

Iran's 1907 constitution and its sources: a critical comparison

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British Journal of Middle Eastern Studies

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Abstract

Scholars of Iranian constitutional history have long recognized the influence of the Belgian and Bulgarian constitutions on the Iranian 1907 constitution. The exact character and extent of these and other constitutional influences have remained unclear, however. This article provides an analytical comparison of the 1907 Supplementary Fundamental Laws with the 1831 Belgian, 1876 Ottoman and 1879 Bulgarian constitutions that served as models and sources of inspiration. We also provide an easily navigable annotated version of relevant constitutional provisions in the footnotes for scholars interested in tracing models for particular provisions and have provided a complete version of the 1907 Supplementary Fundamental Laws and its sources on our website. In doing so, this article and the accompanying materials hope to clarify where these influences begin and end, where they have been modified or ignored, and where Iran's constitutionalists innovated by introducing more stringent separation of powers or new institutions. It is thereby demonstrated that Iran's constitutionalists critically engaged with previous constitutional traditions, rather than merely copying provisions from earlier models. Thus, Iran's 1907 Supplementary Fundamental Laws should be regarded as an organic engagement with and global extension of the European liberal tradition, rather than as a merely peripheral or derivative development.

Introduction

In recent years, the resurgence of constitutionalism in the Middle East in the wake of the Arab Spring—particularly in Egypt and Tunisia—and the rumoured possibility of a new constitutional convention in Iran have inspired new scholarly interest in constitutionalism in the region, in both its contemporary and historic forms. Contrary to popular impressions, constitutionalism has had a spectacular, and often ultimately tragic, history in the region, and none more so than in Iran. The grand constitutional experiment at the heart of Iran's Constitutional Revolution of 1906–1911 inspired European and American observers such as E.G. Browne¹ and Morgan Shuster² who saw in it the promise of a new Iranian political culture devoted to democracy, civil rights and independence from colonial domination. For Iran and other Middle Eastern societies, constitutionalism promised various intersecting and frequently contradictory things, including the establishment of new democratic institutions, the promotion of a new inclusive sense of national unity, the creation of a centralized state as a mechanism of modernization and a means of securing independence from colonial encroachment, as well as a tool in paradoxically challenging and reinforcing some traditional systems of authority.

While Iran's constitutional movement collapsed under the weight of internecine fighting and imperialist intervention, resulting in the reassertion of royal authoritarianism, the constitutional documents and representative institutions of that period continued to represent a powerful symbolic challenge to royal authority and legitimacy. The Russian intervention of 1911 effectively ended the constitutional period, but neither the Majles nor the constitution were abolished, and both were uneasily appropriated as symbols of royal legitimacy in the decades that followed. So potent were the Majles and ^{AQ1} the constitution as latent popular symbols that neither Reza Shah nor Muhammad Reza Shah thereafter dared to create an absolute royal dictatorship by abolishing them.

The year 2017 marked the 110th anniversary of the 1907 Supplementary Fundamental Laws, the heart of Iran's first constitution enshrining ideas of popular sovereignty, equality and civil rights. It was a document that captured the tensions and contradictions of three competing forms of political legitimacy: democratic, monarchical and theocratic. The tensions and conflicts among these three forms of political legitimacy shaped the political trajectory of Iran in the last century. The monarchical tradition was eliminated in the overthrow of Muhammad Reza Pahlavi in 1979. The theocratic tradition remains entrenched, but has made major concessions to democracy as a means of legitimating the theocratic political order. While the constitutional revolution failed to achieve all its goals, it nevertheless won a significant symbolic victory and effected real change in Iranian political culture by introducing and legitimizing political ideas and concepts from the European liberal tradition.

While scholars of Iranian constitutional and political history have long recognized the Belgian and Bulgarian influences on the 1907 Supplementary Fundamental Laws (*motammem-e qānūn-e asāsī*), the exact character and extent of these influences have thus far remained somewhat undefined and it remains uncertain as to how these influences interacted with the historical contingencies of Iranian social and political circumstances at the turn of the twentieth century. This ambiguity has had the effect of implying that Iran's constitutionalists merely copied or borrowed their constitution without serious engagement with the constitutional traditions of Europe and, to a lesser extent, the Ottoman Empire.

Even borrowing, however, implies a process of translation and adaptation as Iran's constitutionalists weighed which traditions would best serve their political and social needs. This required not only a familiarity with the social and political conditions of their own country, but also a familiarity with the conditions that shaped the European constitutions from which they were borrowing.

Iran's constitutionalists did not engage in this process of adaptation and translation uncritically. The drafting committee of Iran's Supplementary Fundamental Laws sought to secure the rights of Iran's newly fashioned citizens by placing limits on the authority of both the monarchy and the clerical establishment, restrictions that were at the heart of various European constitutions. Nevertheless, the inclusion of provisions adapted from the 1876 Ottoman and 1879 Bulgarian constitutions cemented clerical authority in both traditional and innovative ways. Furthermore, Iran's constitutionalists refused to include or otherwise adapt certain liberal articles present in these constitutions, either because of the political cost they would entail or because they were considered unsuitable to Iran's social and political needs. Nevertheless, the 1907 Supplementary Fundamental Laws should be considered a product of the constitutionalists' critical engagement with the European and Ottoman liberal tradition, one that warrants its consideration as an organic global extension of that tradition, and not as a merely peripheral or derivative development.

This article does not venture to retell or reinterpret the events of the Iranian Constitutional Revolution. That has been undertaken elsewhere by other scholars.³ Rather, this article aims to examine the various elements of the 1907 Supplementary Fundamental Laws in the context of its constitutional predecessors that served as models and sources of inspiration. The present study also tries to provide an easily navigable reference guide for scholars interested in tracing models for particular provisions, and the relevant constitutional provisions and their precedents have therefore been provided in full in the footnotes and on a separate website. It is hoped thereby to clarify where these influences begin and end, where they have been modified or ignored, and where Iran's constitutionalists innovated by introducing

a more stringent separation of powers or new institutions. It is our hope that it might thereby clarify how the constitutionalists sought to redress Iran's specific political and social problems by engaging critically and selectively with the constitutional traditions of other societies.

The drafting of the Supplementary Fundamental Laws

The Iranian Constitutional Revolution of 1906–1911 produced three foundational documents intended to establish and frame the country's new political and social order: the Electoral Laws of 9 September 1906; the Fundamental Laws of 30 December 1906; and the Supplementary Fundamental Laws of 7 October 1907,⁴ which represented the fullest expression of the constitutionalists' envisioned political and social order. The constitutionalists drafted the Electoral Laws a month after the shah conceded to the formation of a National Consultative Assembly (*majles-e shūrā-ye mellī*) in August 1906.

Influenced by the 1871 constitution of the German Empire, the Electoral Laws established the procedures and regulations for the election of the First Majles (1906–1908), including voting and candidate qualifications based on a limited male suffrage and corporate social identities.⁵ Elections held soon after led to the convening of the First Majles on 7 October 1906. The Electoral Laws did not, however, address the most important questions concerning the demarcation of institutional authority and responsibilities. The constitutionalists undertook this more difficult task in the autumn of 1906 by drafting the first version of Iran's constitution—the Fundamental Laws (*qānūn-e asāsī*).

Influenced by the 1831 Belgian Constitution, the Fundamental Laws consisted of 51 articles and significantly reduced the authority of the shah. It established a bicameral National Consultative Assembly (*majles-e shura-ye mellī*) (Arts. 1–14) comprised of a representative assembly and a senate. The shah possessed the authority to appoint half of the deputies of the senate, but no timetable was established for the body's formation, and the senate was ultimately not convened as the constitutionalists were not interested in augmenting the king's powers.⁶ The Majles was invested with the legislative authority to propose laws subject to royal approval (Arts. 15, 17 and 47); conversely, the Majles' approval was required for laws emanating from the shah or his ministers (Arts. 16, 33 and 38). The Fundamental Laws further established the Majles as an independent governmental body by granting it the right to regulate its own internal affairs (Art. 14), and established immunity for its deputies from molestation, intimidation or prosecution without the Majles' approval (Arts. 12 and 38).

