PART TWO

Chapter V Civil Liberties and the Making of Iran's First Constitution*

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Introduction

It is a commonplace these days to speak of historical narratives that are mythologized by subsequent generations. Not only political revolutions, which are by their very nature elusive and fraught with contradictions, but also political documents created in the midst of major social upheaval experience such multiple readings. Generations of Americans have taken great pride in the 1776 Declaration of Independence and its pronouncement that "all Men are created equal" and have the "inalienable Rights" of "Life, Liberty, and the Pursuit of Happiness." Debates continue, however, on the process through which this text was written and the fact that it cannot easily be reconciled with the 1787 constitution that legitimized slavery in the United States.

The Iranian constitutional laws of 1906–7 have had a somewhat similar trajectory.[1] The new laws recognized the authority of the new Majles (parliament), the

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[1] Throughout this article I have used Edward G. Browne's translation of the 1906 and 1907 Iranian constitutional laws will mirror alterations that reflect modern usage. See Browne, *The Persian Revolution of 1905–1909* (Cambridge: Cambridge University Press, 1910), 362–84. For a discussion of the Constitutional Revolution see Janet Afary, *The Iranian Constitutional Revolution: Grassroots Democracy, Social Democracy, and the Origins of Feminism, 1906–1911* (New York: Columbia University Press, 1996); Vanessa Martin, *Islam and Modernism: The Iranian Revolution of 1906* (London: I. B. Tauris, 1989); Mangol Bayat, *Iran's First Revolution: Shi'ism and the Constitutional Revolution of 1905–1909* (New York: Oxford University Press, 1991); Ahmad Kasravī, *Tārīkh-e Mashrūte-ye Īrān* (History of Iranian constitutionalism) (Tehrān: Amīr Kabīr, 1984 [1363]).

new center of power, and curtailed the powers of the shah. The new Majles gained the authority to negotiate all foreign treaties. It guaranteed the autonomy of the new provincial councils, and supported freedom of the press. Christians, Jews, and Zoroastrians were recognized as citizens and given equality before the law. Ultimately however, the new Iranian law could not reconcile the conflict between religious law and secular law and in this area fell far short of other modern constitutions.

The most important model for the Iranian constitutional laws of 1906–7 was the Belgian Constitution of 1831, although its framers also consulted the French, Bulgarian, and Ottoman constitutions. This article will explore the impact of these constitutions on the Iranian law. We shall see that the Iranian Constitution moved beyond the Belgian, Bulgarian, and Ottoman ones in several arenas. The Iranian law gave fewer rights to the king. It expanded the authority of the parliament and the prime minister. It established a secular judiciary, which mitigated the traditional authority of the religious jurists. But the new law also gave unprecedented new institutional powers to the clerical establishment. It thereby undermined the new civil liberties the constitution granted and curtailed the power of both the parliament and the judiciary.

The Traditional Discourse of Justice

The seventeenth-century French traveler Jean Chardin portrayed the shah of Iran as more powerful than any other monarch in the world.[2] Likewise, Sir Percy Sykes commented in the early twentieth century that the shah was an "absolute monarch" whose unquestioned authority was rooted in the traditions of the Achamedian times: "In his person were fused the threefold functions of government, legislative, executive, and judicial. He was the pivot upon which turned the entire machinery of public life."[3]

Such might have been the perceptions of Western travelers but reality belied such claims of absolutism, since the powers of the shah were mitigated by other powers. In traditional Iranian society, a dual system of authority existed where several other patriarchs—the clerics, the tribes, and the local notables, including princes and other provincial governors—checked the patrimonial powers of the king in some arenas.[4] There were also two sets of laws: shari'a law and *'urf* cus-

[2] See Roger Savory, *Iran under the Safavids* (Cambridge: Cambridge University Press, 1980), 33.

[3] Sir Percy Sykes, *A History of Persia*, 3rd. ed. (London: Macmillan, 1930), 2:381.

[4] Reza Sheikholeslami, *The Structure of Central Authority in Qajar Iran, 1871–1896* (Atlanta: Scholars Press, 1997).

tomary law. Shari'a law was derived from the Qur'an and the hadiths, judgments of the twelve Shi'i imams, and decisions of the jurists. Administered by various members of the clerical establishment, it covered four areas: (1) religious obligations and duties; (2) commercial contracts; (3) marriage, divorce, and other personal affairs; and finally (4) judicial procedure.[5] The state administered the *'urf* customary law (often pre-Islamic in origin), which dealt mostly with criminal conduct. In the Qājār era, the *'urf* law was administered in courthouses known as *dīvān khāne* and the rulings were carried out by police (*dārūghe*). The shah appointed and dismissed the judges in these courts. Local governors also set up *'urf* courts in their province. At the village level, village heads resolved local conflicts through mediation.

The boundary between shari'a law and *'urf* law was never entirely clear. Sometimes, as in the late part of the Safavid era (1501–1722), all matters were settled through shari'a. At other times, as in the period of Nāder Shāh Afshār (r. 1736–47), state authorities oversaw all legal matters. In general, clerics handled religious and civil matters, while the state handled cases of murder, robbery, and other forms of violence. In commercial disputes, two arbitrators, one for each plaintiff, often resolved conflicts through mediation and negotiation. Still, there were many gray areas. If a murderer had money, he would appeal to a ranking cleric to intercede on his behalf and to convince the family of the victim to accept blood money instead of punishing him. He thereby transgressed the traditional boundary between *'urf* law and shari'a law.[6]

These premodern concepts and practices of justice were different from modern ones in at least four ways. First, in Iran as in the Greco-Roman, or medieval European societies, justice meant treating people according to their station in life. The law treated unequal people according to different standards. Traditional justice involved an overt maintenance of social hierarchies. The shah's job was to preserve the hierarchy of the four social classes—men of the pen, men of the sword, merchants, and farmers—with each group claiming rights that belonged to its particular social function. Hoseyn Vā'ez Kāshefī (d. 1504–5) summed up this traditional view, one that political leaders of Iran shared:

> To each of mankind there is a particular rank
> Which was prescribed a long time ago
> If any man should transgress beyond his limits
> Quarrels will arise to the left and to the right
> Keep everyone in his proper station
> And then sit down with prosperity in thine own place.[7]

[5] Sykes, *A History of Persia,* 2:384.
[6] Ibid., 2:385–86.
[7] Cited in Sheikholeslami, *The Structure of Central Authority in Qajar Iran*, 6.

One result of this policy was that the shah had enormous control over the lives of members of the royal court, his ministers, and all public officials; "anyone who held office in the state was considered to be the slave of the shah; his property, his life and the lives of his children, were at the disposal of the shah."[8] Often grand viziers who lost favor with the shah also lost their lives.[9] But the great authority of the shah also provided a measure of security for the lower classes of society since he could stop governors, princes, and other member of the elite from tyrannizing their subject populations.

A second characteristic of traditional justice was its lack of unanimity and uniformity. The same crime could result in widely different punishment depending on the city or town in which it was committed. This was not an issue that could be easily resolved, especially for religious courts, as it went to the heart of Shi'i doctrines and hierarchy. The vast majority of the 'ulama' were trained as *faqīh*s, i.e., they were specialists in jurisprudence and the legal sciences of Islam. At the head of the 'ulama' were the *mojtahed*s. These were clerics who were often educated at Shi'i centers in present-day Iraq. They gained the right to interpret the Qur'an and the shari'a and to appoint leaders of communal prayers in every town and village. From among the *mojtahed*s, a few emerged as *marja' taqlīd*. These individuals were a "source of emulation" for ordinary believers. The *marja' taqlīd* could interpret the law with considerable leeway. Each individual Shi'i was required to follow a particular *marja'* of his or her choice and to receive guidance from him in all ambiguous ritualistic/religious matters. Different communities of Iran, depending on ethnicity, were often followers of one or another *marja'*. After the death of a *marja'*, his followers would pick another *marja'* as guide.[10] As a result of this tradition, various attempts in the late nineteenth century at reaching legal consensus had not succeeded. The writing of a uniform code of law involved both a reconciliation between *'urf* and shari'a law, and an agreement among various *marja'*'s concerning the interpretation of the law. Such a consensus could have dramatically changed the decentralized nature of top Shi'i leadership.[11]

A third characteristic of traditional justice was its routine employment of physical punishment, such as mutilation and amputation of parts of the body, as well as its use of collective punishments. Until the late nineteenth century, if the state found someone guilty of carrying out an insurrection against Islam or the shah, the punishment was brutal and could involve the mass execution of entire communities.

[8] Savory, *Iran under the Safavids*, 34.

