

# The place of *Shi'i* clerics in the first Iranian constitution

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## Abstract

Despite their regional, ethnic, and linguistic differences, the recent social and political upheavals of the Middle East have shared one basic concern. From the 2009 Green Movement in Iran to the 2011 Tunisian revolts which ignited the Arab Uprisings, and from the first Muslim Brotherhood government in Egypt in 2012 to the protests in Turkey's Taksim Square in 2013, a central issue has been how to establish a democratic state with a modern constitution while adhering to many *shari'a* rules and regulations. This debate is not a new one in the Middle East and, as this article will demonstrate, it has been a central theme of Iranian politics ever since the Constitutional Revolution of 1906. At the time of that first Iranian revolution, Iran was ruled by two sets of laws, *shari'a* religious law and *'urf* customary law. *Shi'i* clerics, with their elaborate institutional hierarchy, controlled *shari'a* law, which was considered the more important law of the land, whereas the monarch and local rulers were nominal guardians of *'urf* laws. Soon the novel discourses of the Constitutional Revolution would create a paradigm shift in Iranian society.<sup>1</sup> Constitutionalist clerics had assumed that a new political order reformed *'urf* rulings, leaving *shari'a* laws more or less intact. They were stunned by the realization that a constitutional order revamped both legal systems and overturned sacrosanct social and religious hierarchies. Many clerics resisted these reforms. The result was a bifurcated set of laws that institutionalized clerical authority, while also placing limits on clerics in legislative and judicial branches of the government.

## Keywords

constitutional law in the Middle East, religion and democracy in Iran, Iranian Constitutional Revolution

## The 1906 Constitutional Revolution, Social Democrats and the battle to reduce *Shi'i* authority

The first “Awakening” of the non-European world took place at the turn of the early twentieth century. Nations such as Iran (1906–11), India (1905–08), Turkey (1908), and

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China (1911–12) witnessed dramatic social movements and uprisings, many of which involved non-violent protests. What is so remarkable about these movements is that, contrary to common assumptions, these were not just movements challenging the imperialist incursions of the West; rather, they also called for a more democratic social and political order at home and included calls for religious reform. Most were following the example of the Russian Revolution of 1905 and aspired to having a constitution and a parliamentary political system that checked the powers of the monarchy and the clerical establishment. For obvious reasons the royalist factions were adamantly opposed to these new constitutional orders and did everything in their power to disarm them.

Cities such as Baku and Tbilisi were home to large populations of *Shi'i* Muslims, including many immigrant workers and merchants who had joined the revolutionary movement in Russia but regarded Iran as their ancestral homeland. Soon they formed their own secret social democratic cells in Baku. These cells adhered to a hybrid ideology, a *mélange* of European socialism and indigenous *Shi'i* Iranian ideas. They upheld liberalism and nationalism and called for political and social reforms. They demanded a redistribution of lands to peasants, reforms in child labor, modern education for boys and girls, an eight-hour day for factory employees, and other similar social democratic reforms. Although most were practicing Muslims, they also criticized the extreme authority of *Shi'i* clerics as well as certain *Shi'i* rituals, such as the practice of self-flagellation in the month of Moharram.<sup>2</sup>

These movements in the north had a dramatic influence on Iran, which had its own revolution in 1906, known as the Constitutional Revolution. After more than a year of protests in Tehran and Qom in 1905–06, supporters of a new constitutional order succeeded in gaining the country's first constitution and parliament. In August 1906 the ailing monarch Mozaffar al-Din Shah (r. 1896–1907) signed an unprecedented royal proclamation that allowed the formation of a national parliamentary assembly, known as the *Majlis*, and the drafting of a constitution.

Popular elections were soon held and the *Majlis* opened in October 1906. A limited male franchise was established. As elsewhere in the world, women were excluded from the electoral process, and property and language qualifications barred peasants, workers, and many non-Persian-speaking tribes and communities. Still, the heavy representation of trade guilds of Tehran and Tabriz, and the contribution of liberal and social democratic deputies, made the First Iranian Parliament one of the most respected institutions of modern Iran. Many parliamentary deputies and journalists were secretly affiliated with social democratic centers where debates within parliament were analyzed and progressive agendas formulated.<sup>3</sup>

In their fight against the new monarch Mohammad-Ali Shah and the clerics, constitutionalists relied on two sources: (i) the new grassroots institutions of the revolution: local councils, known as *anjomans*, their volunteer military force known as *mojahedin*, and the radical newspapers; and (ii) the support they received from three progressive grand clerics in Najaf. Indeed, many reforms could not have happened without support from Najaf.

The first *Majlis* accomplished a number of unprecedented deeds during its short-lived existence. It ratified a constitution, set up executive, legislative, and judicial branches of the government, and substantially reduced the powers of the monarchy. *Majlis* deputies gained the right to remove irresponsible ministers and government officials. They balanced the state budget and allocated all major expenses. This move drastically curtailed the court budget and soon led to the permanent closing of the royal harem.

The National Assembly also challenged the authority of the British and Russian governments in Iran. The new constitution decreed that all major foreign transactions had to be

ratified by the National Assembly. The era when European entrepreneurs and governments gained lucrative concessions in the country by slipping handsome payouts to the king and his cronies had come to an end.

This article will focus on the process whereby the *Majlis* tried to reduce the powers of the clerical establishment. At the time Iran was ruled by two sets of laws: *shari'a* religious law, which was controlled by the *Shi'i ulama*, and *'urf* customary law, which was administered by the state. Even clerics who supported the Constitutional Revolution in the summer of 1906 had assumed that the new political order would reduce the powers of the king and reform *'urf* law, leaving *shari'a* laws more or less intact. However, liberal and social democratic deputies and journalists were determined to replace the binary legal system of Iran with a more modern secular structure. Deputies such as Hasan Taqizadeh, who were influenced by liberalism and social democratic ideas from Transcaucasia, spearheaded these radical reforms. Soon the novel discourses of the Constitutional Revolution would create a paradigm shift in Iranian society. Many clerics resisted these reforms. The result was a bifurcated set of laws that institutionalized clerical authority, while also placing limits on clerics in legislative and judicial branches of the government.

### **Institutionalization of Shi'ism in the constitution**

In Iran, as in other pre-modern societies, the traditional notion of justice differed dramatically from our contemporary understanding of the term. Justice (*'adl*) was one of the fundamental elements of *Shi'ism* and a precondition for the selection of a *marja' taqlid* or source of emulation. A *marja'* was expected to be a mature and respectable learned man known for his devotion to the faith and his intelligence. A just *marja'* was one who scrupulously adhered to the *shari'a* by refraining from what was prohibited and performing all that was obligated.<sup>4</sup> This included strict adherence to all social and class hierarchies in a legal system where women were treated far differently from men; *Sunnis* and those belonging to other *Shi'i* schools of Islam (*Isma'ilis* and *Zaidis*) had fewer rights than Twelver *Shi'is*; non-Muslims were subject to strict segregation and had added financial obligations in the form of *jezya* religious taxes; slaves occupied a position between humans and commodities. Even those belonging to Twelver *Shi'ism* were not treated the same in this traditional notion of *'adl*.

