

Structural Challenges to the Principle of Separation of Powers in the Power Dynamics of Contemporary Iran

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Abstract

The principle of separation of powers, adopted within Iran's political order with the aim of establishing institutional balance and preventing the concentration of power, has encountered numerous structural challenges despite its recognition in Iran's constitutions following the Constitutional Revolution and, particularly, after the Islamic Revolution. Due to the existence of institutions such as Velayat-e Faqih (Guardianship of the Islamic Jurist) and the Guardian Council, the political structure of the Islamic Republic of Iran has introduced substantial modifications to the classical model of separation of powers. Consequently, the independence of each of the three branches of government—the legislative, executive, and judiciary—has been established only in relative terms, while overlaps and intersections of functions exist across various domains. Although this distinctive institutional structure has contributed to a certain degree of coordination and to the preservation of political cohesion within the system, it has, in some instances, resulted in constraints on the authority of elected institutions, reduced transparency, and greater difficulties in ensuring accountability. An analysis of the structural challenges confronting the principle of separation of powers in contemporary Iran may contribute to the identification of effective approaches for enhancing the efficiency and legitimacy of the country's political system.

Keywords: Separation of Powers, Islamic Republic of Iran, Structural Challenges, Guardian Council, Guardianship of the Islamic Jurist.

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1. Introduction

The introduction of the concept of separation of powers into contemporary Iran has been accompanied not only by potential opportunities for growth and development but also by its own particular challenges. Examining and analyzing these deficiencies and obstacles is essential for advancing the process of democratization and improving the efficiency of Iran's political system. Ultimately, only through a deeper understanding of this concept and its adaptation to Iran's social, cultural, and political conditions can a stable and balanced political order be achieved. This process requires the collective commitment and determination of political and civil institutions, particularly intellectuals and social activists, who can contribute to the formulation of an appropriate roadmap for the country's political future through constructive dialogue and effective

cooperation. Efforts to establish such a system entail creating a framework in which the separation of powers is transformed from a merely theoretical concept into an actual and effective practice capable of protecting citizens' rights and laying the groundwork for genuine democracy in Iran.

The central philosophy underlying the theory of separation of powers is the control of governmental power. In *The Spirit of the Laws*, Montesquieu, after explaining that the concentration of legislative, executive, and judicial powers in the hands of a single individual or a particular institution may lead to despotism, emphasizes that "in order to prevent the abuse of power, governmental institutions must be arranged in such a way that power restrains power" (Mohtadi, 1955).

An examination of analytical sources concerning the Constitution of the Islamic Republic of Iran, including the detailed deliberations of the Assembly for the Final Review of the Constitution, the Council for the Revision of the Constitution, and the interpretive opinions and practices of the Guardian Council, demonstrates that the concept of the "independence of the branches of government" contained in Article 57 of the Constitution was primarily designed to provide for the specialized division of governmental functions among different institutions and was not necessarily associated with the theoretical foundations and objectives of the doctrine of separation of powers, particularly the division of political power for the purpose of controlling it and preventing its corrupting effects (Tabatabaei, 2017).

At present, the most significant challenge confronting the Iranian legal system in relation to the concept of separation of powers is that, although the theory of separation of powers has been accepted in the Islamic Republic of Iran—as can be inferred from legislation and the opinions of the Guardian Council—the implementation of this theory remains ambiguous in certain respects, and the boundaries of the authority of the different branches are sometimes disputed. Consequently, the Guardian Council, in its capacity as the institution responsible for interpreting the Constitution and reviewing the legislation adopted in the country, intervenes in such matters and contributes to resolving disputes among the three branches of government (Javan Arasteh, 2016).

The research question of this article is as follows: "What challenges does the concept of separation of powers face in becoming operational within the sphere of the country's political order?"

The hypothesis of this article is as follows: "It appears that the application of the separation of powers in the Islamic Republic of Iran encounters theoretical difficulties because it involves implementing a Western theory within an Islamic political system founded upon the doctrine of the Guardianship of the Islamic Jurist."