[9] Sykes, *A History of Persia,* 2:382–83.

[10] See Hossein Nasr, "Religion in Safavid Persia," *Iranian Studies* 7, nos. 1–2 (Winter–Spring 1974): 271–93.

[11] Mohammad Zerang, *Tahavvol-e Nezām-e Qazā'ī-ye Īrān: Az Mashrūte tā Soqūt-e Rezā Shāh* (The evolution of the legislative process in Iran: From constitutionalism to the fall of Rezā Shāh), vol. 1 (Tehrān: Markaz-e Asnād-e Enqelāb-e Eslāmī, 2002 [1381]).

This type of punishment was inflicted on adherents of the new Bābī religion, a messianic offshoot of Islam that became popular in the mid-nineteenth century. In 1852, after four Bābī converts made an attempt on the life of Nāser od-Dīn, thirty Bābī leaders were sentenced to death for heresy. They were paraded in the streets and divided among various sectors of society, such as members of the court, Qājār tribes, members of the military, government ministers, merchants, and bazaar guilds, whereupon a festive orgy of cruelty was unleashed upon them.[12] Similar massacres of Bābī converts and their family members took place in other cities and provinces. Torture of prisoners was routine and bastinado remained a common form of punishment. Between 1893 and 1904, the public directory for the city of Shīrāz alone listed the following: "118 amputations—41 fingers, 39 feet, and 38 ears—110 floggings, 48 decapitations, 17 hangings, 11 drawing-and-quarterings, 4 live-wallings, and 2 disembowelings."[13] Despite attempts by the liberal prime minister Amīr Kabīr to end public executions and torture in 1848, these practices continued. By 1896, however, when Nāser od-Dīn Shāh was assassinated, his son Mozaffar od-Dīn Shāh refused to call for the torture of the assassin and merely hanged him in public.[14]

A fourth characteristic of traditional law in Shi'ite Iranian society was its particularly unequal treatment of women and minorities, whether Sunni Muslims or non-Muslim Iranians. It should be noted, however, that unlike the situation in Judaism and Christianity, where women were denied the right to inherit property, Muslim women had inheritance rights and could legally administer their property even after marriage. A woman could also claim her alimony while she was married. However, as Nikki Keddie and Deniz Kandiyoti have argued, the Islamic inheritance laws, which gave a son twice the share a daughter received, were for the most part ignored in the rural areas, especially when land was involved.[15] But even for many urban women these rights were unattainable. Women were excluded from most public arenas. They also had extremely limited personal rights and held a highly precarious position in marriage, due to male rights to polygamy and easy repudiation. These conditions made it difficult for women to come to the courts and petition the authorities for an extended time against their own family members (fathers, brothers, uncles, husbands). Even when women had explicit and uncontroversial

[12] For details see Lady Sheil, *Khāterāt-e Leydī Sheyl* (Memoirs of Lady Sheil), trans. Hoseyn Abū Torābiyān (Tehrān: Nashr-e Now, 1983), 253–65. An English summary of this event appears in Ervand Abrahamian, *Tortured Confessions: Prisons and Public Recantations in Modern Iran* (Berkeley: University of California Press, 1999), 20–21.

[13] Cited in Abrahamian, *Tortured Confessions,* 21.

[14] Ibid., 24.

[15] See the introduction to *Women in the Middle Eastern History: Shifting Boundaries in Sex and Gender*, ed. Nikki R. Keddie and Beth Baron (New Haven: Yale University Press, 1991), 8; and Deniz Kandiyoti, "Islam and Patriarchy: A Comparative Perspective," 23–44, in the same collection.

rights, they either could not exercise them (For example, because their inheritance—land or property—was jointly held with other members of the family) or else opted not to exercise their rights, since they would thereby lose the support of their kin in any future hour of need.

Minorities were likewise treated unequally before the law. One of the obligations of traditional justice was to preserve the social and religious distinctions of a Shi'i Muslim state. This meant maintaining the space between Muslims and non-Muslims, and the distinction between free individuals and slaves. Many of these restrictions were created during the late Safavid era and continued until the early twentieth century.

The idea that Iranian (male) citizens had to be treated equally before the law regardless of their station and social standing, the notion that mutilation and amputation of the body were cruel and inhumane forms of punishment, the concept that laws should be uniformly practiced in different cities and towns, or that Iranian citizens were equal before the law regardless of their religion, were all legally implemented during the course of the Constitutional Revolution. As we shall see below, these unprecedented civil liberties were not easily accepted by the monarch and by the 'ulama' and the struggle over them continued to define Iranian politics in the twentieth century.

The Constitutional Revolution

On 5 April 1906, after a year-long series of popular protests and demonstrations, a reluctant Mozaffar od-Dīn Shāh (r.1896–1907) issued a royal proclamation that called for the formation of a National Consultative Majles and the writing of a constitution.[16] In the first five months of the revolution, constitutionalists conducted popular elections and chose members of the parliament. The electoral laws of September 1906 established a corporate and estate form of representation and gave limited franchise to six classes of male voters: members of the Qājār aristocracy, other nobles and landowners, the 'ulama' and theology students, as well as the merchants, the smallholders, and members of trade guilds.[17] Hasan Taqīzāde, the radi-

[16] As Nāzem ol-Eslām Kermānī writes in his memoir, the shah initially insisted on calling the new assembly an Islamic Consultative Majles, but the constitutionalists rejected this proclamation. See Kermānī, *Tārīkh-e Bīdārī-ye Īrāniyān* (History of awakening of Iranians) (Tehrān: Āgāh, 1983 [1362]), 1:560–63.

[17] The electoral laws of 1906 were also influenced to an extent by Bismarck's imperial German Constitution. Hasan Taqīzāde stated that the electoral laws "were based on various European systems and particularly on the German model." On this point, see Edward G. Browne, "The Persian Constitutionalists," *Proceedings of the Central Asian Society*, 1909:12. One area where there is clear correspondence is Article 6 of the Iranian law, where the num-

cal deputy from Āzarbāyjān, later reported that 90 percent of eligible voters in major cities, and less than 50 percent in rural areas, voted for 156 seats in the Majles. Taqīzāde probably exaggerated, since a huge number of voters in tribal and provincial areas did not participate in the election. Still, most contemporary observers agree that this first-ever Iranian election was popularly embraced and was an example of democratic politics.[18]

Soon after the formation of the Majles in Tehrān, and before many provincial deputies arrived, an elite group of constitutionalists drafted the short constitution of 1906. This document, which was influenced by the 1791 French and the 1831 Belgian constitutions, laid out the skeleton of a modern parliamentary system for Iran. The First Majles included deputies from Tehrān and the provinces, who were elected for a two-year term (Article 5). Decisions were made by a simple majority (Article 6). The deliberations of the Majles were to be public. Journalists could attend the sessions as observers and publish the public debates of the assembly (Article 13). The Majles was a legislative body. It proposed new laws and approved legislation that cabinet ministers forwarded to that body. The parliament ratified all financial transactions, foreign concessions, government contracts and treaties, and established the budget of various ministries (Articles 22–26).[19]

The shah's absolutist powers were substantially curtailed and he was required to uphold the constitution (Article 51). He remained head of state, but governed through ministers responsible to the Majles. He no longer controlled the treasury and his rights were limited to those specifically stated in the constitution. The shah was obligated to uphold the constitution, which guaranteed freedom of organization and freedom of the press, among other rights (Article 13).

The electoral law of September 1906 called for the formation of supervisory electoral councils known as *anjoman*s. *Anjoman*s were first formed in the northern

ber of deputies from each province is determined (with larger provinces having more deputies than smaller ones). This is similar to Article 6 of the German Constitution. See Louis L. Snyder, ed., *Documents of German History* (New Brunswick: Rutgers University Press, 1958), 227. The Second Majles ratified universal male suffrage in the autumn of 1911.

[18] See Browne, "The Persian Constitutionalists," 12–13. There were, of course, areas such as Esfahān, where leading *mojtahed*s, or elite members of the community, appointed the deputies, rather than allowing them to be elected. In Tabrīz, progressive candidates were favored. The liberal cleric Theqat ol-Eslām believed that the social democrats meddled with the election in Tabrīz and that his rival Taqīzāde should not have been elected. See Gholam Hoseyn Mīrzā Sāleh, *Bohrān-e Demūkrāsī dar Majles-e Avval* (The crisis of democracy in the First Parliament) (Tehrān: Homā, 1993 [1372]), 1–8.