*Shi'i* leadership was decentralized and clerics were granted great discretion in interpreting laws. Different clerics might issue different rulings for the same transgression, and the same crime could receive vastly different punishment depending on the judge and the location. Torture, corporeal punishment, or executions were viewed as proper punishment for certain crimes. These types of punishments, carried out by the state or its representatives, were generally performed in large public ceremonial events that were approved by the clerics and served as a means of both chastising the public and entertaining them.<sup>5</sup>

Many of these social hierarchies would be questioned and overturned in the course of the Constitutional Revolution when new laws were promulgated in the hopes of creating a nation state with equal rights for all male citizens. The December 1906 Constitution was a progressive document, which substantially reduced the authority of the king. He remained head of the state, but his ministers answered to the Parliament and could be dismissed by the decision of parliament. Parliament also had the right to ratify all major financial transactions and concessions with foreign powers. Freedom of press was

guaranteed in the constitution and parliamentary meetings were open to the public. Members of Parliament also created new secular laws and judicial codes that reduced the powers of the clerics.<sup>6</sup>

In winter of 1907 progressive parliamentarians proposed a bill of rights that codified some of the civil liberties that had been gained in the course of the revolution. This became the first draft of a supplement to the 1906 Constitution, but the process of ratifying this document turned into a major political and ideological confrontation between the liberal-radical faction of parliament and the conservatives. The final draft, known as the Supplementary Constitutional Law, was ratified on 7 October 1907. This Supplementary Law guaranteed certain basic rights for citizens, such as the right to form associations and equality before the law for all (male) citizens, including some religious minorities, but many of its provisions also altered the secular and democratic nature of the 1906 Constitution.

With this document, constitutionalists curtailed the domain of the *shari'a* in several significant ways. However they were also forced to grant the clerical establishment new institutional authority within the *Majles*. Articles 1 and 2 of the Supplementary Laws show the essence of these concessions. In Article 1 the *Shi'i* character of the nation was elevated over and above the national character of the Iranian people. The model for the Iranian constitution had been the Belgian constitution of 1831, but the Iranians had also borrowed elements from the Bulgarian and Ottoman laws. These laws had defined the geographic parameters of their respective nation and listed conditions that constituted citizenship, through birth or through naturalization. The 1907 Supplementary Laws of Iran initially followed a similar model and enumerated the country's provinces and departments:

Article 1. The Iranian nation is composed of the following provinces and departments (followed by a list of 25 regions).

Article 2. Division of provinces into local authorities.

Article 3. The boundaries of the Iranian nation, its provinces and municipalities, will not change except according to law.<sup>7</sup>

However, the final draft of the Supplementary Laws began with an entirely different premise and signaled a departure from all other official documents that had appeared in the first year of the Constitutional Revolution. The Royal Proclamation of August, the Electoral Laws of September, and the Constitution of December 1906 had been largely secular documents, making only brief references to the *Qur'an*, mostly when an oath was required. In contrast, the 1907 Supplementary Laws began with a declaration of the religious identity of Iran instead of the national identity, and codified one particular branch of Islam, albeit that of the majority, as the official religion of Iran. Rather than naming the country's provinces or borders, Article I stated, "the Official religion of Iran is Islam, according to the orthodox *Ja'fari* doctrine of Twelver *Shi'ism*."<sup>8</sup> The shah was also expected to "profess and promote the [Shi'i] *Ja'fari* doctrine," thus emphasizing the religious underpinnings and obligations of Iranian monarchy.

Article 2 of the 1907 law called for the establishment of a council of clerics with veto power over the Parliament. Under Article 2, laws ratified by the parliament could not be at variance with the *shari'a*. MPs were given the right to select five *mujtaheds* who sat on the council of clerics. A *mujtahed* was a high-ranking cleric who had received the authority to interpret religious laws according to his judgment. Their selection was to be made from a list of twenty candidates provided by the *ulama* themselves.<sup>9</sup> The *ulama* thus

reasserted their role as representatives of the Hidden *Imam* inside the *Majles* and maintained their right to instruct the ruler and the government in perpetuity:

Iranian, Article 2. At no time must any legal enactment of the Sacred National Consultative Assembly . . . be at variance with the sacred principles of Islam or the Laws of [the Prophet Mohammad]. It is hereby declared that it is for the *ulama* . . . to determine whether such laws as may be proposed are, or are not, conformable to the principles of Islam; and it is therefore officially enacted that there shall exist at all times a Committee composed of no less than five *mojtaheds* or other devout theologians, cognizant also of the requirements of the age . . . This Article shall continue unchanged until the appearance of the *Mahdi* [the Messiah].

The architect of Article 2 was the ranking *mojtahed* of Tehran, Sheikh Fazlollah Nuri (1843–1909).<sup>10</sup> Nuri had studied in Najaf under the *marja'* Mirza Hasan Shirazi before returning to Tehran in 1883. In the summer of 1906, Nuri briefly supported the constitutionalists, before turning against them when the aims of the new democratic movement became clearer. He soon became its most vociferous opponent, joined Muhammad Ali Shah, and issued fatwas and wrote articles in his newspaper, *Lavayeh-e Sheikh Fazlollah Nuri*, where he accused supporters of the movement of heresy and apostasy.<sup>11</sup>

Article 2 was a novelty in modern constitutions of Europe or the Middle East. Neither the Ottoman nor the Bulgarian laws had given such overt recognition and power to the religious establishment. The *Sunni* Ottomans had a much more extensive history of reform than the Iranians, where the sultan had claimed the authority of the caliph (supreme religious leader) since the fifteenth century. The *Tanzimat* reforms of the mid-nineteenth century had attempted to unite people of different religions to preserve the unity of the Ottoman Empire in the face of Western support for its dismemberment. These reforms had recognized the nominal equality of Ottoman subjects before the law “without distinction of class and religion.”<sup>12</sup> Also, although Article 11 of the Ottoman Constitution made Islam the state religion, it had not given preference to a specific sect, not even the *Sunni* Islam professed by the majority of Ottomans. Further, this Ottoman article contained a provision for the protection of religious minorities, which affirmed that the Ottoman state would “protect the free exercise of faiths professed in the empire.”<sup>13</sup>

Similarly, Article 37 of the Bulgarian Constitution stated that Eastern Orthodox Christianity was the state religion. Here again, provisions were added to safeguard the rights of religious minorities. Article 40 of the Bulgarian Constitution gave Christians and Bulgarians “of any other religion . . . full liberty to profess their religion.”<sup>14</sup> The Iranian Constitution made no such explicit guarantee of rights to Iran’s minorities, either *Sunni* minorities or non-Muslims, even though both groups were granted equal rights before state law.