The new constitution also significantly reduced the financial authority of the shah—one of the constitutionalists' main goals—by requiring that all major financial transactions, including foreign

loans, contracts, concessions and the budget, be approved by the Majles (Art. 18, 22, 24 and 26). By reducing the shah's financial authority, the constitutionalists sought to simultaneously preclude further colonial and economic exploitation of Iran's natural resources, which the Qajars had readily granted to European powers as concessions in the nineteenth century, as well as asserting control over the shah's lavish and expensive lifestyle. The new constitution also imposed an unprecedented degree of accountability on the shah's ministers by investing in the Majles the right to question and call ministers to account and to demand their dismissal by the shah should they be found to be in violation of the law (Arts. 27–29 and 42).

Nevertheless, there was wide recognition among the constitutionalists that the 1906 constitution had left many fundamental issues unresolved. It did not include a bill of rights, nor were the institutional powers of the executive, legislative or judicial branches of government clearly defined or demarcated. The provisions of the 1906 constitution had been hastily drafted to secure the signature of the ailing shah, Mozaffar al-Din Shah (1853–1907), on 30 December 1906, as a means of cementing the constitutionalists' institutional gains. The shah died a week later. The 1906 constitution had primarily focused on the limitations which the Majles imposed upon the shah's authority, but it did not clearly

AQ2 identify the institutional character or powers of either the executive or judicial branches. It also relied upon the monarchy to assume the functions of the executive without clear provisions as to the extent and character of its functions.

The First Majles soon began work on supplements to the Fundamental Law, forming a new committee for that purpose in mid-February 1907.⁷ Tasked with drafting supplementary provisions that would address the constitution's weaknesses and ambiguities, the drafting committee was composed of six members, the most important of whom were Javad Sa'd al-Dowleh (1841–1929), Hassan Taqizadeh (1878–1970), Sadeq Mostashar al-Dowleh (1864–1954) and Muhammad Hussain Amin al-Zarb (1872–1933). They were not only key constitutionalists, but several of them had lived abroad and possessed extensive foreign contacts. Javad Sa'd al-Dowleh was an Azerbaijani merchant who had served as the minister of commerce in the court of Muzaffar al-Din Shah. He had lived for some time in Belgium and was the leader of the liberal radical faction of the Majles during this period. Hassan Taqizadeh was a celebrated deputy from Azerbaijan who had close ties to social democratic circles in Russian-ruled Baku and Tbilisi, and he eventually replaced Sa'd al-Dowleh as the leader of the liberal/radical faction. Sadeq Mostashar al-Dowleh, a deputy and close friend of Taqizadeh, had studied in Istanbul and worked in Iran's Ministry of Foreign Affairs.⁸ Lastly, Muhammad Hussein Amin al-Zarb, a prominent Tehran merchant and son of the nineteenth-century entrepreneurial giant, Haj

Muhammad Hassan Amin al-Zarb (d.1898), was one of the key financial backers of the Constitutional Revolution.⁹ While various members of the committee approached the drafting process with different political agendas, it was Taqizadeh's views that predominated in the early drafts of the new constitution.¹⁰

It was a requirement for all members of the draft committee to know a foreign language so they could consult European constitutions.¹¹ While Iran's constitutionalists had a range of European constitutions from which they could draw, they nevertheless seem to have seriously consulted only a few. A careful examination of the Supplementary Fundamental Laws of 7 October 1907 suggests that the constitutionalists consulted the 1791 French, the 1831 Belgian,¹² the 1876 Ottoman¹³ and the 1879 Bulgarian constitutions.¹⁴ The 1791 French Constitution had the least direct influence on Iran's constitution, even though French political ideas had been circulating in Iran for at least several decades.¹⁵ The 1791 French Constitution had also directly influenced the Belgian, Bulgarian and Ottoman constitutions, but the influence was less liberal in the Bulgarian and Ottoman adaptations.

While Iran's constitutionalists admired Japanese society and were enthusiastic about the 1905 Russian Revolution, they did not adopt provisions from either the 1881 Japanese or 1905 Russian constitutions in drafting the 1907 Supplementary Fundamental Laws, as neither were democratic by contemporary standards and both maintained strong monarchs at the centre of their constitutional orders. Even though Iran's constitutionalists consulted the German Empire's 1871 constitution to draft Iran's 1906 Electoral Laws, they did not borrow from it in the drafting of the 1907 Supplementary Fundamental Laws. The United States' constitution does not seem to have been considered at all.

The 1831 Belgian Constitution was likely considered the most attractive model for the Supplementary Fundamental Laws for two reasons. First, the Ottoman constitution of 1876, which was the first Middle Eastern constitution establishing a representative body, was also based on the 1831 Belgian Constitution. This not only established a precedent for their decision, but also possibly demonstrated the practicality of adapting European constitutions for Middle Eastern societies. Egypt would later adopt the 1831 Belgian Constitution as the model for its 1923 constitution.¹⁶ The 1831 Belgian Constitution has thus influenced constitutions of three major states of the Middle East—the Ottoman Empire, Iran and Egypt—while influencing the political developments of several European countries.

The second reason that may have influenced the choice of the Belgian constitution as a model lay in the fact that several elite Iranian constitutionalists had commercial and political ties to Belgium.¹⁷ Sa'd

al-Dowleh was intimately familiar with the Belgian political system as he had lived in Brussels as Iran's envoy. He requested a copy of the 1831 constitution from the Belgian legation, translated it into Persian and presented it to the constitutional committee for revisions.¹⁸ While both the French and Belgian constitutions influenced the 1906 Iranian Constitution, it was the 1831 Belgian Constitution that became the primary model for the 1907 Supplementary Fundamental Laws. In a speech to the Central Asian Society in London in 1909, Taqizadeh stated that he and his colleagues had based the supplementary laws 'largely on the Belgian [constitutional] laws, partly on the French, and partly on the laws prevalent in Bulgaria'.¹⁹

The Majles ratified the Supplementary Fundamental Laws on 7 October 1907, the parliament's first anniversary, and it consisted of 107 articles. The 1831 Belgian Constitution served as the primary model for much of the administrative framework and many of the rights of the Supplementary Fundamental Laws. It recognized three branches of government, including a bicameral legislature (the representative Majles and a senate), an executive (the monarchy) and a dual judiciary combining a secular Ministry of Justice with traditional religious courts. It also included an 18-point bill of rights (Arts. 8–25).

The Supplementary Fundamental Laws were not minor additions, but were the very core of the new constitutional order. They not only determined the political character of the new order, but also expressed a new social vision for Iranian society in terms of national sovereignty, civil rights and equality. This vision, however, was a contested one, reflecting political, cultural and social divisions between radical social democrats, moderate secular constitutionalists and moderate and conservative 'ulema. It was a contest indelibly marked in the ink and pages of the Supplementary Fundamental Laws, and the social and political tensions embodied in this document would shape Iran's political trajectory throughout the twentieth century.

Limits on the monarchy

The Supplementary Fundamental Laws significantly curtailed the powers of the shah in terms of his arbitrary, legislative, ministerial and financial authority. Further empowering the Majles at the expense of the monarchy was necessary both to challenge the king's countless prerogatives over his subjects and to counter the obstinacy of the new king, Muhammad Ali Shah (r.1907–1909), who remained opposed to the new order. While the ideological claim that the king had absolute power over his subjects had always been conditioned by the realities of political expediency and the social and military power of various corporate groups (the 'ulema and the tribes, among others), the constitutionalists' efforts to condition that authority were as much a symbolic as a practical assault on the ideological legitimacy of the shahs'

patrimonial authority.

