (analogy) are invalid conjectures, especially when they are in contradiction with *shari'a* ordinances. None of the Shi'ite authorities confirmed this idea.

The theory of the absolute guardianship of jurist (*al-wilayat al-mutlaqah lil-faqih*) needs clarification and elaboration. Its essence could be better understood through comparison with its two sisters. There are three types of guardianship of jurists (*wilayat al-faqih*) in Shi'ite *fiqh* in terms of the domain of the jurists' authority:

First, Minimum guardianship of jurists (*wilayat al-faqih fil-umur al-hisbiyya*) has a very small realm of authority, and is restricted to the minor affairs who do not have any custodian, such as public endowments or taking care of orphanage. *Al-umur al-hisbiyya* refers to those affairs that the Law-maker (*al-shari'*) wants them to be taken care of in any circumstances. Even in the absence of just jurists, it will be the duty of just believers to take care of them, and in the absence of just believers, it is the duty of any Muslims including evildoers (*al-fasiq*) to take action. This minimum realm is for necessary civil affairs. The majority of Shi'ite jurists believes in this type of *wilayat al-faqih*, and recognizes the authority of jurists to take action in regard to such affairs.

⁴ The original source for Khomeini's complete works in Persian is *Sahife-ye Imam Khomeini* in 21 volumes could be found online in *Jamaran* the official website of his office: <http://www.jamaran.ir/>

The second notion refers to the general guardianship of jurists in public domain (*al-wilayat al-'amma lil-fuqaha*): This type of guardianship covers the whole public domain, or in other words the affairs that the citizens assign to governments such as public order, security, public defense, and public health. This type of guardianship is much larger than the first type. It is restricted by two limits: First, this kind of guardianship has to be enforced according to public interest (*al-maslahat al-'ammah*). Second, this kind of guardianship is effective only in the limits allowed by *shari'a* ordinances including primary and secondary ordinances. I mean the authority of jurist is bounded to *fiqh*.

The third type is the absolute guardianship of jurist (*al-wilayat al-mutlaqah lil-faqih*). This type of guardianship is even larger than the second type. Although the jurist should rule according to public interest based on his judgment, his authority is not restricted to the *shari'a* ordinances (primary and secondary ordinances). The jurist has the authority to issue governmental command (*al-hukm al-hukumi*) based on regime interest. These government ordinances, also, count as *shari'a* ordinances, which make the jurist's authority authority. A challenging and important question in this regard is whether the authority of the jurist is restricted to the constitution. This is a controversial point that is ambiguous in Khomeini's statements. The essence and logic of his theory is close to this idea that the supreme leader is above the constitution, and that the validity of the law including the constitution itself depends on the jurist's approval. However, there are a few statements that say the opposite. Khomeini's conservative and reformist followers have contested over these two responses to this question.

The political theory of Ayatollah Khomeini in Tehran period could be called 'Islamic Republic under absolute guardianship of jurist'.

Foundations of the Theory

There are five theories that form the foundations of Ayatollah Khomeini's theory of the "absolute guardianship of a jurist". **First**, Khomeini adopted and altered Plato's theory of a philosopher-king by replacing the philosopher with the jurist. **Second**, as one of Ibn al-Arabi's admirers, Khomeini took his idea of the mystic as the "perfect human being," and replaced the mystic with the jurist. **Third**, he expanded the theory of Shiite

leadership or *Imamat*, which equated the Imam to the prophet that are both appointed by God. He equated the jurist with the infallible imam who is the absolute guardian of the people. **Fourth**, he assigned the characteristics of the charismatic, mythical Iranian king (*farrahmand*) to the jurist. **Fifth**, he added the bases of public interest and the efficiency of the modern state, which he replaced with the expediency of the regime, to ultimately serve Islam. The first four theories belong to the pre-modern state. Only the last one is borrowed from theories of the modern state.