[19] For discussions of the 1906 constitution see also Said Amir Arjomand "The Constitutional Revolution (The Constitution)," in *Encyclopaedia Iranica*, ed. Ehsan Yarshater, vol. 6 (Costa Mesa: Mazda, 1993), 187–92, and Laurence Lockhart, "The Constitutional Laws of Persia: An Outline of Their Origin and Development," *Middle East Journal* 13 (Autumn 1959): 372–88.

provinces of Āzarbāyjān and Tehrān, and later in the southern provinces of Shīrāz, Esfahān, and elsewhere. Most continued to function once the elections were over. They became important autonomous institutions, acted as a conduit between the public and the legislature, and introduced new social concerns. Popular *anjoman*s were also formed in large cities, small towns, and even in some northern villages. A number of semisecret women's councils were organized in Tehrān and several other major cities, where elite and middle-class women helped create schools, clinics, and orphanages.

Many of the rights that these councils claimed, such as supervising reforms, establishing new more secular schools, monitoring the actions of the governors and the landed elite, had not been anticipated by the 1906 constitution. Moreover, provisions that regulated relations between the monarch and the parliament, or laws that defined the limits of the shari'a religious laws, remained either unexplored or ambiguous. These were significant issues that bore on the nature of the Majles (the new institution of power) and the boundaries between it and the old sources of authority (the monarchy and the clerical establishment).

The 1907 Supplementary Constitutional Law

The new limits that the Majles had imposed on the shah, as well as the new discourse of justice, liberty, and equality, would create a tremendous paradigm shift in early twentieth-century Iran. Both the Majles and the newspapers were given extraordinary rights compared to earlier times, rights that were in direct violation of traditional social hierarchies. Not just conservative opponents of the new order, but many constitutionalist clerics who had supported the revolution, were perplexed. The parliament, for example, could propose any measures which it regarded as "conducive to the well-being of the government and the people (Article 15). All the laws of the nation had to be approved by the Majles (Article 16). No part of the nation's resources could be sold without Majles authorization (Article 22). No foreign treaties could be enacted, or foreign debts acquired, without similar authorization (Article 24). The Majles could request from the shah the resignation of ministers who had violated the constitution (Articles 28 and 29). Meetings of the Majles were open to the public. Journalists were free to attend and report whatever they heard (Article 13), and they did, creating a whole new public arena for dissent.

At the same time, the 1906 constitution left many issues unresolved. For example, there was no bill of rights in the 1906 law, nor were the limits to the authority of the executive, legislative, or judicial branches of government clearly defined. In order to address these concerns, the Majles established a committee of six in the winter of 1907 to write a set of supplementary laws to the constitution. All members of this committee were required to know a foreign language in order to con-

sult European constitutional laws.[20]

Two years later, in a speech to the Central Asian Society in London in 1909, Majles deputy Taqīzāde, a member of this committee, 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."[21] A careful examination of the existing European laws suggests that they looked at the 1791 French,[22] the 1831 Belgian,[23] the 1879 Bulgarian,[24] and the 1876 Ottoman consti-

[20] See *Mozākerāt-e Majles-e Showrā-ye Mellī-ye Dowre-ye Avval* (Proceedings of the First National Parliament), comp. Mohammad Hāshemī (Tehrān: Chāpkhāne-ye Majles-e Showrā-ye Mellī, 1946 [1325]), 28 Zī-hajje 1324 A.H. (12 February 1907), 79. Among the most important of these were: (1) Javād Sa'd od-Dowle, an Āzarbāyjānī merchant and minister of commerce in the court of Mozaffar od-Dīn Shāh, who had lived in Belgium for some time and was the leader of the liberal/radical faction of the Majles in this period; (2) Taqīzāde, the celebrated deputy from Āzarbāyjān who had close ties to Social Democrats in Russian-ruled Baku and Tbilisi, and eventually replaced Sa'd od-Dowle as the leader of the liberal/radical faction; (3) Sādeq Mostashār od-Dowle, who had studied in Istanbul and worked at Iran's Ministry of Foreign Affairs, a deputy from Āzarbāyjān and a close friend of Taqīzāde; (4) Mohammad Hoseyn Amīn oz-Zarb, one of the key financial backers of the Constitutional Revolution.

[21] Browne, "The Persian Constitutionalists," 11.

[22] The French Constitution had the least *direct* influence on the Iranian law, unless we count the fact that the Belgian law, which was the principal model for the Iranian law, was itself derived from the French law. Taqīzāde does not mention the Ottoman Constitution, which was well known to Iranian constitutionalists and seems to have been consulted as well. But the French law had been discussed in Iran for several decades. In 1871, Yūsof Mostashār od-Dowle, a diplomat who had served in Tbilisi and Europe, published a small book in Persian based on the 1789 Declaration of the Rights of Man and Citizen. He argued that there was much compatibility between the French civil code and the Islamic shari'a laws. This book had a significant influence on Iranian constitutionalists. Several subsequent editions of Mostashār od-Dowle's book appeared in Tabrīz (1906) and in Tehrān (1907). See Bāqer Mo'menī, *Dīn va Dowlat dar 'Asr-e Mashrūtīyat* (Religion and state in the constitutional period) (Stockholm: Bārān, 1993), 295–308. For the influence of the French revolutionary discourse on Iranian constitutionalists, see Mohamad Tavakoli-Targhi, "Āthār-e Āgāhī az Enqelāb-e Farānse dar Shekl-gīrī-ye Engāre-ye Mashrūtīyat dar Īrān" (The impact of the ideas of the French Revolution on the formation of constitutionalism in Iran), *Iran Nameh* (A journal of Iranian studies) 8, no. 3 (Summer 1990): 411–39.

[23] I have used the text of the Belgian Constitution that appears in J. Thonissen, *La Constitution Belge* (Bruxelles: Bruylant-Christophe, 1879).

[24] Bulgaria was part of the Ottoman Empire for five centuries before it became a Russian protectorate in 1878. In the Bulgarian Constitution, the king, much like his counterparts in Greece, Serbia, and Romania, could assume dictatorial powers in times of emergency. I have used the text of the Constitution of Bulgaria that appears in Albert P. Blaustein and Gisberth Flanz, eds., *Constitutions of the Countries of the World* (Dobbs Ferry, N.Y.: Oceania Publications, 1992). Flanz pointed out that the Belgian Constitution of 1831 was the model for the Serbian and Bulgarian constitutions.

tutions.[25] The 1791 French Constitution had directly influenced the Belgian, Bulgarian, and Ottoman ones. But these laws, as they moved from Belgium, to Bulgaria, and to the Ottoman Empire, also became less and less liberal. It should be noted additionally that despite their admiration for Japanese society, and their enthusiasm for the 1905 Russian Revolution, Iranian constitutionalists did not follow the example of either the 1881 Japanese or the 1905 Russian constitutions. Neither were democratic by contemporary standards, since they gave extraordinary powers to the king. Nor did the Iranians follow the example of the 1871 constitution of the German Empire, though this law had been consulted in drafting the 1906 electoral laws.[26]

If we ask why Iranian constitutionalists chose the Belgian law as their principal model, two answers seem plausible. First, the Ottoman Constitution of 1876, the first Middle Eastern constitution of the nineteenth century, was also based on the Belgian Constitution; hence, there was a precedent for the Iranians' decision. The same Belgian Constitution later became a model for the 1923 Egyptian Constitution.[27] Thus, Belgian law has had a remarkable influence on the political developments of not only several European countries, but also on three major states of the Middle East, the Ottoman Empire, Iran, and later, Egypt.

The popular *Siyāhatnāme-ye Ebrāhīm Beg* (Travelogue of Ebrāhīm Beg), published in 1895, had included a discussion of the Ottoman Constitution. The author expressed his admiration for the Ottoman Constitution because of its ability to combine modern and shari'a laws. A rough translation of the Ottoman Constitution was also discussed in the court of Nāser od-Dīn Shāh (1848–96) and then summarily discarded when the shah realized that it would greatly limit his authority. Perhaps Sultan Abdülhamid's suspension of the Ottoman Constitution also influenced Nāser od-Dīn Shāh. The shah had begun his reign with much enthusiasm for change, but ended it with a sense of "mortal dread" toward political and administrative reforms.[28]

[25] For a text of the Ottoman Constitution see Suna Kili, *Turkish Constitutional Development* (Istanbul: Mentes Matbaasi, 1971), 150–62.