The new constitutional restrictions on the shah's arbitrary authority, and the articulation of a series of rights possessed by citizens, thus represented a complete negation of the absolutist character of Iran's previous political traditions. The articulation of these rights reflected the dawning political consciousness of a 'nation' (*millet*) composed of citizen-subjects possessing certain rights emanating from the will of the people as the basis of legitimate political authority. The restrictions imposed on the previously arbitrary authority of the shah exemplify the revolutionary character of these newly articulated rights. The Supplementary Fundamental Laws guaranteed Iranian citizens and foreign subjects residing in Iran security of person and property from illegal arbitrary seizure or destruction (Arts. 6, 9, 15, 16 and 17), security from summary arrest 'save flagrante delicto in the commission of some crime' (Art. 10), protection from arbitrary exile (Art. 14), protections against arbitrary violation of domiciles (Art. 13), rights to privacy in postal and telegraphic correspondence (Arts. 22 and 23) and a guarantee that punishments would conform to the law (Art. 12).

While the bill of rights at first glance seems like a simple re-articulation of rights found in the 1831 Belgian, 1876 Ottoman and 1879 Bulgarian constitutions, a closer examination of specific adaptations and omissions reveals a particularly Iranian flavour and emphasis that reflected Iran's particular historical experience, political tensions and contradictions. Those articles prohibiting the arbitrary seizure of property—thereby affording Iranians a kind of 'right to property'—were heavily influenced by both the Belgian and Ottoman constitutions. These included prohibitions on the arbitrary removal of property from an owner's control, the confiscation of property as a form of punishment, as well as a broad prohibition on depriving owners of their possessions 'under any pretext whatsoever' (Arts. 15–17).²⁰ The Supplementary Fundamental Laws also included a general provision protecting the lives, property, homes and honour of Iranians from unlawful interference (Art. 9),²¹ which had no exact equivalent in the Ottoman, Belgian or Bulgarian constitutions, but was possibly influenced by similar articles in the Ottoman (Arts. 21 and 22)²² and Bulgarian (Arts. 67 and 74)²³ constitutions. Iran's 1907 constitution included a further article that extended these protections to foreign persons residing in Iran (Art. 6).²⁴

Nevertheless, there were notable departures and omissions in the adaptation of these provisions from other constitutions. The Belgian and Ottoman constitutions defined the inviolability of person and property in terms of 'individual' or 'personal' liberty which was removed from the Supplementary Fundamental Laws due to the controversial connotational association of liberty (*azādī*) with religious

heterodoxy, atheism and immorality.²⁵ The constitutionalists' need for multiple, redundant provisions protecting security of property and person reflected the frequency with which these had historically been violated by the arbitrary authority of the shahs and their agents both directly and indirectly through taxation. Throughout the nineteenth century and earlier, seizure of property had been a common form of arbitrary punishment for criminal offences and political dishonour.

The Supplementary Fundamental Laws' prohibition on arbitrary exile either from or to other regions of the country (Art. 14)²⁶ was an Iranian innovation that did not have a parallel provision in any of the Belgian, Ottoman or Bulgarian constitutions. This not only reflected concern over the frequency with which exile as a form of punishment had been historically put to use by the shah, but it also suggests an awareness of one of the fatal flaws of the 1876 Ottoman Constitution.

Prominent Iranian ministers such as Amir Kabir (1807–1852) had suffered internal banishment, imprisonment and execution throughout the course of the nineteenth century whenever their ambitions or policies displeased or potentially threatened the shah. Whereas Article 14 of the Iranian constitution categorically forbade exile as a form of punishment 'save in such cases as the Law may explicitly determine', Article 113 of the 1876 Ottoman Constitution had stipulated that 'His Majesty the Sultan has the power of expelling from the territory of the Empire those who... are recognized as being injurious to the safety of the state.'²⁷ The power to exile was thus effectively conditioned by law and transferred to the legislative authority of the Majles in the Iranian case. In contrast, the Ottoman sultan retained the arbitrary authority to exile anyone he considered a threat, a power that would ultimately lead to the downfall of the Ottoman constitutionalists and the 1876 constitutional order in the Ottoman Empire. Midhat Pasha, the most prominent leader of the Ottoman constitutionalist movement, was exiled by the shah in 1877 as soon as political circumstances permitted.²⁸ The Ottoman National Assembly had only convened for a total of five months between 1876 and 1878 and would not meet again until 1908.²⁹ It is likely, consequently, that the brevity of the Ottoman example and the retention of autocratic elements such as the sultan's power to exile tempered the inclination of Iranian constitutionalists to borrow more readily from the Ottoman constitution.

The 1907 Supplementary Fundamental Laws also recognized the rights of Provincial and Departmental (District) Councils (Arts. 90–93), a provision that was adopted from the Belgian 1831 law.³⁰ In a separate document, the Majles also passed a set of laws for these councils. The law recognized, and in some cases introduced, some degree of provincial autonomy. Residents elected their own council members and governors had to consult with these elected members on some local matters,

thereby limiting the arbitrary exercise of executive authority in the provinces. The council's court could also investigate complaints that fell within the purview of *'urf* matters, providing a formalized, administrative alternative to the inefficient petitioning practices that had formerly served as the main means of seeking redress. The council could also offer its opinion on taxes when there were natural disasters.³¹

Conflict, compromise and omission in the Supplementary Fundamental Laws

While the 1907 Supplementary Fundamental Laws reflected the constitutionalists' agreement on the need to curtail the shah's arbitrary authority, it reflected agreement on little else. The *'ulema* believed that the restriction of the shah's authority would promote clerical influence in the new regime both by protecting their traditional authority and by giving them a voice in the new political order.³² Grand ayatollahs in Najaf such as Seyyed Kazem Khorasani (1839–1911) and Mirza Muhammad Husayn Nā'inī (1860–1936) had supported the curtailment of the shah's authority. They also encouraged efforts to institutionalize clerical authority within the new document with broad powers over the Majles. In contrast, democratic and social democratic constitutionalists sought to weaken the authority of both the shah *and* the clerical establishment as a means of pursuing social reforms related to education and the social structure of Iran. During the drafting of the Supplementary Fundamental Laws, conservative *'ulema* in Tehran, led by Sheikh Fazlullah Nuri, were determined to maintain the traditional, if

AQ6 historically contested, separation between *'urf* (customary/state) and *shari'a* (religious) laws as a means of protecting their social influence from legislative encroachment. They were confronted by liberal and social democratic constitutionalists determined to replace the divided legal system with a modern secular and unitary structure. The resulting political struggle produced a document that ultimately placed some limits on the legislative and judicial authority of the *'ulema*, while simultaneously establishing a bifurcated legal system that institutionalized clerical authority in unprecedented ways.³³

While the 1831 Belgian Constitution served as the primary model for the institutional framework and many of the rights of the new constitutional order in Iran, the Supplementary Fundamental Laws departed from the French and Belgian constitutional traditions—which had sought to dismantle the Catholic Church's privileged status in society—by simultaneously challenging and institutionalizing clerical authority in novel ways. The 1831 Belgian Constitution, which had been heavily influenced by the 1791 French Constitution, had stripped Catholic priests and the Church of much of their authority. Articles 14–17 of the Belgian constitution guaranteed freedom of religion, a right that was unacceptable to the vast majority of Iranians.³⁴ Nevertheless, the Supplementary Fundamental Laws challenged and

reduced the social influence of the clerical establishment in several important areas, such as control of the educational system, but only with concessions that otherwise cemented the role of clerical authority in the new order.