Mohseni Shanbeh Bazari (Mohseni Shanbeh Bazari, 2021), in discussing the relationship between the separation of powers and the Guardianship of the Islamic Jurist in the Islamic Republic of Iran, characterized the separation or independence of powers as a model for the governmental organization of a political system. The theory of separation of powers encompasses principles explaining how power is distributed or divided. In principle, the distribution of power is based on the diverse functions of government in three principal spheres: legislation (the legislative branch), administration and execution (the executive branch), and adjudication (the judiciary). In this work, an attempt was made not only to examine the theoretical foundations of the separation of powers but also to explain the nature of the relationship between the separation of powers, the Guardianship of the Islamic Jurist, and the branches operating under its supervision.

Ackerman (Ackerman, 2020), in his discussion of the new separation of powers, argues that the theory of separation of powers serves three fundamental ideals: first, the ideal of democracy, or guaranteeing the people's right to determine their own destiny; second, the establishment of a professional and specialized administrative apparatus capable of implementing democratically enacted laws with relative impartiality; and third, the protection of fundamental rights. According to Ackerman, the first two ideals ultimately serve the third. In his view, democratic government and a professional and specialized administrative apparatus can rapidly become instruments of authoritarianism if they do not serve the protection and guarantee of fundamental rights. The distinction between the present study and the aforementioned work lies in the fact that this study examines the existing discourses surrounding the theory of separation of powers and critically analyzes the relevant theoretical perspectives, whereas such an inquiry was not undertaken in the cited source.

Shieali and Zare (Shieali & Zare, 2017), in examining the theory of separation of powers in the Islamic Republic of Iran with particular attention to the relationship between the Guardianship of the Islamic Jurist and the separation of powers, argue that, given the structure of the political system of the Islamic Republic of Iran, this principle primarily functions to coordinate the three branches of government. Accordingly, considering Iran's governmental structure, the existence of the institution of

the Guardianship of the Islamic Jurist, and its extensive authority over the principal organs of political power, a modern conception of the separation of powers cannot be fully adopted, and greater attention must instead be given to the traditional dimension of this principle. Moreover, under the Constitution, the separation of powers is relative rather than absolute.

The principle of separation of powers constitutes one of the most fundamental principles of modern governance and was developed with the objective of distributing political power, preventing its concentration, and averting despotism. In contemporary Iran, this principle first entered the country's political structure through the Constitutional Revolution and subsequently received renewed attention following the establishment of the Islamic Republic within the framework of the new political system. Nevertheless, the legal-political structure of the Islamic Republic of Iran, owing to the existence of institutions beyond the three conventional branches, such as the Guardianship of the Islamic Jurist and the Guardian Council, has generated a distinctive model of separation of powers in which certain fundamental powers have been transferred from popularly elected branches to appointed institutions. This arrangement has generated structural challenges, including overlapping jurisdictions, the absence of complete institutional independence, limitations on accountability, and reduced transparency in political and decision-making processes. Research in this field is necessary because the extent to which the separation of powers is effectively realized plays a decisive role in the balance of power, transparency, governmental efficiency, and political legitimacy. At a time when Iran is experiencing significant political, social, and economic transformations, reconsidering the structural dimensions of the separation of powers may contribute to improving governance and increasing public trust. Furthermore, a systematic scholarly examination of these challenges can provide a basis for legal and institutional reforms and enhance the accountability and effectiveness of institutions exercising political power. Clarifying the nature and consequences of the structural challenges affecting the separation of powers in contemporary Iran is therefore of considerable importance not only to researchers and policymakers but also to citizens interested in the country's political development.

2. The Concept of Separation of Powers

The earliest foundations for the application of the separation of powers in Iran were laid with the preparation of an unofficial draft constitution in 1897 and the presentation of related views by Mostashar al-Dowleh. However, the necessity of separating political powers was first explicitly articulated in the writings of scholars such as Mulla Abd al-Rasul Kashani and Mirza Na'ini (Alavi & Sadeghian, 2010). Regarding the necessity of separating political powers, Mirza Na'ini writes that one of the indispensable requirements of political governance is the division of the powers of the state so that each distinct branch may be regulated in accordance with sound scientific rules and laws (Naini, 1982). An examination of Mirza Na'ini's views demonstrates that his conception of the separation of powers differs to some extent from the approaches of Western theorists. This distinction can be inferred particularly from the examples that Na'ini invokes in identifying manifestations of the separation of powers within Islam.