[26] For a text of the Russian Constitution see Albert P. Blaustein and Jay A. Sigler, *Constitutions that Made History* (New York: Paragon House, 1988), 256–73. For the Japanese Constitution, see Marquis Hirobumi Itō, *Commentaries on the Constitution of the Empire of Japan*, 2nd ed. (Tokyo: Chūō Daigaku, 1906; repr., Washington, D.C.: University Publications of America, 1979). The German law was the model for the Japanese Constitution and it contained none of the civil rights provisions of other nineteenth-century European constitutions. For a comparison of the German Constitution with the American and French ones, see George Jellinek, *The Declaration of the Rights of Man and of Citizens: A Contribution to Modern Constitutional History* (Westport: Hyperion, 1901), 5.

[27] See Arthur Goldschmidt, *A Concise History of the Middle East*, 2nd ed. (Boulder: Westview, 1983), 219.

[28] See Abbas Amanat, *Pivot of the Universe: Nasir al-Din Shah Qajar and Iran's Monarchy,*

For their part, it seems that Iranian constitutionalists examined the Ottoman and Bulgarian laws to determine the authority of the clerics in the new order. The Belgian Constitution, following the example of the 1791 French Constitution, had stripped the Catholic priests and the Church of much of their authority:

> Belgian—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.
> Belgian—Article 15. No one shall be compelled to join in any manner whatever in the forms or ceremonies of any religion, nor to observe its days of rest.
> Belgian—Article 17. There shall be freedom of opinion in teaching; any preventive measure shall be forbidden; the punishment of such offences shall only be regulated by law.

In contrast, the Eastern Orthodox Church of Bulgaria had maintained a great deal of authority in the 1879 constitution:

> Bulgarian—Article 37. The state religion of the principality of Bulgaria is the Eastern Orthodox confession.
> Bulgarian—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. Though the same authority the principality remains united with the ecumenical Eastern church in matters regarding dogma and faith.

Likewise, in the Ottoman Constitution, the sultan had remained both king and supreme religious leader, and he was responsible for carrying out the shari'a law as well as other laws:

> Ottoman—Article 4. His Majesty the Sultan under the title of "Supreme Caliph" is the protector of the Mussulman religion. He is the Sovereign and Padisha of all the Ottomans.

1851–1896 (Berkeley: University of California Press, 1997). See also Sheikholeslami, *The Structure of Central Authority in Qajar Iran*; Lockhart, "The Constitutional Laws of Persia," 373–74; and Malekzāde, *Tārīkh-e Enqelāb-e Mashrūtīyat-e Īrān* (History of the Constitutional Revolution of Iran), 3 vols. (7 vols. in 3) (Tehrān: 'Elmī, 1984 [1363]), 1:92–94. For the contribution of Bahā'ollāh and other Bahā'ī leaders to these debates on political liberty and democracy in the late nineteenth century, see Juan R. I. Cole, *Modernity and the Millennium: The Genesis of the Bahai Faith in the Nineteenth-Century Middle East* (New York: Columbia University Press, 1998).

Ottoman—Article 11. Islam is the state religion.

As we shall see, despite attempts to limit the powers of the religious establishment in this area, the Iranian Constitution ultimately followed the example of the Bulgarian and Ottoman ones, rather than the Belgian law, and even went beyond its predecessors in the degree of authority it granted the clerics.

The second reason for adopting the Belgian Constitution probably lay in the fact that several elite Iranian constitutionalists had commercial and political ties to Belgium.[29] Sa'd od-Dowle, who had lived in Brussels as Iran's envoy, was quite familiar with the Belgian political system. It was he who requested and received a copy of the 1831 law from the Belgian legation. He then translated the document into Persian and presented it to the constitutional committee of the Majles for revisions.[30] Therefore, while the French and Belgian laws both influenced the 1906 Iranian Constitution, it was the 1831 Belgian Constitution that became the model for the 1907 supplement to the Iranian Constitution. These supplements were not minor additions; rather they constitute the heart and soul of the Iranian Constitution.

A number of questions come to mind when we explore the Belgian Constitution as a model for Iranian laws of 1907: Was the Belgian law an appropriate paradigm for Iran's first experience with parliamentary democracy? How close was the 1907 Iranian law to the 1831 Belgian one? Should the Iranians have followed the example of another European constitution? And finally, was the Iranian Constitution able to go beyond the Belgian law in any areas? The chapter will explore these and other questions by briefly summarizing some of the main components of the Belgian Constitution and its special place in European history. We then turn to a close textual reading of some of the key articles of the 1907 Iranian law and compare it to the 1831 Belgian one. Special attention will be given to the powers that were granted to the clerical establishment and the issue of civil rights.

The Belgian Constitution of 1831

In February 1831, The National Congress of Belgium adopted a constitution that borrowed many elements from the French Constitution of 1791. Instead of the old corporate and estate form of representation of the Joyeuse Entrée, a new principle

[29] For a discussion of the relations between Iran and Belgium see Martin, *Islam and Modernism.*

[30] An account of this event was recorded in Navā'ī, "Qānūn-e Asāsī-ye Īrān va Motamame ān Chegūne Tadvīn Shod?" (How was the constitution of Iran and its supplement compiled?), *Yādgār* (Memory) 4, no. 5 (January–February 1947), 34–47.

of individual representation was adopted. As in many other Western constitutions of the eighteenth and nineteenth centuries, franchise was limited to a small strata of tax-paying male members of the elite.[31] The constitution of 1831 established a strong central government, but it also gave considerable power to the provinces, and maintained the organic relation between the local councils of the nine provinces (made up of 2,500 communes) and the state.[32] The same electorate voted for members of the nine provincial councils. These councils continued to levy taxes and maintained considerable autonomy in their internal affairs.

The Belgian Constitution did not go as far as the 1791 French Constitution, which spoke of the "inalienable rights of Man." Unlike the French revolutionaries, the Belgians established a constitutional monarchy rather than a republic. This decision was reached partly because of pressure by European powers, and partly because moderate centrists controlled the parliament.[33] The king was the supreme commander of the military forces and had the authority to dissolve parliament whenever he so desired. In principle, the Belgian Constitution ended the control of the Catholic Church over the educational system and established public education. It devoted a number of articles to religious freedom and to the separation of religion and state. Other civil liberties, such as freedom of association, of the press, and language rights were instituted (Belgian Articles 14, 15, 16, and 17). Similarly, Article 23, which protected the freedom of individuals, gave French and Flemish speakers the right to speak their own languages.[34]

While the Belgian Constitution was influenced by Montesquieu's theory of the separation of powers, in actuality there was much overlap among the powers that were allocated to the king, the House of Representatives, the Senate, and the judi-

[31] This privilege would be contested on several occasions during the nineteenth century. In 1894 the property qualifications of the electorate were removed. Instead some Belgian citizens were given multiple votes under certain conditions (property, high education, official status), up to three votes per person. These changes, however, did not influence the Iranians' reading of the Belgian law, since they were working with the text of the 1831 law. For details, see *the Encyclopedia Britannica*, 11th ed., s.v. "Belgium."

[32] R. C. K. Enson, *Belgium* (New York: Henry Holt, n.d.), 142; Mark Almond, *Revolution: 500 Years of Struggle for Change* (New York: De Agostini, 1996), 143.

[33] Janet Polasky, "Belgian Revolutions, 1786–1830" (unpublished manuscript). Thanks to the author for sharing this material with me.

[34] French was the dominant language by this time and it was the only language used in administration, parliament, and the courts. The Francophone elite used this provision to impose French throughout much of Belgium. As a result, by the 1840s, Flemish had virtually disappeared. Polasky argues that the imposition of French in 1830 eventually threatened the existence of the Flemish language and culture, which in the twentieth century resulted in the rise of a Flemish separatist movement. See her "Liberalism and Biculturalism," in *Conflict and Coexistence in Belgium: The Dynamics of a Culturally Divided Society*, ed. Arend Lijphart (Berkeley: Institute of International Studies, 1981), 35–36.

ciary. The king and the two chambers shared the legislative power, with a stipulation that new laws could not negate the constitution.[35] The king held executive power, but his ministers had to countersign all executive orders. Ministers remained in power if they had the support of parliament. Judges were appointed by the king but could be removed by the combined decision of the king and the two chambers.

Despite these concessions to royal power, and the fact that these rights were never extended to Belgian colonies,[36] where native populations were treated with utmost brutality, the Belgian Constitution remained one of the most admired constitutions of Europe until the beginning of the twentieth century. It became the archetypical liberal constitution of the era and a model for other European constitutions. Some even called it the "purest specimen of the organization of a state according to principles of nineteenth-century liberalism."[37] Belgium's success, according to the historian, R. C. K. Enson, was due to the fact that its constitution had maintained a delicate balance between the old and the new. It codified new rights that were articulated by the American and French revolutions, but it did not create an entirely new social structure for Belgium.[38] The 1831 law built on the existing rights and privileges of the autonomous provinces and introduced new individual rights.