The Supplementary Fundamental Laws established equality for all Iranian males before the state, thus implicitly recognizing the rights of religious minorities (Art. 8),³⁵ compulsory state education separate from religious education (Art. 19),³⁶ a free press (Art. 20), freedom of inquiry in the sciences and arts (Art. 18) and a right to free association in societies (*anjomans*) and associations (*ijtima'at*) (Art. 21). Equal rights regarding taxation were also quietly incorporated into the new constitution. Articles 97³⁷ and 99³⁸ nominally outlawed the practice of collecting the *jezya* taxes from non-Muslims by stipulating that 'there shall be no distinction or difference among the individuals who compose the nation' in the matter of taxation, and that no taxes can be demanded from the people except those established by law. These achievements, however, came at the price of significant concessions with regards to other rights included in the Supplementary Fundamental Laws.

These innovations and concessions to the clerical establishment imposed limits on how these rights could be expressed. These included the establishment of the 'orthodox Ja'fari doctrine of the Ithna 'Ashariyya' as the state religion (Art. 1) and the establishment of a clerical council of five *mujtahids* with the power to invalidate laws 'at variance with the sacred principles of Islam' (Art. 2).³⁹ The rights to freedom of the press, freedom of inquiry and free association were also conditioned by excluding those cases 'as may be forbidden by the ecclesiastical law' (Art. 18)⁴⁰ or deemed 'hurtful to the perspicuous religion [of Islam]' (Art. 20)⁴¹ or presumed 'productive of mischief to Religion or the State' (Art. 21).⁴²

While this 'Ecclesiastical Council' was not convened, it established an important political precedent of the 'ulema as the ultimate arbiters of the law. In 1910, Khorasani, who had gone so far as to acquiesce to both the overthrow of Muhammad Ali Shah and the execution of Sheikh Fazlullah Nuri in 1909, supported the continued implementation of Article 2. He advised the prime minister that 'now that the foundation of despotism has been uprooted, [parliament should] take good care not to violate the second article of the Supplementary Fundamental Laws.'⁴³ Similarly, Nā'inī viewed the constitution as a binding social contract between ruler and ruled compatible with Shi'ite legal tradition.⁴⁴ He also considered the clerical council of Article 2 as an essential component of the constitutional order, even though he limited its purview to reviewing legislation's compliance with the text-based rules of the *shari'ah*, which excluded most political affairs.⁴⁵ When defending the legitimacy of the constitution

against the anti-constitutionalists' accusation that the legislative power of the Majles subsumed the authority of the twelfth Imam, Nā'īnī wrote:

Considering all the required precautionary measures, the least that can be achieved [occurs through two paths], first, the realization of the principle of election and the participation of the elected individuals by permission of mujtahid *nāfidh al-ḥukūma* (a jurist who has dispositive authority in determining the rules of the *Shari'ah*), and second, the qualification of the validity of the elected individuals' enactments to the correction and ratification of a certain number of jurists as devised in Article Two.⁴⁶

Khorasani and Nā'īnī consequently supported a *shari'a*-informed rule of law that would impose limits on the arbitrary authority of the monarchy by securing a prominent role for the 'ulema in the state, both as members of the judiciary and as legislative reviewers. This *shari'a*-informed rule of law contrasted sharply, however, with secular reformists' understandings of liberty, equality and rule of law.⁴⁷

The Supplementary Fundamental Laws further established a dual judiciary of parallel secular and religious courts that in some cases reflected and institutionalized the traditional division of secular authority governed by customary (*'urf*) and religious (*shari'a*) laws. The establishment of a dual judiciary was thus in tension with the principle of equality before the state law established in Article 8, as the *shari'a* did not recognize Muslims and non-Muslims as equal legal subjects. Even the approval of Article 8 by pro-constitutionalists such as Khorasani and Nā'īnī seems to have been based on a different interpretation of equality from what the secular reformists meant by it. Nā'īnī interpreted Article 8 in terms of equality of legal procedure, in which all Iranians would have a right to procedural equality in the application of their community's laws, and that it otherwise only applied to secular (*'urf*) laws.⁴⁸ Thus, while various provisions of the Supplementary Fundamental Laws challenged the authority of the clerical establishment, it nevertheless promoted the *political* influence of the 'ulema to unprecedented levels by making them the theoretical custodians of the state's political legitimacy and legality, and thereby afforded them an unprecedented institutionalized regulatory function in the new political order.

The establishment of legal equality in Article 8 was the most acrimonious and significant achievement of the democratic and social democratic constitutionalists. By its adoption, they hoped to establish equality as the foundation of Iran's new political system, and to thereby gain the recognition of Western countries as a legitimate constitutional order. They also hoped, like the Ottoman reformers of the nineteenth century, that the granting of legal equality and civil rights to Iran's non-Muslim populations would reduce foreign intervention in Iran's affairs by precluding opportunities for

imperialist governments to represent minorities in their disputes with Muslim communities.⁴⁹

Nevertheless, the inclusion of Article 8 in the Supplementary Fundamental Laws required significant concessions elsewhere.

The 1831 Belgian Constitution served as the principal model for much of the administrative skeleton and civil rights of Iran's 1907 constitution, but it was the Ottoman and Bulgarian constitutions that served as the model for the authority of the *'ulema* in the new order.⁵⁰ Unlike the Belgian constitution, which had divested the Catholic Church and its priests of much of their institutional authority, the Bulgarian and Ottoman constitutions established state religions. The 1879 Bulgarian Constitution (Arts. 37 and 39)⁵¹ established Eastern Orthodox Christianity as the state religion and required that the prince of Bulgaria and his descendants be 'restricted to the exclusive profession of the Orthodox religion' (Art. 38).⁵² Similarly, the 1876 Ottoman Constitution confirmed Islam as the state religion, investing in the sultan the responsibility for protecting Islam as both king and caliph (Art. 4)⁵³ and for implementing the *shari'a* (Art. 11).⁵⁴ Likewise, the Supplementary Fundamental Laws required that the shah 'profess and promote' Ja'fari Twelver Shi'ism (Art. 1).⁵⁵ The Iranian constitutionalists were thus using the example of other constitutional precedents in defining the position of religion in the new political order.

The institutionalization of religion in the Bulgarian and Ottoman constitutions, however, was conditioned by protections for religious minorities. Prior to the 1876 constitution, the Ottoman Empire had issued the 1839 Edict of Gulhane and the Imperial Rescript of 1856 which had recognized the nominal equality of Ottoman subjects before the law 'without distinction of class and religion'.⁵⁶ Furthermore, the 1876 Ottoman Constitution's establishment of Islam as the official religion was explicitly conditioned by a further provision committing the state to protect 'the free exercise of all religions recognized in the Empire' as well as the continuation of those religious privileges previously granted by the state (Art. 11). The Ottoman constitution's establishment of religion was also ambiguously conditioned in that it did not give preference to the Sunni branch of Islam, which contrasts sharply with the Supplementary Fundamental Laws' establishment of Ja'fari Twelver Shi'ism as the official religion in Article 1. Similarly, the 1879 Bulgarian Constitution safeguarded the rights of religious minorities in Article 40 by stipulating that those 'professing any other religion whatever' from Eastern Orthodox Christianity 'have full liberty to profess their religion...'.⁵⁷

Iran's 1907 Constitution, however, offered no explicit guarantees protecting religious minorities, whether Sunni Muslims or non-Muslims. This was a continuation of the treatment of religious minorities under Shi'i Islam. Unrecognized religious communities, especially the Babi and Baha'i, were

particularly excluded from the traditional *dhimmi* protections offered to People of the Book (Jews and Christians) and would continue to suffer from periodic attacks on their communities in the twentieth century. Iran's constitutionalists also refrained from including Articles 14–16 of the 1831 Belgian Constitution⁵⁸ establishing freedom of religion, denying state intervention in religious matters, and requiring civil weddings to precede religious ones. Marriage, divorce and all matters related to the family and gender relations would also remain under the firm grip of the 'ulema until the 1960s, when the Pahlavi regime established separate Family Courts overseen by secular, civil judges.