Following the Constitutional Revolution, some of Mirza Na'ini's views were reflected in the Supplement to the Constitutional Law. According to Article 27 of that law, "the powers of the state shall be divided into three branches: first, the legislative power, which is specifically concerned with the enactment and amendment of laws; second, the judicial and adjudicative power, which concerns the determination of rights; and third, the executive power." Under Article 28 of the same law, the three branches were declared separate from one another. Nevertheless, despite the formal recognition of the principle of separation of powers in the Constitutional Law, prior to the victory of the Islamic Revolution this principle was repeatedly infringed upon by executive institutions and, in some instances, by foreign powers.

3. Reconstruction and Revival of the Separation of Powers

Christoph Möllers is another theorist who has advanced a noteworthy approach in this field. By proposing a "theory of reconstruction of the concept of separation of powers," he takes the right to self-determination as his point of departure and, through reference to models of individual and collective self-determination, seeks to reconstruct the concept of separation of powers within democratic constitutional systems. His concern arises from the view that the classical principle of separation of powers is undergoing erosion because of the emergence of an increasingly expansive political executive, the decline of parliamentarism, the rise of the regulatory administrative state, the proliferation of technocratic institutions, and the challenges confronting constitutional democratic systems. He therefore seeks to establish a connection between a normative model of

political theory and public law, with the idea of separation of powers serving as the conceptual link between the two (Zarei & Azizmohammadi, 2017).

The most significant contested issue concerning the executive branch relates to drawing the boundary between political government and an administration bound by law, as well as determining how the relationship between these two domains should be recognized and interpreted differently. A careful examination of the temporal orientation of decisions made by the executive branch reveals its central position. Whereas judicial rules are generally oriented toward the past and legislative rules toward the future, the executive branch concentrates on the present interpretation and application of law. Indeed, the implementation of a legal norm may be interpreted in a manner that simultaneously contributes to the creation of the norm and its practical enforcement. The executive branch does not, however, confine its activities solely to implementing legislation; it may also engage in regulatory rulemaking and, in certain contexts, make case-specific determinations that possess quasi-judicial characteristics. The crucial issue in this context is specialization and expertise, which play particularly important roles within the executive branch. Accordingly, under this theoretical perspective, the activities of the executive in the modern world may possess both legislative and judicial characteristics. In other words, the executive has evolved from a merely implementing authority in the classical conception into a regulatory branch with multiple functions. This transformation makes it possible to preserve the principle of separation of powers while more appropriately accommodating the emergence of regulatory institutions within the executive branch and ensuring their supervision without undermining their effectiveness. It therefore appears that the function of the separation of powers in constitutional democratic states is neither to suppress political power nor simply to facilitate its exercise, but rather to organize a model of lawmaking that recognizes individual and democratic dimensions of self-determination on an equal basis (Zarei & Azizmohammadi, 2017).

4. Separation of Powers in the Opinions of the Guardian Council

Various mechanisms have been developed in legal systems to prevent the intermingling of governmental powers. Most of these mechanisms are supervisory in nature and involve the establishment of specific oversight institutions. In Iran, two supervisory institutions have been envisaged to safeguard the separation of the legislative and executive branches: the Guardian Council and the Administrative Justice Court. The Guardian Council generally safeguards the functional separation of the legislative and executive branches by relying on Articles 85 and 138 of the Constitution. On the basis of Article 85, the Guardian Council regards legislative authority as belonging exclusively to the Islamic Consultative Assembly and does not permit other bodies to undermine this exclusive competence. Under Article 138, the Guardian Council determines the limits within which the executive branch may enact executive regulations (Vijeh, 2011).

5. Challenges to the Separation of Powers in the Political System of the Islamic Republic of Iran

The challenges confronting the separation of powers in the political system of the Islamic Republic of Iran arise primarily from the distinctive political, social, and cultural characteristics of the system. Drawing on previous research, several of these challenges are examined in greater detail below.