The Belgian Constitution was, therefore, a reasonable choice for the new constitutional movement in Iran, which had little experience with democratic politics. In their choice of the Belgian Constitution we should also note that there appears to have been no substantial borrowing from the constitutions of the two Great Powers, Russia and Great Britain, or the United States. The choice of the Belgian Constitution as a model was evidently not accidental, nor was it simply dictated by existing circumstances.[39] Rather, the decision seems to have been the product of a discerning and critical analysis of Western constitutions in order to uncover aspects that would work in a predominantly Muslim society.

[35] Any change in the Belgian Constitution required a two-thirds majority, followed by the dissolution of the parliament, the election of a new parliament, and then a second vote by the new parliament to ratify the change.

[36] In Congo, for example, the most rapacious exploitation of the population took place. King Leopold formed an international group to exploit the Congo region and its vast resources, especially diamonds. The 1884–85 Conference of Berlin recognized Leopold as the king and chief owner of the Congo Free State. By 1920, millions of Congolese had died as a result of extremely inhumane working conditions that included slave labor.

[37] De Gruben, "The Dutch Regime (1814–1830) and the Kingdom of Belgium," in *Belgium*, ed. Jan-Albert Goris (Berkeley: University of California Press, 1945), 32. See also Jean Stengers, "Belgian National Sentiments," in *Conflict and Coexistence in Belgium* (see note 34), 48

[38] Enson, *Belgium*, 142; Almond, *Revolution*, 143.

[39] Mehdī Qolī Hedāyat, one of the framers of the constitution, wrote that "we had also read

Preliminary Parliamentary Discussions

The discussions in the first few months of the Majles, when the 1906 Iranian Constitution was drafted, suggest that liberal constitutionalists made a strenuous effort to produce a more democratic document. Arguments on various drafts of the 1906 constitution were aimed at reducing the traditional powers of the shah, and to a lesser extent those of the Qājār aristocrats and landed elite, even though a number of constitutionalists belonged to the elite. Members of parliament also wanted to make cabinet members and the prime minister more responsible to the Majles.[40]

A number of liberal Majles deputies were vehemently opposed to the formation of a Senate, to be jointly elected by the shah and the nation. When the deputies finally agreed to the formation of a Senate, they placed some restrictions on that body (Articles 44, 46, and 48).[41] The deputies also rebuffed attempts by the royal court to change the Majles from a legislative body to a merely consultative one (Articles 15 and 16 of the 1906 constitution):

> Article 16. All laws necessary to strengthen the foundations of the State and Throne and to set in order the affairs of the Realm and the establishment of the Ministries, must be submitted for approval to the National Consultative Assembly.

An earlier draft had called for unconditional support of the shah, but the deputies changed that language. The shah could expect loyalty from the deputies if "his majesty's government, and our just king, support and uphold the requirements of these by-laws and strengthen the foundations of the Majles."[42]

the constitutions of France and Belgium. A country that embarks on a new and unfamiliar road should move slowly. Unfortunately, and as a matter of custom, the Belgian Constitution, which is based on the French, was the model. The radical French themselves did not follow the laws of that constitution…if it had not been for political reasons, we should have imitated the British, who always maintained the old order and only reformed the inadequacies." See Hedāyat, *Khāterāt va Khatarāt* (Memories and dangers) (Tehrān: Zavvār, 1965 [1344]), 145.

[40] See *Mozākerāt-e Majles*, 7 Zī-qa'de 1324 A.H. (23 December 1908). As a result of these oppositions a senate was not formed during the constitutional era and for the next four decades.

[41] See ibid., 9 Zī-qa'de 1324 A.H. (25 December 1908) and 20 Ramazān 1324 A.H. (7 December 1906).

[42] This amendment to Article 11 (the oath taken by the Majles) was modified in the final draft. The text of the 1906 constitution says that so long as the rights of the Majles and the deputies are protected and observed (according to the constitution), the deputies pledge allegiance to the king and the nation. For the text of the 1906 constitution, see Kermānī, *Tārīkh*, 1:39; *Mozākerāt-e Majles*, 11 Zī-qa'de 1324 A.H. (27 December 1906), 36.

Rights of minorities were also briefly discussed in the fall of 1906. In late December 1906, Shi'is of Kordestān (where the majority population was Sunni and thus the Shi'is were a minority), as well as Nestorian Christians and Jews, petitioned the Majles for greater representation and their concerns were discussed.[43] The Zoroastrians eventually gained a representative of their own. But Jews and Christians had to wait until the Second Majles (1909–11), when they each obtained one representative. Thus, for a very brief period, some Majles deputies explored the complicated issue of representation in a multireligious nation, though the rights of Sunni and non-Persian minorities were never addressed.

In January 1907, after the death of Mozaffar od-Dīn Shāh, his son Mohammad 'Alī Shāh (r. 1908–9) ascended to the throne. He was an enemy of the new order and he refused to send a formal invitation to Majles deputies to attend his coronation. In a desperate attempt to cast doubt on the legitimacy of the Majles and the constitution, Mohammad 'Alī Shāh also argued that his father had been mentally incapacitated before his death. Failing to succeed here, the new shah made an alliance with the most senior and conservative cleric in Tehrān, Sheykh Fazlollāh Nūrī. They now charged that the new constitution violated Islam and that only a legal code based on the shari'a would be acceptable to them.

In this same period, new deliberations had begun over a series of additions to the constitution. These additions, which were intended to be a bill of rights, were ultimately known as "the supplementary constitutional laws" and were ratified in spring 1907. The deliberations of the committee that wrote the supplementary laws were not published in much detail, but the surviving record shows that there was great acrimony. Conservative clerics and deputies rejected many of the proposed civil liberties on the grounds that they were incompatible with Islam and unacceptable to the majority Shi'i population. Often, the constitutional committee was accused of violating the Islamic shari'a laws. Ultimately, and in great frustration, Majles deputies agreed to the formation of an additional committee, composed of ranking clerics and headed by Sheykh Fazlollāh Nūrī. This second committee was to reexamine laws drafted by the first constitutional committee and ascertain their compatibility with the spirit and the letter of the shari'a.[44]

A close comparison of the 1907 Iranian law with the French, Belgian, Bulgarian, and Ottoman laws shows that Iranian constitutionalists were able to establish relatively modern and democratic laws, granting many civil rights. They also gained considerable say in the structure of the legislative, executive, and judicial branches. But in the end, the constitution combined the modern desire for a secular nationalist identity with a new form of institutionalized authority for the clerics, inaugurating a hybrid legal code that contained multiple points of ambiguity.

[43] *Mozākerāt-e Majles*, 14 Zī-qa'de 1324 A.H. (30 December 1906), 38.
[44] See *Mozākerāt-e Majles*, 1 Rabī' II 1325 A.H. (14 May 1907), 166.

1. Rights of the Throne

By far the most important accomplishment of the 1906–7 constitutional law was to limit the authority of the shah. Many of the shah's earlier rights were dramatically curtailed. He was required upon taking office to uphold the rights of the nation (Article 39) while sovereignty was described as a "trust confided (as a divine gift) by the people to the king" (Article 35).[45]

Indeed, in both the 1906 constitution and the 1907 supplementary constitutional law the shah had less authority than the Belgian and Bulgarian kings or the Ottoman sultan. In the Bulgarian Constitution, the legislative, executive, and judicial powers all acted in the name of the prince (Bulgarian—Article 9, 12, and 13). In the Belgian and Ottoman constitutions, the king was likewise given significant authority over the parliament:

> Belgian—Article 71. The King has the right to dissolve the Chambers either simultaneously or separately. The act of dissolution shall order a new election within forty days and summon the Chambers within two months.
> Ottoman—Article 7. [The Sultan] summons and prorogues the General Assembly; he dissolves, if he deems it necessary, the Chamber of Deputies provided he directs the election of new members.

Thus in all these laws the king had broad authorities, including the right to dissolve the parliament. But in the Iranian constitutional laws of 1906–7, the shah often played a ceremonial role. If there were irreconcilable differences between the Majles and the Senate, and if *both the Senate and the cabinet ministers approved*, then the shah could issue the order for the dissolution of the Majles (Article 48). In a vast majority of the articles the shah was obligated to consult with his ministers, or with the Majles. The shah was granted executive powers, but his proclamations *had to be countersigned by a minister responsible to the Majles* (Iranian 1906—Article 28).