It seems that Iranian constitutionalists had examined the Ottoman and Bulgarian laws to determine the authority of the clerics in the new order.<sup>15</sup> Following the example of the French Constitution, Articles 14, 15, and 17 of the Belgian Constitution had divested the Catholic Church and its priests of much of their authority, guaranteed freedom of opinion, religious liberty, and the right not to observe religious rituals.<sup>16</sup> By contrast, the Bulgarian Constitution (Articles 37 and 39) had declared the Eastern Orthodox confession the state religion of Bulgaria with vast authority.<sup>17</sup> Under the Ottoman Constitution (Articles 4 and 11), the sultan retained the functions of both king and caliph, and was responsible for carrying out the *shari'a* as well as other laws.<sup>13</sup>

Thus, despite attempts to limit the powers of the religious establishment, the Iranian Constitution ultimately exceeded all its predecessors, including the Ottoman and Bulgarian constitutions, in the degree to which it upheld clerical authority as an independent source of power and a body of clerics to oversee the actions of Parliament.<sup>18</sup>

Why did this happen, despite all the attempts by the liberal constitutionalists to produce a more democratic document? There were several reasons. *Shi'i* clerics historically had much greater authority in Iran than their *Sunni* brethren in the neighboring Ottoman Empire. The *Shi'i ulama* also had a separate source of income because they collected an annual tax from their followers. This meant they could remain independent of both the *shah* and the new constitutional state. Clerics had also played an influential role in the early stages of the revolution. They had employed large numbers of theology students who were routinely utilized in street processions. Low-level clerics and theology students (*talabes*) participated in demonstrations, joined the *anjomans*, and became influential activists. As would happen throughout modern Iranian history, Parliament could not take on the *shah* and the *ulama* at the same time, while also fighting the encroachment of two powerful imperialist powers, Russian and Britain. When Great Britain and Russia signed a secret treaty in St Petersburg in August 1907—a treaty that partitioned the country into three zones, with a northern Russian and a southern British zone, and a middle neutral zone of influence—the Western powers further weakened the constitutionalists, who now found themselves with their back to the wall.

To be sure, there were some ranking clerics who opposed Western encroachment and supported the new constitutional order on religious and anti-colonial grounds. Among them were the three leading *Shi'i marja' taqlid* of Najaf, Seyyed 'Abdollah Mazandarani, Seyyed Mohammad-Kazem Khorasani, and Mirza Hossein Tehran. The most vocal and respected one of the three was Khorasani. Unfortunately, he and his colleagues did not write much about the revolution.

Without mentioning Nuri by name, the three clerics led by Khorasani argued that, “support for opponents of constitutionalism, no matter the person. . . was tantamount to fighting a war against the Hidden *Imam*.”<sup>19</sup> In general they adopted what we would today call an anti-colonial Muslim discourse, one that exposed the machinations of the Western powers and placed greater limits on the authority of the monarch. They argued that to save the nation from foreign concessions, debts, and other irresponsible actions of the monarchy, greater limits had to be placed on the *shah* and the court. However, even these constitutionalist clerics envisioned a prominent role for the *shari'a* and the jurists in the new order.

Soon after the ratification of the Constitution in 1906, Sheikh Fazlollah Nuri and his supporters, who had maintained close ties to the court, began to air their strong disagreements with the reforms. They rejected the first draft of the Supplementary Laws for its secular orientation and accused liberal constitutionalists of heresy and apostasy. In response, the *Majles* agreed to the formation of a clerical council, with Nuri at its head, whose responsibility was to compare and contrast the new laws with the *shari'a* and amend undesirable and overtly secular ones, which interfered with the authority of the *ulama*. The result was Article 2, which established a council of clerics in perpetuity.

As the dissident cleric Mohsen Kadivar, now living in exile, has argued, Nuri was in fact an early supporter of the concept of *velayat-e faqih* (rule by jurists).<sup>20</sup> Nuri challenged the legislative authority of the Parliament and opined, “In the absence of the Hidden Imam, *velayat* is with the *faqih*s (religious jurists) and the *mojtahed*, not some grocer or clothes merchant. . . What does it mean [for the Parliament] to write laws? The laws of Muslims are Islam,” which *mojtaheds* had safeguarded.<sup>21</sup> Still, Nuri's and these earlier definitions of

*velayat-e faqih* were far more limited in scope than the later definitions of the term developed by Ayatollah Khomeini nearly seventy years later. Neither Nuri, nor constitutionalist clerics who supported the concept of *velayat-e faqih* in 1907, challenged the authority of the *shah* and his executive powers, nor did they claim absolute political authority for the *faqihs*. Rather, they disapproved of the new legislative and judicial branches of the state and claimed that both functions belonged properly to the *faqihs*.<sup>22</sup>

In comparing the views of clerical supporters of the constitutional order in 1906–07 we see that even ranking constitutionalist clerics such as Khorasani of Najaf, who distanced themselves from the notion of *velayat-e faqih*, shared some of Nuri's views.<sup>23</sup> Clerics who backed the Constitutional Revolution and those who opposed it had a number of points in common. Both, for example, supported Article 2 of the Supplementary Laws, and held that the Parliament should be prevented from drafting legislation that conflicted with the *shari'a*. Both insisted that the *faqihs* should control the judicial branch of government, and finally both expected that existing social hierarchies between Muslims and non-Muslims, *Shi'is* and *Sunnis*, men and women, would remain intact. Although some clerics grudgingly agreed to the representation of non-Muslim representatives in the parliament, most clerics assumed that the new constitution left *shari'a* laws intact and simply codified and expanded '*urf law*.'<sup>24</sup>

Since the three grand *ayatollahs* wrote little on the subject, their opinions can be gleaned from the writings of some of their most devoted students. Khorasani's perspective on these limits is best captured in the writings of Mohammad Isma'il Mahallati Gharavi.<sup>25</sup> Defending Article 8, which granted equal rights to all male Iranians, Mahallati insisted that the new bill of rights of the Supplementary Laws did not interfere with the personal, familial, and religious laws of the people—areas traditionally under the auspices of the *shari'a*—or with the distribution of alms. These matters were entirely within the province of the religious establishment. With these assurances in place, Mahallati saw no reason to be apprehensive about Article 8. He recalled that modern European laws had also called for equality and new civil liberties, but none of these had eradicated class or gender distinctions. Article 8 would institute a similar situation in Iran. Equality would have a very precise meaning. Citizens would be treated equally before the state law and in matters such as taxation, but religious and class hierarchies would not disappear. To prove his point, he argued that indeed no nation on earth, not even Europeans, had declared the equality of all their citizens in all affairs. "Do the king and a soldier receive the same income in England?"<sup>26</sup>

Khorasani's other protégé, Na'ini Gharavi, also believed that a constitutional government would not obviate *Shi'i* doctrines.<sup>27</sup> Na'ini was one of the *mojtaheds* who contributed to Article 2, but he also supported the election of recognized religious minorities to the Parliament. In his well-known essay, *Tanbih al-Umma va Tanzih al-Millat* (Awakening the Muslim Community and Purifying the Nation), Na'ini states, "If the minorities select someone from their rank, even though they are not expected to be loyal to Islam, they will exhibit good will toward the nation (*vatan*) and others, and such qualifications will be sufficient for their participation."<sup>28</sup> Na'ini assuaged his audience's concerns that the new laws might end up legitimizing the "equality of Muslims with *dhimmi* non-Muslims" or the "unveiling of women." He assured them that such radical measures would not be adopted in Iran because the constitution did not call for equality between "adults and children, sane and insane persons, healthy and sick people" and so forth. With these assurances, he convinced many other clerics that the new constitutional order, with the added Supplementary Laws, would not threaten the *ulama's* authority in any significant way.<sup>29</sup> However, after the hanging of Sheikh Fazlollah Nuri in July 1909, a shocked Na'ini changed his mind.