Challenging the Theory

Ayatollah Khomeini's theory was called the "absolute guardianship of the jurist". God, His prophet, or the hidden Imam appoints the jurist to this supreme position and the assembly of experts discovers (*al-kashf*) his appointment or deposal. In this totally modern theory, Ayatollah Khomeini used "the expediency of the regime" instead of public interest and claimed that rather than the state; the jurist-ruler determines the public interest. This theory of absolute guardianship of the jurist ruler could be compared to Tomas Hobbes' *leviathan*. Ayatollah Khomeini had not read the *Leviathan* and did not know Hobbes (d.1679), but his ideas were very similar to those of Hobbes in a Muslim context. There is no doubt this theory is more functional than the traditional political theories of other Muslims. Since this theory is essentially a modern theory of state, its validity according to Islamic teachings is questionable. Taking public interest as the foundation of an Islamic State and abrogating the primary and secondary ordinances of *shari'a* is the process of secularizing *fiqh* under the authority of a jurist. The political power will replace traditional *shari'a* with public interest-oriented rules. Why would we call the product of this process a religious state, and why should we call these governmental rules *shari'a* ordinances?

Ayatollah Khomeini expanded the domain of *fiqh* and *shari'a* to include all political, social, economic, personal, public, cultural, and even the military affairs. He thought that *fiqh* had a comprehensive capacity to promote the jurist to the position of an absolute ruler, who is the final decision maker after consulting with experts. Ayatollah Khomeini tried to compensate the shortcomings of *fiqh* by servicing the public interest. We may reverse his theory, and appoint the elected experts as final decision makers who consult

the jurists! Jurisprudence does not have the capability to substitute politics, economics, sociology, law, the humanities, and the social sciences.

The administration of a state as well as governance based on public interest is essentially a secular job.⁵ Building a modern state on public interest is necessary for an efficient secular state, regardless of its official religion. Contrary to how Ayatollah Khomeini and Sunni fundamentalists (such as A. Mawdudi or Sayyed Qotb) understood it, *shari'a* is NOT a system of law. *Shari'a* is a set of Islamic ethical virtues and moral norms. Hence, theocracy or the religious state is implausible, at least in the modern age. *Shari'a* could not be the state law in its traditional form. Revising it on the basis of public interest would make it nothing except a form of secular law. The product of this process is modern in nature.⁶

Ayatollah Khomeini's theory with a few revisions could be regarded a theory of the modern state. **First**, "Islamic" should be dropped from the name: it is a secular theory in essence and it triggers the process of secularizing *shari'a*. **Second**, any divine role or special rights for jurists must be dropped: the *faqih* is an expert in *shari'a*, which is the set of ethical virtues and moral norms in Islam. *Fiqh* is NOT law, politics, economics, or any of the other social sciences. We may not expect it to be something beyond its essence and capabilities. **Third**, the supreme leader should not substitute the state. In Iran's current Constitution, the head of the state is the elected president who is accountable and responsible to citizens' representatives, and the length of his presidency is limited to 4 or 8 years. The supreme leader is above the constitution with absolute power. He is only responsible only to God in the Day of Judgment, and his term is also indefinite, which is a characteristic of dictatorships, a characteristic that is neither modern, nor Islamic.

⁵ For more information as a case study of Iran: Yasuyuki Matsunaga, The Secularization of a Faqih-Headed Revolutionary Islamic State of Iran: Its Mechanisms, Processes, and Prospects, *Comparative Studies of South Asia, Africa and the Middle East* (2009) 29(3): 468-482.

⁶ I analysed and criticised Khomeini's theory in detail in this book: *Hukumat-e Wela'i (Theocratic State)*, Tehran, Ney publisher, 1999, second edition: 2008. The English, Arabic and Indonesian translations of it are forthcoming. You may find more information on my critique on Khomeini's theory this two articles: 1) *Wilayat al-faqih and Democracy in Islam, The State and Political Authority, Medieval Issues and Modern Concerns*, Edited by Asma Afsaruddin, Palgrave, New York, 2011; 2) From Traditional Islam to Islam as an End in Itself, *Die Welt des Islams*, 51 (2011) 459-484, Brill, Leiden, The Netherlands.