He could not pardon a minister on his own, but needed to have the approval of the parliament for such actions. If a minister proved derelict and negligent in his responsibilities, however, Majles members *could* ask the shah to dismiss him (Iranian 1906—Article 29). The shah could grant military commissions (Article 47); however this rights was also ceremonial because the appointments *had to be approved* by the responsible minister:

[45] Esmā'īl Rezvānī writes that Mohammad 'Alī Shāh added the phrase, "as a divine gift," when the document was presented to him for his signature. See Jahāngīr Shamsāvarī, "Barkhord-e Ārā' va 'Aqāyed" (Conflict of views and opinions), *Negīn* (Gem) 3 (Spring 1998): 22.

> Iranian 1907—Article 45. The decrees and rescripts of the King relating to affairs of State can only be carried out when they are co-signed by the responsible Minister, who is also responsible for the authenticity of such decree or rescript.

Likewise the shah's appointment of heads of governmental departments *needed the approval of his ministers*:

> Iranian 1907—Article 48. The choice of officials as heads of the various government departments, whether internal or foreign, subject to the approval of the responsible Minister, is the King's right, save in such cases as are specifically excepted by the Law; but the appointment of other officials does not lie with the King, save in such cases as are explicitly provided for by the Law.

The shah also no longer controlled the country's finances, and the court budget was determined by the parliament (Iranian 1907—Article 56).

Several rights that were reserved for the monarch in the Belgian law were also allocated to the shah. The shah was granted supreme command of the military forces, as well as the right to declare war and to conclude peace (Iranian 1907—Articles 50 and 51). The shah could sign secret treaties when national security requirements made that necessary (Article 52). He also could convene extraordinary sessions of the assembly (Article 54). In all matters the shah was exempt from responsibility, but his ministers were responsible for his actions (Iranian 1907—Article 44).

Many other rights of the Belgian king, however, were denied to the Iranian monarch. The shah was not given the independent right to close the parliament, to dissolve either of the chambers, to postpone its meetings, or to change the sentences issued by judges (parts of Articles 71, 72, and 73 of the Belgian law).[46] Similarly, the shah *could not refuse to sign and promulgate* resolutions that had been ratified by the parliament (Iranian 1907—Article 49). Here in particular, the position of the Iranian monarch was far weaker than that of the Ottoman sultan, who dominated almost every branch of government. The sultan opened and closed the parliament, increased and decreased the length of the sessions, and dissolved that body if he so desired.[47]

[46] Note that the 1907 Iranian law contained no provisions dealing with an incapacitated king, unlike the Belgian one (Article 82 of the Belgian law).

[47] Suna Kili, *Assembly Debates on the Constitutions of 1924 and 1961* (Istanbul: Mentes Matbaasi, Robert College Research Center, 1971), 15.

2. Rights of Cabinet Ministers

Laws regarding cabinet ministers followed the Belgian model, with several exceptions. (1) Whereas citizenship (by birth or by naturalization) was a requirement for becoming a minister in the Belgian law, in the Iranian law ministers had to be Muslim, citizens of the nation, and born in the country. (2) The Belgian law banned all members of the royal family from becoming ministers, but in the Iranian law only first-degree royal male relatives (sons, brothers, uncles) were prohibited from holding that office. In Iran men such as the shah's son-in-law (Sanī' od-Dowle), were principal players in the new political order and many held cabinet positions. This explains why framers of the Iranian Constitution were reluctant to exclude members of the Qājār aristocracy.

Some of the changes that were introduced in the Iranian law gave the Majles greater rights vis à vis the cabinet. The Belgian law was vague with regard to the election of ministers from the parliament (Article 36), the Iranian law clearly stated that deputies could not hold any other state position. The Iranian version was, therefore, closer to Montesquieu's notion of separation of powers (Iranian 1907—Article 32 and 68). A person could hold office in one, and only one, of the three branches of the government.

With regard to the rights of Majles and the shah over the ministers the law was quite confusing and contradictory. Cabinet ministers had an important role in the constitution, even though the shah had the right to appoint and dismiss them:

> Iranian 1907—Article 46. The appointment and dismissal of Ministers is effected by virtue of the Royal Decree of the King

Ministers were the link between the shah and the Majles, and the parliament held them responsible for the shah's misdeeds:

> Iranian 1907—Article 44. The person of the King is exempted from responsibility. The Ministers of State are responsible to both Chambers in all matters.

Both the Majles and the Senate had the right to put ministers on trial or to demand the resignation of a minister by a majority vote:

> Iranian 1907—Articles 65. The National Consultative Assembly, or the Senate, can call ministers to account or bring them to trial.

In the 1906 constitution, Majles deputies could vote for the dismissal of a minister but the shah actually fired the minister. This meant that the parliament required the

approval of the shah for any such action. The 1907 law, following the Belgian model, gave greater rights to the Majles in this arena. The shah was *obligated* to sign all the laws that were ratified by the Majles:

> Iranian 1907—Article 49. The issue of decrees and orders for giving effect to the laws is the King's right, provided that under no circumstances shall he postpone or suspend the carrying out of such laws.

Additionally, the Majles could force a derelict minister to resign:

> Iranian 1907—Article 67. If the National Consultative Assembly or the Senate shall in an absolute majority, declare itself dissatisfied with the Cabinet, or with one particular Minister, that Cabinet or Minister shall resign their or his ministerial functions.

Four decades later these competing rights of the shah and those of his ministers, especially the prime minister, would become major points of contention during the premiership of Dr. Mohammad Mosaddeq (1951–53), when Mosaddeq repeatedly insisted that the ministers, and especially the prime minister, were given extensive rights while the shah was violating the constitution by denying these rights.

3. Rights of Members of Parliament

The biggest winner in the new constitution was the newly formed parliament. Belgian law was closely followed with regard to the rights of members of the parliament and in some areas the Iranian Constitution went beyond the Belgian one. Majles deputies represented the whole nation and not just the constituency that elected them (Article 30). They could be members of only one of the chambers (Article 31) and could not hold another salaried government position (Article 32). When necessary, both the Majles and the Senate could investigate the state (Article 33), though the Majles generally had more authority than the Senate. In fact, when the Majles was not in session, declarations of the Senate were ineffective (Article 34).

Control of the military remained with the shah, but the Majles oversaw the inner workings of the army (Article 104). The constitution stated that "no foreign troops may be employed in the service of the state," unless the legislative power sanctioned it. This was meant to delegitimate the Russian-backed Cossack Brigade that was in the service of Mohammad 'Alī Shāh (Article 106).[48] The 1907 law also

[48] However in June 1908, Mohammad 'Alī Shāh used the same Cossack Brigade to close the Majles and to bring the first constitutional period (1906–8) to an end. It should be noted

gave substantial powers to the Majles over the nation's financial affairs and curtailed the shah's power in this area, since the national budget (including the military budget), and the court's budget, were set by the Majles:

> Iranian 1907—Articles 56. The expenses and disbursements of the Court shall be determined by law.
> Iranian 1907—Article 105. The military expenditure shall be approved every year by the National Consultative Assembly.

But the Majles gained no parallel power over the finances of the 'ulama', who maintained an independent source of income through religious endowments and taxes. As we shall see in the following chapter, it was during the era of Rezā Shāh that the state moved in this direction and asserted its control over religious endowments.

4. Rights of Provincial and Departmental Councils:

Among the most important accomplishments of the 1907 law were the rights that it secured for the provincial and departmental councils, or *anjoman*s. While Iran was traditionally divided into administrative units known as provinces and departments, these councils were entirely new institutions that sprang up in the course of the revolution.[49] Soon the councils gained rights similar to those originally given to the provincial and communal councils of Belgium, as well as those of the French colonies. As noted earlier, Belgium and the Netherlands had a long history of administrative autonomy and many of these rights were reflected in the 1831 Belgian Constitution. It was this aspect of the Belgian law that had made it unique and creative blend of traditional rights and modern democratic rights. Four articles in the 1907 Iranian law guaranteed the rights of provincial and departmental *anjoman*s to supervise any necessary reforms for public interest. The *anjoman*s collected taxes and established a local budget. The Majles also ratified extensive laws that regulated the affairs of the provincial and departmental *anjoman*s:

that the Iranian law did not recognize the rights of a citizens' militia, one that was regulated by law, though the Belgian Constitution had included such a provision (Articles 122 and 123). This type of citizen militia was created in Iran in 1906–7 and its members were known as the *mojāhedīn*. The *mojāhedīn* defended the new organs of the constitutional government (the Majles and the *anjoman*s) against Mohammad 'Alī Shāh and the conservative opposition.

[49] For a discussion of the traditional assignment of provincial and departmental *anjoman*s see Afary, *The Iranian Constitutional Revolution*, 169–72.