Apparently he told his students in Najaf to collect the remaining issues of his essay and discard them, primarily because he never thought the new constitution would grant itself such far-reaching authority over the clerical establishment.<sup>30</sup>

## Rights of the judiciary

The struggle for a constitutional order in Iran had begun with the demand for the establishment of a House of Justice, and by 1907 many radical constitutionalists were pushing for the formation of a modern judiciary. Constitutionalist clerics were not averse to implementing some procedures like the creation of a Western style courthouse. They assumed that a modern judiciary would revise and expand the old *'urf* law, leaving *shari'a* matters in their hands, but they resisted any attempt to alter or even unify sharia law. Several times constitutionalists and the new Minister of Justice Mo'ayyed al-Saltaneh called on clerics to at least unify existing *shari'a* laws but they were resolutely rebuffed.<sup>31</sup> At the same time secular constitutionalists such as Taqizadeh wanted to revamp the whole system. He and his supporters hoped to build a legal system composed of a new generation of judges trained in modern laws and independent from the clerics.

After battling clerical opposition for months, progressive constitutionalists ultimately chose to compromise. In the manner of the Ottoman Constitution, they established a two-tier judicial system that maintained the *'urf/shari'a* binary in many areas:

Ottoman, Article 87. Affairs touching the *shari'a* are tried by the Tribunals of the *Shari'a*. The judgment of civil affairs pertains to Civil Tribunals.

Iranian 1907, Article 71. The Supreme Ministry of Justice and the judicial tribunals are the places officially destined for the redress of public grievances, while judgment in all matters falling within the scope of the Ecclesiastical Law is vested in just *mojtaheds* possessing the necessary qualifications.

A similar compromise was reached over the selection of the chief prosecutor. The Ministry of Justice would appoint the prosecutor, but the shah and qualified *mojtaheds* had to approve the appointment:

Iranian 1907, Article 83. The appointment of the public prosecutor is within the competence of the shah, supported by the approval of the ecclesiastical judge.

## Civil liberties

Civil liberties are rights that protect citizens from powers of the state, but these protections and rights often contradict religious duties and obligations. Clerical constitutionalists accepted some civil liberties, but not rights that came in conflict with religious obligations or altered family law. Through the efforts of social democrats inside and outside the Parliament, the struggle for civil liberties, in particular the right to equality and the right to freedom, took the center stage in this period.

The French Declaration of the Rights of Man had recognized individual liberties, as had the Belgian (Article 7) and Ottoman (Article 9) constitutions, but neither the Bulgarian Constitution nor the Iranian law of 1907 recognized individual liberties. Social democratic MPs in the Parliament, such as Taqizadeh and his supporters in Azerbaijan, Gilan,

and Tehran, secured the principle of equality before the law in 1907 but not that of individual liberty. Article 8 states, “the people of the Persian Empire are to enjoy equal rights before the state law.” The principal model for this law was Article 6 of the French Declaration, an abbreviated version of which had appeared in the Belgian (Article 6), Ottoman (Article 17), and Bulgarian (Article 57) constitutions. The key term in the Iranian law was that it specified “equality before the state law,” making no provision for equality before religious law. As far as the clerical establishment was concerned, religious (and therefore legal) distinctions between Muslims and non-Muslims still existed. Sheikh Fazlollah Nuri, for example, maintained that an Islamic nation cannot be a constitutional one as well, because it was impossible to have equality in Islam. He wrote that the *shari'a* clearly separates the rights of “a slave and a free man, a father and a son, a husband and a wife, a wealthy man and a poor man, a wise man and a fool.” Likewise it distinguished, several other categories such as “a Muslim and an apostate, a *dhimmi-apostate* and a captive-apostate, and one who has left Islam.”<sup>32</sup>

Several other civil rights provisions from the Belgian Constitution were included in the Supplementary Laws. They guaranteed individual property rights, the sanctity of life and domicile, the right to privacy regarding letters and telegrams, and the right to trial. Under Article 14, no Iranian citizen could be exiled from the country or prevented from living there.<sup>33</sup> In addition, the state, rather than the clergy, was placed in control of the public education system (Article 19), a major achievement for Iranian constitutionalists.

A comparison of the first draft of the 1907 law and the final version demonstrates further concessions to the *Shi'i* clergy. Education in the fields of science, art, and crafts was permitted “save in the case of such as may be forbidden by the ecclesiastical law” (Article 18). Freedom of the press was granted, except for “heretical books and matters hurtful to the perspicuous religion” (Article 20). Freedom of association was granted throughout the nation, provided *anjomans* and other such associations were “not productive of mischief to religion or the state” (Article 21). Thirty years prior, the Ottoman Constitution had guaranteed these rights without the encumbrances that were tacked on to the 1907 Iranian law. Whereas Sultan Abdulhamid II suppressed the Ottoman Constitution soon after its birth, the conservative clerics in Iran aborted these new civil rights while they were still in embryo.

Certain progressive clauses in the Belgian and Ottoman Constitutions never made it into the 1907 Iranian law. Articles 14–16 of the Belgian Constitution established freedom of religion, denied state intervention in religious matters, and required civil weddings to precede religious ones. Though Belgian Article 23 recognized its people’s multilingual heritage, the Iranian Constitution included no such provision, despite Iran’s similarly polyglot population.<sup>34</sup> In the Ottoman Constitution, Article 24 prohibited *corvée* labor, and Article 26 banned torture and inquisition. Article 61 of the Bulgarian Constitution banned slavery of “either sex” and declared that slaves became free upon entering Bulgaria. None of these civil rights provisions were incorporated into the Iranian law, although constitutionalists inside and outside the Majles and European abolitionists continued to work for the eradication of the last vestiges of the Iranian slave trade, which continued in the Persian Gulf for decades.<sup>35</sup>

Personal freedoms were either absent from or restricted in much of the Iranian Constitution. From 1906 onward, many members of the *ulama* continued to oppose the concept of individual freedom (*azadi*), and the word soon took on a pejorative connotation. In some quarters the term *azadi*, including the right to be different and to act differently from other people, was equated with irreligion, immorality, lack of chastity, and licentiousness. In terms of gender, *azadi* came to have a doubly negative connotation and was directly

associated with sexual immorality. A free woman (*zan-e azad*) was an immoral and sexually promiscuous one.