The Ottoman constitution further provided a model for a dual judiciary by establishing secular and religious courts that separately addressed secular and religious laws (Art. 87).⁵⁹ Iran's constitutionalists adopted a similar legal bifurcation of *'urf* and *shari'ah* by reserving 'matters falling within the scope of the Ecclesiastical Law' to the judgement of 'just mojtaheds' (qualified interpreters of the religious law) (Art. 71).⁶⁰ Unlike the Ottoman precedent, however, which required that the competency and powers of all tribunals be determined by law (Art. 88),⁶¹ the Supplementary Fundamental Laws suffered from jurisdictional and administrative ambiguities regarding the religious courts. While the Supplementary Fundamental Laws specifically established that the existence and authority of civil tribunals depended on the law alone (Art. 73),⁶² no similar provision regarding religious courts existed that might clarify the extent of their responsibilities or how they might operate. As a consequence, Iran's 1907 constitution did not determine if religious courts would be subject to laws issued by the Majles, or if they would operate in accordance with procedures established by the clerical establishment. Similarly, disputes concerning political rights were placed within the jurisdiction of the secular judicial tribunals in Article 72, but what this ultimately meant in terms of family law or the status of religious minorities, areas falling within the purview of the *shari'ah*, remained unclear and unspecified.⁶³ The establishment of a clerical council with veto power over laws passed by the Majles (Art. 2)⁶⁴ is an Iranian innovation without constitutional precedent, but it is consistent with the degree to which religion is maintained as an independent source of authority elsewhere in the Supplementary Fundamental Laws. Thus, despite the limits placed on the religious establishment with regard to education and religious minorities, Iran's 1907 constitution exceeded its constitutional predecessors in the degree to which it upheld clerical social and political authority.

Iran's constitutionalists also refrained from adopting certain liberal provisions from the European constitutional tradition. While the stipulation of legal equality for Iranian citizens promised to dismantle Iran's traditional social hierarchies, the constitutionalists nevertheless demurred on abolishing slavery and torture, despite having constitutional precedents for doing so. Article 61 of the 1879 Bulgarian

Constitution had stipulated that ‘No one can buy or sell slaves within the limits of the Bulgarian principality’ and that any slave ‘becomes free upon setting foot on Bulgarian soil’.⁶⁵ As provisions addressing slavery were similarly absent from early drafts of the Supplementary Fundamental Laws, it may be safely surmised that the drafters considered including such a provision on slavery too controversial. While the egalitarian spirit of the Constitutional Revolution affected social attitudes towards slaves, as reflected in the newspapers of the period, and while Iran had banned the importation of African slaves through Persian Gulf ports in 1848, and signed agreements with Great Britain in 1851, 1857 and 1882 to curb the Persian Gulf slave trade, slavery remained a legal institution in Iran until 1928.

The constitutionalists also refrained from the abolition of certain kinds of punishment and certain forms of forced unpaid labour (*corvée*) for the benefit of the landlord or the state. While requiring that punishments must conform to the law (Art. 12)⁶⁶—an exact copy of Article 9 of the Belgian constitution—Iranian constitutionalists discarded an Ottoman addition to the provision abolishing torture and *corvée* labour (Ottoman Arts. 26⁶⁷ and 24,⁶⁸ respectively).

While this theoretically deprived the shah of the authority to define the parameters of punishment, or to execute them without the sanction of the Majles’ authority, it also left torture available as a potentially legitimate form of punishment and means of interrogation. Furthermore, the absence of a specific abolition of *corvée* and the *djerimi* (exaction in the form of fining), which was specifically stated in the Ottoman Constitution, may have reflected the fact that it would have deprived landowners, some of whom had joined the constitutional cause, of routine application of these rights over their peasants. The selective inclusion and exclusion of certain egalitarian provisions and prohibitions on state authority demonstrates that while the constitutionalists were willing to draw inspiration from and adopt many principles from other constitutional traditions, they were nevertheless not willing or able to accept them all.

Conclusion

The legacy of the 1907 Supplementary Fundamental Laws has, like the character of the constitution itself, been a contested one. In subsequent decades, political personalities as different as Mohammad Mosaddeq and Ayatollah Ruhollah Khomeini championed the implementation of the 1907 constitution to serve their divergent political agendas. While Mosaddeq emphasized the democratic elements, especially the rights of the Majles over those of the king, Khomeini spoke only of the rights of clerics (Art. 2) in his opposition to royal autocracy. This is not to imply that the 1979 Iranian Revolution was

merely a continuation of the political and ideological struggles of the Constitutional Revolution. Both events, of course, rested on historically contingent social and political factors specific to their time and place. Nevertheless, the questions raised during the Constitutional Revolution as to which principles were to dominate Iran's political culture remained unanswered in 1979 and served as the ideological lens around which the social and political struggles of the immediate post-Pahlavi period were refracted. While Khomeini's political thought, in particular, underwent change and evolution from the 1940s to the 1970s, he nevertheless recognized the symbolic importance of the constitution, arguing for the implementation of Article 2 of the Supplementary Laws as a means of retrenching the loss of clerical authority.⁶⁹

The Supplementary Fundamental Laws thus served as a potent symbol for Iran's democratic and theocratic political traditions in opposition to the dominant monarchical tradition, paradoxically representing both the promise of popular sovereignty and civil equality on the one hand and the promise of a divinely sanctioned political and social order on the other. The inevitability of conflict between these divergent political philosophies was already apparent in Article 35 of Iran's 1907 constitution, which defined sovereignty as a 'trust' granted by the people to the shah, which in turn had been granted as a 'divine gift' by God.⁷⁰

The tension between the theocratic and democratic elements in this contested definition of sovereignty has since only been very uneasily attenuated in the constitution of the Islamic Republic, as was the tension between the democratic and the highly nationalistic elements of the revolution.⁷¹ The tension between these competing Iranian political traditions has been the product of historically contingent factors which constrained how the constitutionalists of 1906–1911 could adapt preceding constitutional traditions. The various adaptations and omissions presented in this article and in the

AQ8 accompanying constitution nevertheless demonstrate that Iran's constitutionalists engaged critically with previous constitutional traditions and expanded civil rights as far as Iran's historical and political contingencies would permit. This meant they had to stop short of the liberal promise of European constitutions in certain matters, particularly in the curtailing of the clerical establishment, while simultaneously exceeding those traditions in the limits they imposed on executive authority. Iran's constitutionalists succeeded in establishing both the constitution and the Majles as important symbols of civil rights and popular sovereignty, even if it came at the price of institutionalizing clerical authority in unprecedented ways. Consequently, the 1907 Supplementary Fundamental Laws should be regarded as an organic extension of the liberal constitutional tradition that continues to unfold even in the present day, rather than as a peripheral or purely derivative development.⁷²

Disclosure statement

AQ9 No potential conflict of interest was reported by the authors.

¹ See E.G. Browne, *The Persian Revolution of 1905–1909* (Cambridge: Cambridge University Press, 1910).

² See W. Morgan Shuster, *The Strangling of Persia: A Story of European Diplomacy and Oriental Intrigue That Resulted in the Denationalization of Twelve Million Mohammedans: A Personal Narrative* (New York: The Century Co., 1912).