> Iranian 1907—Article 90. Throughout the whole empire provincial and departmental councils (anjomans) shall be established in accordance with special regulations…
> Iranian 1907—Article 91. The members of the provincial and departmental councils shall be elected immediately by the people, according to the regulations governing provincial and departmental councils.
> Iranian 1907—Article 92. The provincial and departmental councils are free to exercise complete supervision over all reforms connected with the public interest, always provided that they observe the limitations prescribed by the Law.
> Iranian 1907—Article 93. An account of every kind of expenditure and income of the provinces and departments shall be printed and published by the instrumentality of the provincial and departmental councils.

The Belgian law had given the communes more rights with regard to taxes. Article 110 of the Belgian Constitution stated that "no public charge, nor any communal assessment, shall be imposed without the consent of the communal council," but no such provision appeared in the Iranian law (Articles 94, 95, and 99). However, the Iranian law gave its councils somewhat greater political autonomy. In the Belgian Constitution, the king had retained some control of the provincial councils (Belgian Article 108-5), but the Iranian law did not grant such rights to the shah; instead the Majles retained that right for itself in detailed regulations that were derived from French sources and were ratified in April 1907.[50]

5. Iranian Nationalism vs. Institutionalization of Shi'ism

While the Shi'i clerics lost control in some areas to the Majles, they also gained new authority through the supplementary constitutional law of 1907. Article 1 of the 1907 law shows the essence of the transformation that took place. The American Declaration of Independence and the French Declaration of the Rights of Man had articulated some of the principles of the Enlightenment, including the inalienable right of (bourgeois) men to life, liberty, and equality before the law. The Belgian, Bulgarian, and Ottoman laws were more modest. They generally began by stating the geographic parameters of the nation and by defining the concept of citizenship (through birth or through naturalization). The first draft of the 1907 supplementary Iranian law had followed a similar model and began by stating the names of the country's provinces and departments:

[50] They were apparently adopted from French colonial laws in Algeria. See Hasan Taqīzāde, "Tārīkh-e Enqelāb-e Īrān" (History of Iran's revolution), *Yaghmā* 7 (1961): 27.

Article 1. The Iranian nation is composed of the following provinces and departments (followed by 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 the law.[51]

The revised version of the supplementary constitutional law, however, began with an entirely different principle. It did not name the country's provinces or borders. Instead, it stated that, "the Official religion of Iran is Islam, according to the orthodox *Ja'fari* doctrine of the *Ithna 'Ashariyya*, which faith the shah of Iran must profess and promote."[52] The Iranian monarch was also expected to "promote the [Shi'i] Ja'fari doctrine," thus emphasizing the religious obligations of Iran's monarchy.

This article also marked a departure from all other official documents that had appeared in the first year of the Constitutional Revolution. The Royal Proclamation of August 1906 had called for the establishment of a National Consultative Majles. Both the electoral laws of September 1906 and the constitution of December 1906 were largely secular documents, with only brief references to the Qur'an, mostly when an oath was required. In contrast, the 1907 supplementary law began by stating the religious identity of the nation, when the national identity of the Iranian people should have been stated. The law also codified one particular branch of Islam, albeit that of the majority, as the official religion of Iran. Finally, the law established the principle that the shah had to "profess and promote" that religion.

Article 2 of the 1907 law, which called for the establishment of a Council of Clerics, one that controlled deliberations in the Majles, went even further. It stated that laws ratified by the Majles could not be at variance with the shari'a. While Majles deputies had the right to choose the five *mojtahed*s who sat on that committee, they nevertheless were required to select them from a list of twenty provided by the 'ulama' themselves.[53]

[51] For a text of the early draft see Īraj Afshār, *Qabāle-ye Tārīkh* (Deed of history) (Tehrān: Talāye, 1989 [1368]).

[52] For a text of these laws see the "Supplementary Fundamental Laws of October 7, 1907," in Browne, *The Persian Revolution*, 372–84.

[53] As Mohammad Torkamān has pointed out, the deputies altered Sheyk Fazlollāh Nūrī's original project and refused to abide by all of his recommendations. In Nūrī's original proposal: (1) the clerical committee operated outside the Majles and therefore established a parallel structure of authority; (2) the exact number of members of this committee was not determined; (3) the selection process for the committee was also undefined; (4) the stipulation that committee members should be fully aware of contemporary worldly concerns was not indicated. See Torkamān, "Nezārat-e Mojtahedīn-e Tarāz-e Avval" (The overseeing of the ranking clerics), *Tārīkh-e Mo'āser-e Īrān* (Iranian contemporary history) 1 (Winter 1994): 33. The Council of Clerics operated briefly during the Second Majles (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.

Here, we must note that neither the Ottoman nor the Bulgarian laws gave such sweeping recognition to the religious establishment:

> 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 Muhammad]. 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 Mahdī [the Messiah]…

The Ottoman and the Bulgarian constitutions had nothing remotely resembling Articles 1 and 2 of the 1907 Iranian one. As noted earlier, the Ottomans had had a much longer history of reform than the Iranians. Throughout the nineteenth century, as the powerful Western powers pushed to dismember the multiethnic empire, the Ottomans proclaimed the 1839 Noble Rescript of the Gülhane and later the Imperial Rescript of 1856, which recognized (at least on paper) the equality of Ottoman subjects before the law "without distinction of class and religion."[54] Article 11 of the Ottoman Constitution stated that Islam was the state religion (not specifically the Sunni Islam professed by the majority). But this same article immediately added a provision for the protection of minorities, wherein that the state "will protect the free exercise of faiths professed in the empire." Article 37 of the Bulgarian Constitution stated that Eastern Orthodox Christianity was the state religion. But here again, provisions were added that safeguarded the rights of religious minorities. Specifically, Article 40 of the Bulgarian Constitution stated that other Christians and other Bulgarians "of any other religion" had "full liberty to profess their religion," so long as they conformed with the constitution.

6. Rights of the Judiciary

The struggle for a constitutional order in Iran had begun with the demand for a uniform code of law and the establishment of a House of Justice. The question now was how to deal with the traditional division between shari'a law and *'urf* law? Most of the clerics who approved of the constitutional order assumed that the task of the modern judiciary was to revise and expand the old *'urf* law, and that shari'a

[54] See Bernard Lewis, *The Emergence of Modern Turkey* (London: Oxford University Press, 1968), 134.

matters would still be left to the clerics, who would become judges and prosecutors in the new system. Constitutionalist clerics were not averse to modern Western procedures (such as the creation of a modern court), but assumed that the content of the law would remain basically the same and under their control.

However, the more secular constitutionalist, such as the liberal deputy Taqīzāde, wanted to revamp the whole system and end the traditional distinction between *'urf* and shari'a law. Several key provisions of the 1907 supplementary constitutional law strengthened the powers of judges. These would later become the subject of enormous controversy:

> Iranian 1907—Article 80. The Presidents of the members of the judicial Tribunals shall be chosen in such manner as the Laws of justice determine, and shall be appointed by Royal decree.
> Iranian 1907—Article 81. No judge of a judicial tribunal can be temporarily or permanently transferred from his office unless he be brought to judgment and his offence be proved, save in the case of his voluntary resignation.
> Iranian 1907—Article 82. The functions of a judge of a judicial tribunal cannot be changed save by his own consent.

Yet when faced with the opposition of clerics, including many within the constitutionalist camp, the reformers had also made some compromise. Following the example of the Ottoman Constitution, a two-tier judicial system was approved:

> 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.
> Ottoman 1907—Article 87. Affairs touching the Shariat are tried by the Tribunals of the Shariat. The judgment of civil affairs pertains to Civil Tribunals.

The same compromise operated over the selection of a chief prosecutor, who was appointed by the Ministry of Justice but had to be approved by both the shah and qualified *mojtaheds*:

> 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.
> Belgian—Article 101. The King appoints and dismisses the State officials serving in the Courts and the tribunals.

Progressive constitutionalists of Iran were quite aware of these limitations of the new law. During the second constitutional period (1909–11), members of the social democratic Democrat Party introduced the concept of separation of religion from state in their party program. The Democrats also included a broad range of civil rights in their program, such as freedom of expression, publication, organization, and the right to strike. They called for free compulsory education for all, including women, who were to receive special attention. None of these proposed civil liberties were encumbered with religious considerations. In a challenge to the supplementary constitutional laws of 1907, which had given extraordinary powers to a committee of 'ulama', Article 5 of the program of the Democrats now called for a separation of state and religion. Also, members of the nobility and the 'ulama' were barred from membership in the Democrat Party unless their credentials were approved by the central committee.[55] This strong emphasis on secular politics resulted in much criticism of the Democrats, who were called "atheists" and "non-Muslims" by the opposition.