Equality before the law was viewed more positively. However, even in this area equality for *Sunni* Muslims, non-Muslims, and women was never practiced. Women ultimately received the right to vote in 1963 and inheritance, marriage, and divorce laws have continued to remain unequal a hundred years later. Religious minorities knew that they could never successfully pursue a legal action against a *Shi'i* Muslim. Three decades after the Constitutional Revolution, after the reforms of the Reza Shah era (1925–41), equality remained a privilege that the state granted to Iranian citizens, including women and minorities. As far as the *shah*, or the majority male *Shi'i* communities were concerned, equality before the law could also be withdrawn when women or minorities transgressed acceptable boundaries, that is to say when they demanded real freedom.

### Freedom of the press

Progressive MPs and government ministers also insisted upon freedom of the press (Article 20). They argued that if the *ulama's* objections to a free press were taken into account, classical works of Persian literature such as Ferdowsi's epic *Shahnameh* (Book of Kings) and Sa'di's *Golestan* (The Flower Garden) could be censored because of their perceived profanities. Taqizadeh suggested a middle ground, which involved establishing two classes of publications and two bodies to monitor them, modeling his proposal on Bulgarian Articles 79 and 80. Religious authorities would oversee the publication of religious texts, whereas modern educators and scholars supervised other kinds of publications.<sup>36</sup> The Bulgarian Constitution divided the two areas in the following manner:

Bulgarian, Article 79. The press is free. No censorship may be instituted, and no caution may be required from authors, editors, or publishers. If the author be well known and resides within the principality, no action may be brought against the editor, the publisher, or the salesman.

Bulgarian, Article 80. The Holy Scripture, prayer books, and catechisms destined for use in the churches of the Orthodox rite, as also treatises of ecclesiastical law destined for use in Orthodox schools, must be submitted for the approval of the Holy Synod.

Bulgarian, Article 81. Offenses in whatever concerns the press, can be tried only under the law and by the ordinary courts.

However, Taqizadeh's suggestion for two publication committees was only partially accepted. Hence, the crisp distinctions regarding the responsibilities and capacities of the press in the Bulgarian Constitution are absent from the Iranian Supplementary Laws. Article 20 created two categories of publications: (i) acceptable publications that were exempt from censorship; and (ii) "heretical" works that were not. The Constitution never explained what constituted a "heretical" work. In this way, the ecclesiastical order could label any publications that did not meet its approval as "hurtful to religion," proceed to ban it, and prosecute its writer and publisher.

Iranian 1907, Article 20. All publications, except heretical books and matters hurtful to the perspicuous religion [of Islam] are free, and are exempt from the 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.

## The battle for equality and liberty

In *Shi'i* Iranian society, maintaining social and religious distinctions was of paramount importance. A majority of *Shi'i* theologians included Jews and Christians, who normally held the status of *dhimmi* (protected but second class citizens) under Islamic law in the category of infidels (*koffar*) who were ritually impure.<sup>37</sup> Segregation was enforced through a series of spatial, sartorial, and dietary rules and regulations. *Qajar* monarchs continued the *Safavid* policy of intolerance toward *Sunni* Muslims and non-Muslims.<sup>38</sup> *Babi* and *Baha'i* minorities, who often lived within Muslim communities and intermarried with Muslims, were denied the customary protection of the recognized religious minorities under Islam. They were at greatest risk of violence and frequently, on one pretext or another, were attacked and even forced to convert. Mistreatment of religious minorities was not always rooted in religion and ideology. Rather, such incidents could be motivated by socio-economic or political reasons and subsequently justified on religious and legal grounds.<sup>39</sup>

In the second half of the nineteenth century Britain, France, and Russia had intervened in Iran's treatment of its minorities, often in response to *dhimmi*'s calls for protection. French and British diplomats encouraged the king to lift various restrictions on Iran's minority communities. Parsi merchants from British-ruled India, who were in continuous contact with their Zoroastrian co-religionists in Iran, also pressed the *shah* to protect their co-religionists. Nasir al-Din Shah and Mozaffar al-Din Shah issued several edicts (*firman*s) during their reigns that outlawed some of the restrictions on Jews and Zoroastrians. However, the *ulama* objected to these changes in the status of Iranian minorities and ultimately ignored the edicts, which meant that religious harassment of non-Muslims continued into the early twentieth century.<sup>40</sup>

In the course of drafting the Supplementary Laws, Taqizadeh insisted on the inclusion of Article 8, which declared that, "the people of the Iranian state are to enjoy equal rights before the Law." Taqizadeh and his colleagues argued, "If this article were included in the law, but all other articles were changed, Western countries would still recognize us as a constitutional order. But if we eliminate this [Article 8] and include everything else, they will not recognize us as a constitutional order."<sup>41</sup> Taqizadeh pointed out that European consulates inside Iran had developed close contacts with Christians, Jews, and Zoroastrians. These foreign powers interfered in Iran's internal affairs by routinely taking sides in local skirmishes between Muslim and non-Muslim communities, often backing the minorities. By recognizing the rights of Iran's non-Muslims, Taqizadeh wanted to establish the foundations of a modern nation state with equality before the law for all citizens. He also believed that, by granting this right, he was removing a major excuse for imperialist meddling in internal Iranian affairs. In addition, he was convinced that educated and entrepreneurial minorities were valuable assets for a modernizing Iran. Some Christian Iranians had attended missionary schools, and Iranian Jews were often educated by the more secular Alliance Israelite. Both were therefore more familiar with Western languages and cultures. Some had also developed extensive economic ties with their co-religionists abroad.<sup>42</sup> Most of all, Taqizadeh was convinced that a modern nation, with extensive commercial ties to the West, could not have a two-tier legal system, one for Muslims and another for non-Muslims and foreign visitors.

For his part, Nuri was concerned with the diminished authority of the *ulama* under the new order. He continued to insist that, "equality and Islam may never coexist." Nuri characterized the MPs who pushed for the ratification of these civil rights as "base, knavish and dishonorable people." The *shari'a* had given Muslims special privileges, both as

Muslims and as men, yet they wished to deny themselves and others these advantages. To Muslims who dared to move beyond such prejudices and made the astonishing claim that “I should be equal and brother with the Zoroastrian, the Armenian, and the Jew!” Nuri had only one response: “May God curse those who do not value themselves.”<sup>43</sup>

Progressive constitutionalists outside Iran also pushed hard for the inclusion of equality as a guiding precept in the constitution. From the Russian Caucasus Abdulrahim Talbof, a strong defender of Article 8, wrote to his friend Mirza Fazlali Aqa Tabrizi, a parliamentary deputy representing the clerics of Iranian *Azerbaijan*:

My Dear: Bad news arrives from Tabriz. In Tehran, a major fight has developed over two articles of the Constitution. With regard to the first one [Article 8], I hope that by now the honorable clerics have accepted this principle and thus have not shamed our Muslim honor. The Christians, Zoroastrians, and Jews pay taxes to the government. This tax is their *jezya* [poll] tax. I don't understand the problem. Are the *ulama* demanding that, as in the old days, the Christians not leave their houses in humid weather? Are they expecting them to fly over a muddy alley to avoid ritually polluting the earth? The fact is that fifty years before the constitution was written, social needs resulted in the disappearance of such artificial traditions that were unknown to the Prophet. If the purpose of this debate is to allow Muslims to confiscate the property [of non-Muslims], trample upon their rights as human beings (*hoquq-e Ensan*), and deny them justice, then [it should be noted that] we have no such *shari'a* law that would allow Muslims the right to trample other people. If the purpose of this argument is to prevent [non-Muslim] members from being elected [to the Parliament] or the popular councils, then why should this be the case? If we select one representative for every 300,000 persons, then we should do the same for the Christians and the Jews. Moreover, Zoroastrians are our ancestors in Iran. How could we in good conscience not include them in our midst and deprive members of this honest and decent nation of their rights as citizens?<sup>44</sup>