1. **The role of the Supreme Leader:** In the political system of the Islamic Republic of Iran, the Supreme Leader possesses extensive powers and influence that may affect the decisions of all three branches of government. Such influence may directly or indirectly affect the institutional independence of the branches and weaken the concept of the separation of powers. For example, through appointments and supervisory authority over the Guardian Council and other institutions, the Supreme Leader may influence electoral and decision-making processes, which has generated criticism regarding the independence of the legislative branch and other branches of government.
2. **The role of the Guardian Council:** The Guardian Council is an institution responsible, among other functions, for reviewing the qualifications of candidates in different elections. Through its supervision of elections and its approval or disqualification of candidates, the Council may affect the composition of the legislative branch. Consequently, the formation of the Islamic Consultative Assembly may be influenced by this supervisory authority, potentially weakening the practical operation of the separation of powers.

3. **Imbalance in the powers of the three branches:** Within the political system of the Islamic Republic, the executive branch has frequently operated under pressure from the legislative branch and the institution of leadership. Such an imbalance in powers may restrict the authority of the executive branch and, in practice, make it dependent upon the legislature and the leadership. Consequently, the separation of powers may not be fully observed, with adverse implications for the effectiveness of the governing system.
4. **Intervention of the branches in one another's functions:** Within the political system of the Islamic Republic, governmental branches sometimes intervene in one another's spheres of responsibility. For example, the legislative branch may become involved in executive or judicial affairs and vice versa. Such interaction may blur the boundaries between the functions of the three branches and contribute to institutional inefficiency within the system of governance.
5. **Judicial supervision over other branches:** The judiciary, as an institution responsible for overseeing the implementation of law, may exercise supervisory authority over the activities of other branches. In some circumstances, however, such supervision may evolve into intervention in their affairs. Certain forms of judicial action may therefore weaken the independence of other branches and ultimately affect the principle of separation of powers.
6. **Presence of institutions without a clear statutory foundation:** Various institutions and organizations operate within the political system of the Islamic Republic of Iran that may not have been formally established through ordinary statutory mechanisms but nevertheless influence policymaking and decision-making. Such bodies may operate under different institutional designations and, as a result, complicate the application of established rules and principles concerning the separation of powers.
7. **Influence of transnational actors:** At times, transnational powers or groups outside the formal structure of government may exert informal influence over policymaking and political decisions. Such influences may be characterized as forms of foreign intervention and may weaken the operation of the separation of powers. In these circumstances, institutional independence may be diminished, thereby impeding governmental bodies from properly fulfilling their legal and constitutional responsibilities.
8. **Competition among political and factional forces:** Political competition among different groups and factions within the Islamic Republic has a substantial influence on decision-making processes. Such competition may lead to struggles for power and insufficient cooperation among the three branches, thereby obstructing the effective operation of the separation of powers as each faction seeks to expand its own influence and authority.
9. **Overlapping responsibilities:** Because certain responsibilities are shared among the three branches, their powers and duties may overlap. Such overlap can generate institutional ambiguity and ultimately produce problems in the functioning of the political system. Under these circumstances, one branch may intervene in matters falling outside its proper sphere of competence, thereby preventing the branches from functioning independently and effectively.
10. **Macro-level policies and lack of consensus:** In the political system of the Islamic Republic, national macro-level policies may at times be formulated in a manner that gives rise to disagreement among different branches. Such disagreement can create practical obstacles to the implementation of legislation and programs and may contribute to internal tensions and broader difficulties within the country.
11. **Deficiencies in supervisory mechanisms:** In some circumstances, mechanisms for supervising and controlling the activities of the branches do not function effectively. This may create conditions conducive to corruption and conflicts of interest. The absence of transparent and effective mechanisms for monitoring the performance of the three branches may reduce public confidence and weaken democratic values.
12. **Deficiencies in the protection of citizens' rights and freedoms:** Considerable criticism has been directed toward the manner in which citizens' rights and freedoms are protected within the political system of the Islamic Republic. In such an environment, the establishment and effective functioning of independent institutions may be affected, potentially weakening the principles of separation of powers and preventing their full realization in practice.
13. **Influence of military and security institutions:** Military and security institutions play an important role in policymaking and political processes in the Islamic Republic of Iran. In some circumstances, these institutions may intervene in areas associated with the responsibilities of other branches, thereby reducing the independence and effectiveness of those branches.