³ The literature in Persian is massive. But there is also a substantial number of scholarly works in English, such as Mangol Bayat, *Iran's First Revolution: Shi'ism and the Constitutional Revolution of 1905–1909* (New York: Oxford University Press, 1991); Vanessa Martin, *Islam and Modernism: The Iranian Revolution of 1906* (Syracuse, N.Y.: Syracuse University Press, 1989); Vanessa Martin, *Iran between Islamic Nationalism and Secularism: The Constitutional Revolution of 1906* (New York: I.B. Tauris, 2013); Janet Afary, *The Iranian Constitutional Revolution, 1906–1907: Grassroots Democracy, Social Democracy, and the Origins of Feminism* (New York: Columbia University Press, 1996); Janet Afary, 'The Place of Shi'i Clerics in the First Iranian Constitution', *Critical Research on Religion*, 1(3) (December 2013), pp. 327–346; Janet Afary, 'Civil Liberties and the Making of Iran's First Constitution', *Comparative Studies of South Asia, Africa and the Middle East*, 25(2) (2005), pp. 341–359. For information on the role of pro-constitutionalist 'ulema who defended the legitimacy of the constitution, but only indirectly contributed to constitutional debates, see 'Abd al-Hadi Ha'iri, *Shi'ism and Constitutionalism in Iran: A Study of the Role Played by the Persian Residents of Iraq in Iranian Politics* (Leiden: E.J. Brill, 1977); Mateo Mohammad Farzaneh, *The Iranian Constitutional Revolution and the Clerical Leadership of Khurasani* (Syracuse, N.Y.: Syracuse University Press, 2015); and Amirhassan Boozari, *Shi'i Jurisprudence and Constitution: Revolution in Iran* (New York: Palgrave Macmillan, 2011).

⁴ The English translation of all three documents can be found in Browne, *The Persian Revolution of 1905–1909*.

⁵ For more information on the substance of the 1906 Electoral Laws, see Afary, *The Iranian Constitutional Revolution*, pp. 64–65.

⁶ *Ibid.*, p. 66.

⁷ Said Amir Arjomand, 'Constitutional Revolution III: The Constitution', *Encyclopaedia Iranica*, vol. VI/2, pp. 187–192, <http://www.iranicaonline.org/articles/constitutional-revolution-iii> (accessed 27 November 2016).

⁸ See *Mozakerat-i Majlis*, 28 Du al-Hajja 1324 (12 February 1907), p. 79.

- ⁹ For more information on the relationship of the Amin al-Zarb family with nineteenth-century political reformers such as Jamal al-Din al-Afghani, see Shireen Mahdavi, *For God, Mammon, and Country: A Nineteenth Century Persian Merchant Haj Muhammad Hassan Amin al-Zarb (1834–1898)* (Boulder, CO: Westview Press, 1999).
- ¹⁰ Afary, *The Iranian Constitutional Revolution*, p. 100.
- ¹¹ See *Mozakerat-i Majlis*, 28 Du al-Hajja 1324 (12 February 1907), p. 79.
- ¹² For the text of the 1831 Belgian Constitution, we have consulted both the French original and the English translation in Albert P. Blaustein and Jay A. Sigler, *Constitutions That Made History* (New York: Paragon House, 1988), pp. 182–199.
- ¹³ We have used the text of the 1876 Ottoman Constitution found in ‘The Ottoman Constitution, Promulgated the 7th Zilbridje, 1293 (11/23 December, 1876)’, *The American Journal of International Law*, 2(4), Supplement: Official Documents (October 1908), pp. 367–387.
- ¹⁴ We have used the text of the Constitution of Bulgaria that appears in *Constitutions of the Countries of the World*, ed. Albert P. Blaustein and Gisberth Flanz (Dobbs Ferry, N.Y.: Oceania Publications, 1992).
- ¹⁵ See Baqer Mo’meni, *Din va Dowlet* (Stockholm: Baran Press, 1993), pp. 295–308. For the influence of French Revolutionary discourse on Iranian constitutionalists, see Mohamad Tavakoli Targhi, ‘Asar-e Agahi az Enqelab-e Faranseh dar Shekl giri-ye Engareh-ye Mashrutiyat dar Iran’, *AQ3 Iran Name*, 8(3) (Summer 1990), pp. 411–439.
- ¹⁶ See Arthur Goldschmidt, *A Concise History of the Middle East*, 2nd ed. (Boulder, CO: Westview Press, 1983), p. 219.
- ¹⁷ For a discussion of the relations between Iran and Belgium, see Vanessa Martin, *Islam and Modernism*.
- ¹⁸ An account of this event was recorded in Nava’i, ‘Qanun-e Asasi-ye Iran va Motammem-e an Cheguneh Tadvin Shod?’, *Yadgar*, 4(5) (January–February 1947), pp. 34–47.
- ¹⁹ E.G. Browne, ‘The Persian Constitutionalists’, in *Proceedings of the Central Asian Society* (London: Central Asian Society, 1909), p. 11.
- ²⁰ 1907 Iranian Constitution, Article 15: No property shall be removed from the control of its owner save by legal sanction, and then only after its fair value has been determined and paid. [1831 Belgian Constitution, Article 11: No person may be deprived of his property save for the public good and according to the forms established by law.] 1907 Iranian Constitution, Article 16: The confiscation of the property or possessions of any person under the title of punishment or retribution is forbidden, save in conformity with the Law. [1876 Ottoman Constitution, Article 24: The confiscation of

property, the *corvée* [forced labour tax] and the *djerimi* (exaction under the form of fining) are

AQ4 *prohibited.*] [Italicized sections excluded from 1907 Iranian Constitution.] 1907 Iranian

Constitution, Article 17: To deprive owners or possessors of the properties or possessions controlled by them under any pretext whatsoever is forbidden, save in conformity with the Law. [1831 Belgian Constitution, Article 12: Punishment by confiscation of property shall not be established.] [1831 Belgian Constitution, Article 13: *Total deprivation of civil rights is abolished and shall not be re-established.*]

²¹ 1907 Iranian Constitution, Article 9: All individuals are protected and safeguarded in respect to their lives, property, homes and honour, from every kind of interference, and none shall molest them save in such case and in such way as the laws of the land shall determine.

²² 1876 Ottoman Constitution, Article 21: Real and personal property regularly proved is guaranteed. No expropriation can take place except for reasons of public utility duly proved and without previous payment conformably with the law and the value of the property to be expropriated. 1876 Ottoman Constitution, Article 22: The domicile is inviolable. The authorities cannot forcibly enter the domicile of any person whatever except in cases determined by the law.

²³ 1879 Bulgarian Constitution, Article 67: The rights of property are inviolable. 1879 Bulgarian Constitution, Article 74: No person can be imprisoned, and no house searched, except under the conditions provided by law.

²⁴ 1907 Iranian Constitution, Article 6: The lives and property of foreign subjects residing on Persian soil are guaranteed and protected, save in such contingencies as the laws of the land shall except. [Based on the 1831 Belgian Constitution, Articles 4 and 128].

²⁵ 1831 Belgian Constitution, Article 7: *Individual liberty is guaranteed.* No person may be prosecuted except in cases established by the law and in the form it prescribes. Apart from the case of flagrant offence no person may be arrested without a warrant issued by a magistrate, which ought to be shown at the time of arrest, or within the next 24 hours. [Italicized sections excluded from 1907 Iranian Constitution.] 1876 Ottoman Constitution, Article 9: *All the Ottomans enjoy individual liberty on condition of not attacking the liberty of other people.* [Italicized sections excluded from 1907 Iranian Constitution.] 1876 Ottoman Constitution, Article 10: Individual liberty is absolutely inviolable. Nobody can under any pretence suffer any penalty whatever except in the cases determined by law and according to the forms prescribed by it. [Italicized sections excluded from **AQ5** 1907 Iranian Constitution.]

²⁶ 1907 Iranian Constitution, Article 14: No Persian can be exiled from the country, or prevented from residing in any part thereof, or compelled to reside in any specified part thereof, save in such

cases as the Law may explicitly determine.

²⁷ 1876 Ottoman Constitution, Article 113: In case of proof of facts or of signs of a nature to apprehend trouble on any of the territory of the Empire the Imperial Government has the right of proclaiming there a state of siege. The effects of the state of siege consist in the temporary suspension of the civil laws. The mode of administering localities submitted to a state of siege shall be regulated by a special law. His Majesty the Sultan has the exclusive power of expelling from the territory of the Empire those who in consequence of information worthy of confidence collected by the administration of police are recognized as being injurious to the safety of the State.