Zoroastrian merchants inside Iran joined this discussion. They complained about repeated prejudice and harassment and demanded the ratification of Article 8 to receive both legal protection and recognition. “Is the sacred word *equality* for all the people of the nation, or is it only for some people?” they wrote in one such petition.<sup>45</sup> Armenians threatened to seek sanctuary at the European legations if Article 8 was not ratified.<sup>46</sup> The *Azerbaijan* Central Committee of the Dashnak Armenian Party demanded that the Parliament establish “equality before the law without distinction of faith and nationality.”<sup>47</sup>

Others, such as Sheikh Salim from *Azerbaijan*, were more aware of the ramifications of the pending changes. A constitutionalist cleric from Tabriz with social democratic tendencies, Salim was known for his fierce support of the poor and the peasants. He realized that the new constitution would gradually undermine the old boundaries between civil and religious laws, and initiate a series of events that would revise the *shari'a*. Salim feared that if equal legal rights were granted to non-Muslims, the conservative opposition would turn completely against the new constitutional order. Unwilling to discuss these conclusions publicly, he suggested to a colleague in Parliament that the Supplementary Laws' language of equal rights be thinly veiled to conceal and safeguard the potential for future progressive reform:

On the matter of equality, it is better if you do not frame the issue as the rights of Muslims vs. heathens [non-Muslim Iranians]. Rather, you should frame it as the rights of Iranians vs. foreigners. After all, there are Muslims who live abroad as well. Then, if [the conservatives] complain, we can say that we are dealing with equal rights of Muslims who live abroad. In the end, it is better if the issue of Muslim and heathen Iranians remains dormant. It will be less of an obstacle.<sup>48</sup>

Note that even a fierce constitutionalist such as Salim, who defended Article 8, used the highly derogatory term “heathens” (*koffar*) to refer to non-Muslims in his private correspondence. In public proclamations, constitutionalists including Salim used the more polite term *dhimmi* or the newly coined one *mellal-e motefarreqeh* (various faith communities). The point is that even constitutionalists who fought for Article 8 avoided mention of non-Muslim Iranians in the law because the conservative *Shi'i* clerics would have recognized such a reference as a threat to their authority, rendering ratification impossible.

As a result, there were at least three public positions on the proposed civil rights legislation:

- (i) Conservatives such as Sheikh Fazlollah Nuri argued that a secular civil code was irreconcilable with the shari'a. Nuri supported the shah during the Minor Autocracy (1908–09) when royalist forces closed down the parliament, executed several leading constitutionalists, and drove others into exile. After the restoration of the constitutional order in the summer of 1909, Nuri was tried and executed for his role in the murder of several constitutionalists.
- (ii) Moderate clerics, such as Na'ini and Mahallati, argued that the domain of the civil and religious law would remain separate as they had been under 'urf and shari'a laws. The new laws would neither interfere in matters traditionally adjudicated by the ulama (such as collecting of *jezya* taxes) nor subvert existing principles of the shari'a. After the execution of Nuri, and rise of the more secular Democrat Party, which openly called for separation of religion and state, supporters of this view became disillusioned with the new political order. They joined the more conservative Moderate Party in the Second Parliament (1909–11) or abandoned politics altogether.
- (iii) More secular and left-wing MPs denied that there were any contradictions between the proposed secular laws and shari'a law in their public pronouncements. None dared enumerate the critical differences between religious and secular laws. Repeated reassurances from progressive MPs that the Parliament would neither interfere in the daily affairs of citizens nor regulate religious and family matters helped push through the Supplementary Laws in fall 1907, though in a more modified version than the one proposed by Nuri and his supporters. Article 8 survived this acrimonious debate. Equal rights for minorities were also quietly incorporated in articles dealing with the nation's finances. These articles nominally outlawed the practice of collecting *jezya* taxes from non-Muslims and paved the way for future reforms in this area:

Iranian 1907, Article 97. In the matter of taxes there shall be no distinction or difference among the individuals who compose the nation.

Iranian 1907, 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.

In 1909, supporters of this group formed the Democrat Party in the Second Parliament and briefly pushed their more secular agenda, including a party program that called for separation of religion and state.<sup>49</sup>

## Conclusion

With the ascendancy of Muhammad Ali Shah to the throne in early 1907, the revolution entered a more perilous stage. Muhammad Ali Shah detested the limits placed on his powers and recognized that the easiest way to challenge the new order was to accuse it of undermining the *sharia*. The *shah* was backed by conservative clerics, especially Nuri, who also realized that the new constitution undermined their authority.

The Iranian Constitutional Laws of 1906–07 went far beyond the Belgian, Bulgarian, and Ottoman Constitutions, as well as those of Germany, Japan, and Russia in reducing monarchical powers. The Iranian Parliament was a legislative body, vested with many of the rights that had previously been the province of European or Japanese monarch. The constitution established the principle of national sovereignty and introduced the notion that the *shah* was a representative of the people, stating unequivocally, “all the powers emanate from the nation” (Article 26).

When progressive constitutionalists proposed a series of amendments to the 1906 constitution that guaranteed broader civil rights, Nuri and his backers confronted the *Majles* and demanded that the new laws conform to religious laws. Ultimately progressive constitutionalists reached a compromise with Nuri and his royalist backers. The Supplementary laws granted basic civil rights. The 1907 Supplementary Laws also curtailed the vast authority of the *shah* by mandating regular consultations with his cabinet ministers. These ministers were in turn responsible to the Parliament for their actions and those of the *shah*.

Clerical authority was also restricted in three major ways: first, by creating a new legislative body; second, by dividing the judiciary into religious and secular units, wherein the *mujtaheds* controlled the religious and family law, whereas civil courts dealt with other matters (Article 27); and third, by establishing the principle that the state, and not the clerics, controlled the educational system.

The 1907 law granted new rights to *dhimmis*, including *Sunni* Muslims, Christians, Jews, and Zoroastrians (but neither *Babis* nor *Baha'is*), by stating that all (male) citizens were equal before the state law. Here the language of the law was less precise and transparent than that of the Belgium, Bulgarian, or Ottoman laws. When universal male suffrage was adopted in Iran in 1911, once again the ethnic, linguistic, and educational diversity of the nation was not taken into account, because all voters were required to read and write in Persian.