14. **War and sanctions:** Exceptional circumstances such as war and sanctions may result in a greater concentration of power within the executive branch and thereby challenge the principles of separation of powers. During periods of crisis, urgent necessities may allow the executive branch to assume a more dominant role than the other branches, potentially diminishing the role of the legislature and judiciary.
15. **Conflicts of interest:** Conflicts of interest among institutions can generate challenges in the implementation of the separation of powers. When personal or factional interests prevail over public interests and the principles of institutional separation, such challenges may emerge and weaken the country's legal structure.
16. **Political culture and public awareness:** Political culture and public awareness of the rights and responsibilities associated with each of the three branches also play a significant role in the effective implementation of the separation of powers. If citizens lack sufficient awareness of their rights and of the functions of governmental institutions, effective public oversight may be weakened, ultimately disrupting the operation of the separation of powers.
17. **The influence of the media:** The media, as instruments capable of exercising political and social influence, may also affect the operation of the political system of the Islamic Republic. At times, media organizations may be subjected to pressure or may operate in the interests of particular groups, potentially contributing to one-sided communication and influencing governmental decision-making. Such circumstances may themselves pose challenges to the effective separation of powers.
18. **Legal limitations:** Legal restrictions and regulatory constraints may, in practice, generate challenges for the separation of powers. In some circumstances, laws may be formulated in a manner that restricts the ability of particular branches to act, thereby adversely affecting their independence and effectiveness.
19. **Lack of transparency in political processes:** A lack of transparency in political and decision-making processes may undermine public confidence and generate difficulties in the operation of the separation of powers. When institutional processes are not comprehensible or accessible to the public, misunderstandings and public disengagement may arise, with negative consequences for the functioning of separated governmental powers.
20. **Economic interdependence among institutions:** Economic dependence among governmental institutions and the three branches may create challenges for the separation of powers. When institutions depend upon one another for financial resources or economic authority, their independence may be affected, thereby preventing the principle of separation of powers from being fully implemented.

Taken together, these challenges illustrate the complexity of the political structure of the Islamic Republic of Iran and the difficulties associated with applying the principles of separation of powers within it. These challenges may weaken institutional effectiveness and citizens' rights and may also exert significant influence on the future political trajectory of the country.

6. The Future of the Theory of Separation of Powers

The principle of separation of powers has gained broad acceptance and constitutes one of the fundamental requirements of the constitutions of democratic states. Different governmental functions, including legislation, execution, and adjudication, are assigned to their respective institutions. The separation of powers is not an ultimate objective in itself; rather, it is an institutional means and constitutional commitment designed to establish a particular form of political organization capable of preventing the concentration and excessive bureaucratization of power. It does not necessarily require absolute institutional disconnection and fragmentation or complete equality and symmetry among the branches. Theories concerning the separation of powers should therefore be understood as attempts to provide realistic and appropriate interpretations of this principle while recognizing that social circumstances are affected by changes in time and place. From this perspective, contemporary theories must incorporate elements of transformation, reform, and development. Theories of the separation of powers, which seek to provide an appropriate framework for the exercise of political authority while protecting citizens' rights and freedoms, require modifications compatible with contemporary conditions so that they can ultimately respond to the changing needs of society.

This development has resulted in the emergence of new theoretical approaches. Although many of these theories have themselves been subject to criticism, a substantial transformation has nevertheless occurred in the status and operation of the doctrine of separation of powers. The evolution of political institutions demonstrates a tendency toward increasing integration, particularly between the legislative and executive branches. One of the principal sources of this transformation can be found in

the emergence and expansion of political parties during the past century. Through their extensive roles in political, economic, and social affairs and their simultaneous influence over legislative and executive institutions, political parties have significantly complicated the traditional balance envisaged by the theory of separation of powers. As previously noted, the doctrine has been extensively examined in legal scholarship but has encountered numerous practical contradictions in the institutional sphere, principally because of the nature of governmental powers and institutions exercising sovereignty. In the United Kingdom, for example, the prime minister stands at the head of the governmental administration while ordinarily commanding parliamentary support, with the result that the legislative agenda of Parliament is significantly shaped by proposals originating from the government. A related phenomenon appeared in the French Fifth Republic, particularly during the presidency of Charles de Gaulle, where presidential authority and parliamentary political leadership interacted in ways that complicated traditional notions of institutional separation. Examples of this kind demonstrate that the effectiveness of the classical theory of separation of powers in preventing abuses of authority has increasingly been questioned, particularly because such institutional arrangements may themselves emerge from democratic government and popular sovereignty. The principle of separation of powers may therefore come into tension with the possibility that the same political party or political coalition simultaneously controls the legislative and executive branches, even though such a situation may itself result from the democratic choices of citizens. At the same time, the position of the judiciary within theories of separated powers has also been subjected to criticism despite its central role in protecting public rights and freedoms. One line of criticism holds that, in both parliamentary and presidential systems, the judiciary retains certain forms of institutional dependence upon the legislative and executive branches, making complete separation of powers practically unattainable. Some theorists have accordingly regarded the judiciary as an institution that remains dependent upon legislation and reliant upon the executive for certain aspects of its functioning rather than as an entirely autonomous center of political authority (Tabatabaei, 2017).