²⁸ Bernard Lewis, *The Emergence of Modern Turkey*, 3rd ed. (New York: Oxford University Press, 2002), p. 167.

²⁹ *Ibid.*, p. 169.

³⁰ See Afary, 'Civil Liberties', p. 353.

³¹ See Martin, *Iran between Islamic Nationalism and Secularism*, p. 119.

³² This is not to imply that the 'ulema were an ideologically homogeneous group. Some members of the 'ulema supported while others opposed the constitutionalist movement. For more information on the ideological heterogeneity of the 'ulema, see Afary, *The Iranian Constitutional Revolution*, pp. 43–50. Nevertheless, even pro-constitutionalist 'ulema such as Khorasani and Nā'inī, and then middle-ranking *mujtahid* Shaykh Ismā'il Maḥallātī assumed that the 'ulema would have a prominent role in the judiciary and as reviewers of legislation. Their defence of the legitimacy of the constitution was in part predicated on the institutionalization of clerical oversight enshrined in Article 2 of the Supplementary Fundamental Laws. For more information on these clerics' defence of the constitution and clerical oversight, see Ha'iri, *Shi'ism and Constitutionalism in Iran*, pp. 102–103; Boozari, *Shi'i Jurisprudence and Constitution*, pp. 134–135; and Farzaneh, *The Iranian Constitutional Revolution*, p. 168.

³³ For more information on liberal and social democratic constitutionalists' efforts to reduce Shi'ite clerical authority and the subsequent institutionalization of that authority in Article 2 of the Supplementary Fundamental Laws, see Janet Afary, 'The Place of Shi'i Clerics'. This legal bifurcation also did not eliminate confusion as to the jurisdiction of secular and religious courts, which continued to be a subject of political contestation. For more information on these jurisdictional disputes, see Hadi Enayat, *Law, State, and Society in Modern Iran: Constitutionalism, Autocracy, and Legal Reform, 1906–1941* (New York: Palgrave Macmillan, 2013), pp. 66–69.

³⁴ 1831 Belgian Constitution, Article 14: *Religious liberty and the freedom of public worship, as well as free expression of opinion in all matters, are guaranteed, unless crimes are committed in the use of*

these liberties. [Italicized section excluded from 1907 Iranian Constitution.] 1831 Belgian Constitution, Article 15: *No one shall be compelled to join in any manner whatsoever in the forms or ceremonies of any religion, nor to observe its days of rest.* [Italicized section excluded from 1907 Iranian Constitution.] 1831 Belgian Constitution, Article 16: *The State has no right to intervene either in the appointment or the installation of the ministers of any form of worship, nor to forbid them to correspond with their superiors or to publish their proceedings, save, in the latter case, for the ordinary responsibility of the press and publication. The civil wedding must always precede the religious ceremony, except in cases to be established by law if found necessary.* [Italicized section excluded from 1907 Iranian Constitution]. 1831 Belgian Constitution, Article 17: *There shall be freedom of opinion in teaching; any preventive measure shall be forbidden; the repression of offences shall be regulated only by law.* [Italicized section excluded from 1907 Iranian Constitution.]

³⁵ 1907 Iranian Constitution, Article 8: The people of the Iranian state are to enjoy equal rights before the Law. [1831 Belgian Constitution, Article 6: There shall be no distinction of classes in the state. Belgian citizens are equal before the law; they alone are acceptable for civil and military posts, with some exceptions in particular cases, which may be established by law.]

³⁶ 1907 Iranian Constitution, Article 19: The foundation of schools at the expense of the government and the nation, and compulsory instruction, must be regulated by the Ministry of Sciences and Arts, and all schools and colleges must be under the supreme control and supervision of that Ministry. [1831 Belgian Constitution, Article 17 (part 2): Public instruction provided/paid for by the State shall likewise be regulated by law.] [1876 Ottoman Constitution, Article 15: Instruction is free. Each Ottoman can give public or private course of instruction on condition of conforming to the laws.] [1876 Ottoman Constitution, Article 16: All schools are placed under the supervision of the State. Proper measures shall be taken for unifying and regularizing the instruction given to all Ottomans but no interference shall be made with the religious instruction of the various communities.] [1879 Bulgarian Constitution, Article 78: Primary education is gratuitous and obligatory for all subjects of the principality of Bulgaria.]

³⁷ 1907 Iranian Constitution, Article 97: In the matter of taxes there shall be no distinction or difference amongst the individuals who compose the nation. Based on [1831 Belgian Constitution, Article 112].

³⁸ 1907 Iranian Constitution, Article 99: Save in such cases as are explicitly excepted by Law, nothing can on any pretext be demanded from the people save under the categories of state, provincial, departmental and municipal taxes. Based on [1831 Belgian Constitution, Article 113].

³⁹ 1907 Iranian Constitution, Article 2: At no time must any legal enactment of the Sacred National

Consultative Assembly, established by the favour and assistance of His Holiness the Imám of the Age (may God hasten his glad Advent!), the favour of His Majesty the Sháhansháh of Islám (may God immortalize his reign!), the care of the mojtaheds of Islám (may God multiply the like of them!), and the whole people of the Iranian nation, be at variance with the sacred principles of Islám or the laws established by His Holiness the Best of Mankind (on whom and on whose household be the Blessings of God and His Peace!). It is hereby declared that it is for the learned doctors of theology (the ‘ulamá)—may God prolong the blessing of their existence!—to determine whether such laws as may be proposed are conformable to the principles of Islám or if they are not, and it is therefore officially enacted that there shall at all times exist a Committee composed of not less than five mojtaheds or other devout theologians, cognizant of the requirements of the age. The ‘ulamá and Proofs of Islám shall present to the National Consultative Assembly the names of 20 of the ‘ulamá possessing the attributes mentioned above, and the Members of the National Consultative Assembly shall, either by unanimous acclamation or by vote, designate five or more of these, according to the exigencies of the time, and recognize these as Members, so that they may carefully discuss and consider all matters proposed in the Assembly, and reject and repudiate, wholly or in part, any such proposal which is at variance with the Sacred Laws of Islám, so that it shall not obtain the title of legality. In such matters the decision of this Ecclesiastical Committee shall be followed and obeyed, and this article shall continue unchanged until the appearance of His Holiness the Proof of the Age (may God hasten his glad Advent!). [Underlined sections unique to the 1907 Iranian Constitution.]

⁴⁰ 1907 Iranian Constitution, Article 18: The acquisition and study of all sciences, arts and crafts is free, save in the case of such as may be forbidden by the ecclesiastical law. [Underlined section unique to the 1907 Iranian Constitution.] [1831 Belgian Constitution, Article 17: There shall be freedom of opinion in teaching; any preventive measure shall be forbidden; the repression of offences shall be regulated only by law.]

⁴¹ 1907 Iranian Constitution, Article 20: All publications, except heretical books and matters hurtful to the perspicuous religion [of Islám] are free, and are exempt from censorship. If, however, anything should be discovered in them contrary to the Press law, the publisher or writer is liable to punishment according to that law. If the writer be known, and be resident in Iran, then the publisher, printer and distributor shall not be liable to prosecution. [Underlined section is unique to the 1907 Iranian Constitution.] [1831 Belgian Constitution, Article 18: The press is free; no censorship shall ever be established; no caution money shall be exacted of writers, publishers or printers. If the writer is known and is a resident of Belgium, the publisher, printer, or distributor cannot be prosecuted.] [1876 Ottoman Constitution, Article 12: *The Press is free; within the limits traced by law.*] [Italicized

section excluded from 1907 Iranian Constitution.]