Regarding gender rights, as feminist scholars have shown, the strict demarcation of private and public realms in the aftermath of modern democratic revolutions had often resulted in codifying existing patriarchal traditions, inventing new ones, and ultimately giving men greater control over women's lives in modern institutions. The same scenario played out during the Iranian Constitutional Revolution.<sup>50</sup> The electoral laws of 1906 barred women from participation in the new political process by denying them the franchise. Family law remained fully under the aegis of the *mujtaheds*, a harbinger of the fact that the battle to establish more secular laws concerning gender and the family would be a long and bitter one. In the decades that followed, Iranian women did gain new rights to education, employment, and political participation, but the state continued to incorporate many religious and patriarchal practices into the newly created modern laws.<sup>51</sup>

But the supplementary laws also recognized the Twelver branch of *Shi'i* Islam as the official religion of the country and gave a council of clerics substantial rights and privileges that directly violated the earlier liberal spirit of the constitution. National identity was subsumed under the *Shi'i Ithna 'Ashari* religious identity. The *ulama* gained veto power

over the Parliament and retained control of the religious courts. Some of the civil liberties that were granted in 1906, such as freedom of press or association, were curtailed in the 1907 laws. Other civil liberties that were introduced in the 1907 law were restricted by religious qualifications.

The council of clerics briefly functioned during the Second Parliament (1909–11). In future decades secular constitutionalists hampered the formation of this council on the grounds that some MPs were ranking clerics hence there was no need for an additional council of clerics. Yet the very existence of Article 2 in the constitution, the fact that in a democratically elected parliament, the clerics could insist on forming their own council of clerics with veto powers over all parliamentary deliberations, dampened the secular intellectuals' enthusiasm for a more democratic political order and robbed the process of its original liberal spirit.

When the Allied powers occupied Iran during World War I, the clerical faction within the Third Parliament (1914–15) regrouped. Led by the cleric Seyyed Hasan Modarres, they formed a new radical conservative and populist party known as *Hey'at Elmiyeh*. This party denounced imperialist incursions in Iran and was left of center on economic matters, claiming to be a defender of the rights of the poor and dispossessed. However, it remained ultra conservative in its social and cultural agenda, including on gender issues. It also questioned the very legitimacy of using European constitutions as possible models for Iranian law, thus undermining the Iranian constitution.<sup>52</sup> Here we see the beginning of a populist Islamist Party, long before intellectuals such as Hassan Al-Banna, founder of the Muslim Brotherhood of Egypt, his follower Seyyed Qotb, or Mawlana Mawdudi of Pakistan formulated such ideas into a new and more politicized interpretation of Islam.

The more secular faction of the Third Parliament did respond to the formation of the new Islamist party. They argued that the emergence of the *Hey'at Elmiyeh* had made Article 2 redundant. Now that the *Hey'at* existed, no additional council of clerics was needed in the *Majles*. Modarres and his supporters abandoned the *Hey'at* when they realized that by working within the parliamentary system, they opened themselves to parliamentary discipline, aggressive criticism, and even insult and ridicule by liberal and leftist deputies. Nor could they claim immunity because of their exalted position in the religious hierarchy as they had always done.<sup>53</sup>

In the 1920s, more secular MPs once again blocked the formation of a council of clerics on the grounds that there were sufficient clerical deputies within the Parliament. Still, leading clerical MPs such as Modarres remained outspoken deputies. They were routinely consulted by the other MPs on the compatibility of proposed laws with the *shari'a*.<sup>54</sup>

In the 1930s, when Reza Shah Pahlavi firmly reestablished dictatorial control, he ignored the constitution, and made sure his supporters and pliable candidates entered the *Majles*. Soon clerical support for Article 2 reemerged. Clerics realized that Article 2 provided them with a convenient excuse for challenging the king. A similar process would take place in the 1960s and 1970s during the rule of Mohammad Reza Shah when clerics called for reinstating the constitution. In fact a closer look at their pronouncements suggests that they were interested mainly in reinstating Article 2 and provisions that increased the authority of the *ulama*.

In a 1959 essay on the Iranian Constitution, historian Laurence Lockhart perceptively predicted, "the possibility remains that the council [of clerics] might some day be brought into existence again, when it might challenge the legality of any legislation passed while it was in abeyance."<sup>55</sup> This became Ayatollah Khomeini's argument as he campaigned against the Pahlavi monarchy in the 1970s. Khomeini moved beyond all other clerics, however,

by offering a maximalist reading of the notion of *velayat-e faqih*.<sup>56</sup> He claimed absolute powers for the *faqih* and argued that in the absence of the Hidden Imam, a leading *faqih* should rule the nation outright, determining both *shari'a* and 'urf matters.

## Notes

1. The literature on the Iranian Constitutional Revolution is extensive. (In English see, for example, Martin, 1989; Bayat, 1991; Afary, 1996). For more recent English discussion of the many achievements of the 1906–07 constitution see the many articles in Chehabi and Martin (2010) as well as Bonakdarian M (2006) and Afary (2005): 341–359.
2. For a discussion of Muharram rituals in Iran, see Chelkowski (1979) and Richard (1995).
3. For details, see Afary (1996), especially chapters 3 and 4.
4. Momen (1985): 202.
5. See, for example, the description by Ja'far Shahri of some of these public executions. He writes that after the execution, the public's reaction depended on the circumstances of the case and of the punishment. If they felt the hanging was excessive or unjust, the crowd wept and cried for the poor soul, but if the condemned was a cruel murderer, and the punishment was deemed justified, they "expressed their joy and clapped hands" as the man's body dangled in air" (Shahri, 1357: 418–419).
6. For a text of the 1906 constitution, see Browne (1910: 362–371).
7. For a text of the first draft, see Afshar (1989).
8. For a text of these laws, see Browne (1910: 372–384).
9. Turkaman (1994: 33). The council of clerics operated briefly during the Second Parliament (1909–11) but remained dormant for the next seventy years. Still, clerical deputies such as Hasan Modarres examined new laws and rejected those they deemed in violation of the *shari'a*.
10. As Mohammad Turkaman has pointed out, in Nuri's original proposal: (i) the clerical committee operated outside the Parliament and therefore established a parallel structure of authority; (ii) the exact number of members of this committee was not determined; (iii) the selection process for the committee was undefined; and (iv) the stipulation that committee members should be fully aware of contemporary worldly concerns was not indicated (see Turkaman, 1994).
11. When constitutionalist forces regained the capital in July 1909, Nuri was tried for the murder of several constitutionalists and found guilty. After receiving permission from some of the Najaf clerics, and allowing the public to check with Najaf through open telegraph lines, the constitutionalists publicly hanged Nuri. He was rehabilitated after the Islamic Revolution of 1979 and is considered one of the early martyrs of Islamism.
12. Lewis (1968: 134).
13. Kili (1971).
14. For the text of the Bulgarian law, see Blaustein and Flanz (1992).
15. While in exile in London, Hasan Taqizadeh gave a speech to the Central Asian Society on 11 November 1908, where he explained that he and his colleagues had based the Supplementary Constitutional Laws "largely on the Belgian (Constitutional) laws, partly on the French, and partly on the laws prevalent in Bulgaria" (see Browne, 1909: 11). We are unaware of the language in which the Bulgarian law was initially examined.
16. I have used the French text of the Belgian Constitution that appears in Thonissen (1879).
17. See the text in Blaustein and Flanz (1992).
18. Kili (1971: 150–162). Bulgaria was part of the Ottoman Empire for five centuries before it became a Russian protectorate in 1878. The Bulgarian constitution gave its king dictatorial powers in times of emergency. See Blaustein and Flanz (1992).
19. Feyrahi (1384/2005: 197).
20. In the early nineteenth century, the *faqih* Molla Ahmad Naraqi (1771–1829) elaborated on the concept of *velayat-e faqih* (Rule of Jurists). Naraqi claimed that the most learned *faqih* also