7. Conclusion

Over the course of more than a century, the principle of separation of powers in Iran has experienced numerous transformations and fluctuations. With the introduction of this principle into the constitutional system, expectations increased that despotism could be constrained and a more balanced relationship among governmental institutions could be established. Practical experience, however, demonstrated that the adoption of modern concepts such as the separation of powers without sufficient attention to the country's cultural, social, and political context would not necessarily lead to the complete realization of their anticipated objectives. Subsequent developments and the Islamic Revolution of 1979 opened a new chapter in relations among governmental branches and in the distribution of political power in Iran. The Constitution of the Islamic Republic of Iran accepted the separation of powers as a fundamental principle while simultaneously institutionalizing new bodies such as the Guardianship of the Islamic Jurist and the Guardian Council, thereby creating a distinctive institutional architecture for the country's system of governance.

Within this structure, the branches possess relative independence but are not completely separated from one another; rather, numerous legal and practical connections exist among them. The institution of the Guardianship of the Islamic Jurist, as a guiding institution and guarantor of the overall political system, participates in many major national decisions and possesses distinctive supervisory and interventionary powers. The Guardian Council, through its responsibilities concerning the review of legislation and supervision of elections, also exercises substantial influence over the operation of the legislative branch and, to some extent, the executive branch. This institutional configuration has resulted in a degree of overlap in powers and responsibilities between elected and appointed bodies and has sometimes rendered the boundary between institutional independence and interbranch cooperation ambiguous.

On the one hand, the integration and interaction of various branches and institutions within the political structure of the Islamic Republic have contributed to a degree of institutional cohesion and coordination and have helped prevent major political fragmentation, particularly during periods of crisis or external threat. On the other hand, the same arrangement has produced significant constraints on elected branches, weakened mechanisms of mutual oversight, reduced institutional accountability, and increased ambiguity concerning the allocation of responsibility. In particular, where appointed institutions have more limited direct interaction with popular demands and preferences, the possibility of a widening distance between political

authority and society may increase, potentially contributing to public dissatisfaction and declining trust, whether episodically or gradually.

An analysis of the structural challenges affecting the principle of separation of powers in contemporary Iran indicates that the effective realization of this principle requires the redefinition of institutional roles and reconsideration of existing power relations. Although the present model has been accepted as a mechanism for preserving the indigenous and religious identity of the political system, addressing institutional conflicts and enhancing transparency and efficiency require reforms at both the legal and institutional levels. The roles of appointed institutions, particularly in areas such as legislation and supervision over the implementation of laws, require reconsideration in a manner that strengthens the accountability of all components of the political system and enables citizens to establish a more meaningful relationship with governance processes.

From the perspectives of institutional effectiveness and political legitimacy, greater institutionalization of genuine independence and balance among governmental branches, combined with increased transparency and accountability, can contribute to strengthening public trust and citizen satisfaction. Iran's experience indicates that any adaptation of conventional models of separation of powers must take into account the country's structural, historical, and cultural realities, and that the comprehensive realization of this principle ultimately depends upon the willingness and commitment of relevant institutions to improve the structural functioning of the political system. Ultimately, addressing the current challenges requires serious reconsideration, constructive critical discourse, and practical solutions aimed at reforming structural deficiencies and achieving a more effective realization of the principle of separation of powers within the power dynamics of contemporary Iran, since the country's political dynamism, stability, and development are closely connected to the appropriate realization of fundamental principles such as the separation of powers.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

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