⁴² 1907 Iranian Constitution, Article 21: Societies (anjomans) and associations (ijtimá‘át) which are not productive of mischief to Religion or the State, and are not injurious to good order, are free throughout the whole state, but members of such associations must not carry arms, and must obey the regulations laid down by the Law on this matter. Assemblies in the public thoroughfares and open spaces must likewise obey the police regulations. [Underlined section unique to the 1907 Iranian Constitution.] [1831 Belgian Constitution, Article 19: Belgian citizens have the right to assemble peacefully and without arms, when conforming to the laws which regulate this right and without previous authorization. This provision does not apply to assemblies in the open air, which remain entirely under the police laws.] [1831 Belgian Constitution, Article 20: Belgians have the right of association; this right shall not be restricted by any preventive measure.] [1879 Bulgarian Constitution, Article 83: Bulgarian subjects have the right to form associations without any previous authorization, on condition that the object pursued and the means employed by these associations not be prejudicial to public order, religion or good morals.] [1831 Belgian Constitution, Article 21: Every person has the right to address petitions, signed by one or several people, to the public authorities. The constituted authorities alone have the right to address petitions in the name of the people collectively (this article corresponds to article 32 of the 1906 Iranian Constitution).]

⁴³ Quoted in Farzaneh, *The Iranian Constitutional Revolution*, p. 168.

⁴⁴ Boozari, *Shi‘i Jurisprudence and Constitution*, p. 116.

⁴⁵ *Ibid.*, p. 136.

⁴⁶ Quoted in *ibid.*, pp. 134–135.

⁴⁷ For more information on Nā‘īnī’s arguments on the legitimacy of constitutionalism, see Ha‘iri, *Shi‘ism and Constitutionalism in Iran*, pp. 101–103; and Boozari, *Shi‘i Jurisprudence and Constitution*, pp. 109–139.

⁴⁸ Ha‘iri, *Shi‘ism and Constitutionalism in Iran*, pp. 224–225.

⁴⁹ Mehdi Mojtahedi, *Taqizadeh* (Tehran: Tehran University Publications, 1979), pp. 58–59.

⁵⁰ For more information on the influence of the Ottoman and Bulgarian constitutions on clerical authority in Iran’s Supplementary Fundamental Laws and on the political struggle over Article 8, see Afary, ‘Civil Liberties’.

⁵¹ 1879 Bulgarian Constitution, Article 37: The state religion of the principality of Bulgaria is the Eastern Orthodox confession. 1879 Bulgarian Constitution, Article 39: The principality of Bulgaria as, from an ecclesiastical point of view, forming an inseparable part of the jurisdiction of the Bulgarian church, is subject to the Holy Synod, which is the highest spiritual authority in the

Bulgarian church, wherever that may exist. Through the same authority the principality remains united with the oecumenical Eastern church in matters regarding dogma and faith.

⁵² 1879 Bulgarian Constitution, Article 38: The prince of Bulgaria and his descendants are restricted to the exclusive profession of the Orthodox religion, *but the first elected prince of Bulgaria may, exceptionally, profess his original religion.* [Italicized section excluded from the 1907 Iranian Constitution.]

⁵³ 1876 Ottoman Constitution, Article 4: His majesty the Sultan is by the title of the Kalif the protector of the Mussulman religion. He is the sovereign and the Padishar of all the Ottomans.

⁵⁴ 1876 Ottoman Constitution, Article 11: Islamism is the religion of the State. *While maintaining this principle the state protects the free exercise of all the religions recognized in the Empire and accords the religious privileges granted to the different communities on condition that no offence is committed against public order or good morals.* [Italicized section excluded from 1907 Iranian Constitution.]

⁵⁵ 1907 Iranian Constitution, Article 1: The official religion of Persia is Islám, according to the orthodox Já'farí doctrine of the Ithna 'Ashariyya, which the Sháh of Persia must profess and promote. [Underlined section unique to the 1907 Iranian Constitution.]

⁵⁶ Lewis, *The Emergence of Modern Turkey*, p. 134.

⁵⁷ 1879 Bulgarian Constitution, Article 40: *Christians other than those of the Orthodox faith, and those professing any other religion whatsoever, whether Bulgarian-born subjects, or naturalized, as well as foreigners permanently or temporarily domiciled in Bulgaria, have full liberty to profess their religion so long as the performance of the rights does not violate the existing laws.* [Italicized section excluded from 1907 Iranian Constitution.]

⁵⁸ See note 34 for the full text of these provisions.

⁵⁹ 1876 Ottoman Constitution, Article 87: Affairs concerning the *Sheri [shari'ah]* shall be judged by the tribunals of the *Sheri*. The judgement of civil affairs belongs to the civil tribunals.

⁶⁰ 1907 Iranian Constitution, Article 71: The Supreme Ministry of Justice and the judicial tribunals are the places officially destined for the redress of public grievances, while judgement in all matters falling within the scope of the Ecclesiastical Law is vested in just mojtaheds possessing the necessary qualifications. [Underlined section unique to the 1907 Iranian Constitution.]

⁶¹ 1876 Ottoman Constitution, Article 88: *The different categories of the tribunals, their competency, their powers, and the emoluments of the judges shall be fixed by the laws.* [Italicized section excluded from 1907 Iranian Constitution.]

⁶² 1907 Iranian Constitution, Article 73: The establishment of civil tribunals depends on the authority

of the Law, and no one, on any title or pretext, may establish any tribunal contrary to its provisions.

[1831 Belgian Constitution, Article 92: Actions that involve questions of civil rights belong exclusively to the jurisdiction of the tribunals.]

⁶³ 1907 Iranian Constitution, Article 72: Disputes connected with political rights belong to the judicial tribunals, save in such cases as the Law except. [1831 Belgian Constitution, Article 93: Disputes that involve political rights come under the jurisdiction of the courts except in such cases as are established by the law.]

⁶⁴ See note 39 for full provision.

⁶⁵ 1879 Bulgarian Constitution, Article 61: *No one can buy or sell slaves within the limits of the Bulgarian principality. Any slave of either sex, and of whatever religion or nationality, becomes free upon setting foot on Bulgarian soil.* [Italicized section excluded from the 1907 Iranian Constitution.]

⁶⁶ 1907 Iranian Constitution, Article 12: No punishment can be decreed or executed save in conformity with the Law.

⁶⁷ 1876 Ottoman Constitution, Article 26: *Torture in all its forms is completely and absolutely prohibited.* [Italicized section excluded from the 1907 Iranian Constitution.]

⁶⁸ 1876 Ottoman Constitution, Article 24: The confiscation of property, *the corvée [forced labour tax] and the djerimi (exaction under the form of fining) are prohibited.* [Italicized section excluded from the 1907 Iranian Constitution.]

⁶⁹ For further information on Khomeini's constitutionalist politics, see our forthcoming article, 'Constitutional Politics in the Pahlavi Era or How Ayatollah Khomeini Became a "Constitutionalist"'.

⁷⁰ 1907 Iranian Constitution, Article 35: The sovereignty is a trust confided (as a Divine Gift) by the people to the person of the King. [Underlined section unique to the 1907 Iranian Constitution.]

⁷¹ As Stephanie Cronin points out, the popular politics and democratic aspirations of the revolution on the one hand and the urge to form a strong centralized nation state on the other hand were not seen as 'being in fundamental opposition, but, on the contrary, were assumed to be mutually reinforcing' in 1906–1911. Stephanie Cronin, 'The Constitutional Revolution, Popular Politics, and State-Building in Iran', in *Iran's Constitutional Revolution: Popular Politics, Cultural Transformations, and Transnational Connections*, ed. H.E. Chehabi and Vanessa Martin (London: I.B. Tauris, 2010), pp. 81–97. Only later did the contradictory nature of these two visions become more manifest when secular constitutionalists lent their support to Reza Shah and his project of building a strong highly centralized (and authoritarian) state (p. 86). For more information on this contradiction in the process

AQ7 of state-building in Iran, see the full chapter by Cronin.

⁷² For a fuller comparison of the 1907 Constitutional Law and its French, Belgian, Bulgarian and

Ottoman sources see <https://janetafary.com/articles/>