- acquired the *imams'* divine inspiration, and therefore had both the exclusive right to interpret and administer the *shari'a* and the ability to exercise political power until Judgment Day. In this more expansive view of the role of the *mojtahed*, the leading jurist acquired nearly the authority of the Mahdi and was entitled to certain political powers. However, the concept of *velayat-e faqih* remained a minority position in *Usuli Shi'ism* and gradually faded away until Ayatollah Khomeini resurrected it in the 1970s in a still far more expansive view, giving the jurist the authority of both the *faqih* and the king.
21. Sheykh Fazlollah Nuri (1995: 155). For an inside view into these discussions and whether Jews, Armenians, and Zoroastrians should be granted equal rights see the letter by Abdulrahim Talbof to Mirza Fazlali Aqa, 21 Jamdi 1325, in Hussein and Saleh (1993): 50–51.
  22. Kadivar (2005: 254).
  23. Kadivar (2005: 240–243).
  24. Ahmad Kasravi captures this outrage in his classic study of the Constitutional Revolution. For example, the cleric Ahmad Tabataba'i writes to this son-in-law, "You do not know how destructive this Parliament has been to people's livelihood and religion. . . [People] have stopped reading the *Qur'an* and praying, and instead read the newspapers, which are full of blasphemy and insult our sacred religion" (Kasravi, 1984: 101).
  25. See Mohammad Isma'il Gharavi Mahalati's essay in Zargarinejad 1995: 495–549.
  26. See Mahalati (1995: 518).
  27. The two men with the similar last name of Gharavi should not be confused. To distinguish them, I have used the names Na'ini and Mahallati, used during their lifetimes. Mohammad Hossein Na'ini Gharavi was a close associate of the two constitutionalist clerics in Najaf—Mazandarani and Khorasani—but was more conservative than Khorasani (see Yazdani, 1997: 134–135). As Mohsen Kadivar points out, some constitutionalist clerics supported the concept of *velayat-e faqih*. Na'ini, for example, believed in a limited form of *velayat-e faqih*, which might explain why he was more conservative than Khorasani or Mahallati. For more details see the outstanding work by Kadivar (2005: 240–241).
  28. Sheikh Mohammad Hossein Na'ini [Gharavi], *Tanbih al-Umma*, p. 89. See also Vahdat (2002: 70). Thanks to Vahdat for e-mail exchanges in fall 2006 for further clarification on this point.
  29. Na'ini [Gharavi], *Tanbih al-Umma*, pp. 36–37.
  30. See Hairi (1977: 240).
  31. For details see Malekzadeh (1984: 628) and Dowlatabadi (1952: 220–221).
  32. Nuri (1908–09/1995: 159–160).
  33. This article might have been a response to Article 113 of the Ottoman Constitution, which gave the sultan the right to exile those violating state security. Sultan Abdulhamid dissolved the Parliament, suspended the constitution in 1878, and expelled liberal reformers from the country (see Kili, 1971: 15).
  34. Religious minorities (including *Sunnis*) comprised about 10 percent of the population.
  35. Mostashar al-Dowleh had called for an end to torture and slavery in his 1871 book, but these issues were not addressed in the 1906–07 Constitution. Domestic slavery, mostly by tribal brigands, persisted through the 1920s, and even later in the Persian Gulf area. For details, see Ricks (2002: 77–88). The slave trade continued on a much smaller scale in the opposite direction. In 1929, some 250 Baluchis were sold across the Persian Gulf. See the letter by Arthur Henderson, 9 November 1929, in Foreign Office 248/1387.
  36. See Mozakerat-e Majles, Rajab 7, 1325 (17 August 1907), 212.
  37. By the late nineteenth century one could find more than 50 types of such restrictions imposed on Jews, Christians, or Zoroastrians. Jews, for example, could not walk on the streets when it was raining because, "water and moister transferred their uncleanliness" to Muslims. Jews also could not enter a Muslim's house or store, if per chance they entered in the company of a Muslim; they were not allowed to touch anything inside a store, though ironically their money was considered clean (see Issawi, 1971: 64 and Tsadik, 2007: 17).

38. On this issue, see Sharifi Y (2009). For treatment of minorities in the Safavid and Qajar era see, among others: Taremi (1996); Fischel (1950: 119–160); Matthee (1998: 219–246); Levy (1984: 404–409); Tsadik (2007).
39. For a detailed discussion of these issues, see Sanasarian (2006), Amanat (2011), Berberian (2001) and Levy (1984 and 1999).
40. Malcolm (2009: 50); Tsadik (2007: 33–177).
41. Mojtahedi (1979: 58–59). Mehdi Mojtahedi and others have indicated that Taqizadeh played a key role in these debates.
42. Nateq (1996).
43. Nuri (1995: 159–161).
44. Abdulrahim Talbof to Mirza Fazlali Aqa, 21 Jumadi I, 1325, published in Hussein and Saleh (1993: 50–51). Some educated members of the elite no longer observed practices such as avoiding all bodily contact with non-Muslims, but Talbof's claim that such conduct was abandoned in the 1860s is an exaggeration (see Afary, 2002: 137–157).
45. See Mozakirat-e Majles Rabi' II, 6, 1325 (14 May 1907), p. 169. See also Mozakirat-e Majles, Jamadi I, 5, 1325 (17 June 1907). Zoroastrians did not align themselves with Jews and Christian Armenians, perhaps because they ranked higher in the religious hierarchy of Iran.
46. Mojtahedi (1979: 60).
47. Thanks to Hourii Berberian for providing me with a copy of this statement (see also Berberian, 2001).
48. See the 1907 private letter of Sheikh Salim to Mirza Fazlali Aqa Tabrizi that appears in Hussein and Saleh (1993: 85–86).
49. For details, see Afary (2005: 257–283).
50. For a classic treatment of the subject, see Elshtain (1996) and Boling (1996).
51. For a discussion of gender-related changes during the Pahlavi era, see Paidar (1995) and Afary (2009).
52. Mansoureh Ettehadieh Nezam-Mafi says that the formation of such a “radical conservative party” in Iran was an unprecedented event (Mafi, 1371/1993: 107–109).
53. Nezam-Mafi (1371/1993): 107–108.
54. See, for example, Modarres' comments on a mechanism that would ensure the compatibility of modern laws with the *shari'a* at Majles, session 57, Sunday Aban 10, 1303/1924 in Torkaman (1374/1995).
55. Lockhart (1959: 381).
56. Kadivar (2005: 254).

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