More moderate attempts at secularization of the judiciary continued throughout the second constitutional period. In July 1911, Prime Minister Moshīr od-Dowle set up a new Ministry of Justice. Under the guidance of a former French prosecutor, Adolph Perni, the ministry proposed a provisional civil code. These laws defined the limits and authority of civil and religious courts, and became the foundation of Iran's judicial system. In addition to the secular courts, the Ministry of Justice recognized a set of religious courts of appeal, both in cities and provinces. The judges in these courts were to be *mojtahed*s. They were appointed by the Ministry of Justice, but were recommended by two *marja' taqlīd*. These religious courts did not have the authority to carry out sentences. Rather, they reviewed cases that involved differing interpretations of the shari'a and turned over their decision to the original court, which carried out the sentence.[56] The old division *'urf* and shari'a law was especially maintained in family law. Under the new system, shari'a courts handled family affairs (marriage, divorce, inheritance, and guardianship of children and widows) as well as strictly religious conflicts. Secular courts and the modern judges handled all other issues.

In the years that followed, a number of issues complicated the operations of the new judiciary. In the interest of time, a small Parliamentary Commission of the Ministry of Justice discussed and ratified new judicial laws. The idea was to test the laws for a few years they send them over to the Majles for permanent ratification. In reality, the laws were not sent to the Majles and this weakened the authority of the Ministry of Justice. There were only a small number of modern courts, lawyers, and trained judges in the whole country. The general poverty of the nation,

[55] *Īrān-e Now* (New Iran), no. 120, 20 March 1911, 1.
[56] Zerang, *Tahavvol-e Nezām-e Qazā'ī-ye Īrān*, 1:174.

coupled with low rates of literacy, made it difficult for the public to negotiate the new system. The new Ministry of Justice did not end the controversial Capitulation Rights and powerful members of the elite, including local governors, continued to ignore the rulings of the courts and appealed to the legations of various Western powers. As a result of these shortcomings, the dual legal system persisted and a vast majority of cases were handled in shari'a courts.[57] Still, Iran's judicial system was slowly becoming more secularized, while clerical deputies in the Majles, and the Parliamentary Commission of the Ministry of Justice, kept a watchful eye over proposed laws and assured their compatibility with shari'a laws.

7. Liberty, Equality, and Other Civil Rights

But what did this idea of the compatibility of modern laws with shari'a law really mean? A closer look at the debates of the era suggests that constitutionalist clerics were willing to revise most traditional laws, unless they involved civil and religious liberties for the citizens or dramatically altered gender divisions. As is well known, one of the most important accomplishments of the French Declaration of the Rights of Man was its recognition of individual liberties. This right was retained in the Belgian (Article 7) and Ottoman (Article 9) constitutions:

> Belgian—Article 7. Individual liberty is guaranteed.
> Ottoman—Article 9. Every Ottoman enjoys personal liberty on condition of not interfering with the liberty of others.

Neither the Bulgarian law, nor the Iranian law of 1907, however, included this principle. Liberal deputies in the Majles, including Taqīzāde and his supporters in Āzarbāyjān, Gīlān, and Tehrān, did secure the principle of *equality* before the law in the 1907 law. Article 8 stated that "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.[58] The key term in the Iranian law was "equality before the *state* law" and not religious law. As far as the clerical establishment was concerned, religious distinctions between Muslims and non-Muslims still existed, though in practice it would become difficult to maintain them.

[57] Ibid., 1:176–257.

[58] Here again, the French law was the most liberal, as it stated that all (male) citizens were equal and eligible for all posts. The Ottoman law stated that "citizens are equal without prejudice to religion." The Iranian law added no such religious emphasis.

Several other civil rights provisions from the Belgian Constitution were also included in Iran's 1907 law. It guaranteed individual property rights, the sanctity of life and domicile, the right to privacy regarding letters and telegrams, and the right to trial. The state, rather than the clergy, was placed at the head of the public educational system (Article 19). An additional civil rights provision (Article 14) even stated that no Iranian citizen could be exiled from the country or prevented from living there.[59]

A comparison of the first draft of the 1907 law and the final version demonstrates that again in areas formerly under clerical control, major concessions were made to the Shi'i authorities. The study 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 lucid religion" (Article 20). Freedom of organization was granted throughout the nation, provided such *anjoman*s and associations were "not productive of mischief to religion or the state" (Article 21). Thirty years earlier, the Ottoman Constitution had guaranteed all of these rights without these encumbrances that were now tacked on to the 1907 Iranian law. Therefore, we might argue that while Sultan Abdülhamid II suppressed the Ottoman Constitution soon after its birth, the conservative clerics in Iran aborted these new civil rights during conception.

Several relevant Belgian articles never made it into the 1907 law. Articles 14–16 of the Belgian Constitution had established the principles of freedom of worship, non-intervention of the state into religious matters, and required a civil wedding preceding a religious one. Likewise, Article 23 of the Belgian law, which recognized the multilingual nature of that country, was ignored by the Iranians, even though Iran was also a multilingual nation. Several progressive articles from the Bulgarian and Ottoman constitutions could have been included but were not. For example, Article 24 of the Ottoman Constitution prohibited corvée labor and Article 26 banned torture and inquisition. Likewise, Article 61 of the Bulgarian Constitution banned slavery of "either sex" and declared that slaves became free upon setting foot on Bulgarian soil.[60] None of these civil rights provisions were

[59] This article might have been a response to Article 113 of the Ottoman Constitution that gave the sultan the right to exile those violating state security. As is well known, Sultan Abdülhamid (r.1876–1909), who dissolved the parliament and suspended the constitution in 1878, frequently expelled liberal reformers from the country. See Kili, *Turkish Constitutional Development*, 15.

[60] Because of pressure by European governments, especially Britain, slavery was banned through several ordinances issued by Nāser od-Dīn Shāh. Remnants of domestic slavery remained through the 1920s, however. See Thomas Ricks, "Slavery and Slave Trading in Shi'i Iran," *Journal of Asian and African Studies* 36 (2001): 407–18. British Foreign Office reports indicate that the slave trade continued on a much smaller scale in another direction as well. In 1929, some 250 Balūchīs were sold across the Persian Gulf. See the letter by Arthur Henderson, 9 Nov. 1929, FO 248/1387.

incorporated into the Iranian law.

The concept of freedom was either absent or highly restricted in much of the Iranian Constitution. From 1906 onward, many members of the 'ulama' continued to oppose the notion of *freedom* and the word soon adopted a highly pejorative connotation. Freedom, including the right to be different and to act differently from other people, was equated with nonreligiosity, immorality, lack of chastity, and licentious behavior. With regard to gender, words such as *freedom* and *liberation* came to have a doubly negative connotation. A "free woman" meant a vulgar, immoral, and sexuality promiscuous one.

Equality before the law was viewed more positively. But even in this area, equality with regard to the rights of Sunni Muslims, non-Muslims, and women came to mean "separate but equal," similar to the way that U.S. minorities were treated before the civil rights era. Three decades later, after the reforms of the Rezā Shāh era (1925–41), equality was still a privilege that the king granted to Iranian citizens, including women and minorities. As far as the shah, or the majority male Shi'i community, was concerned, equality before the law was a privilege that could also be withdrawn if the women or the minorities transgressed from the acceptable boundaries, i.e., if they demanded real freedom.

Conclusion

Insofar as the powers of the king were concerned, the Iranian constitutional laws of 1906–7 went beyond the Belgian, Bulgarian, Ottoman, as well as the German, Japanese, or Russian constitutions. The parliament was a legislative body, and the Iranian law vested the Majles with many of the rights that had previously been given to the European kings or the Japanese emperor. The Iranian Constitution did establish the principle of national sovereignty and the notion that the shah was a representative of the people, stating in no unequivocal terms that, "all the powers emanate from the nation" (Article 26).[61] The 1907 law curtailed the unlimited authority of the shah by demanding routine consultation with the ministers. Ministers were in turn responsible to the Majles for their own actions and those of the shah. The law also reduced the powers of the clerics in three major ways: first, by creating a new legislative body; second, by establishing the principle that the state controlled the educational system (and not the clerics); third, by dividing the judiciary into two areas, wherein the *mojtahed*s controlled the religious law, including family laws, while civil courts dealt with other matters (Article 27).

With regard to minorities, the 1907 law granted new rights to religious minori-

[61] This is based on Article 26 of the French Declaration and Article 25 of the Belgian Constitution.

ties (both Sunni Muslims and non-Muslims), by stating that all (male) citizens were equal before the state law. But even in this arena, the language of the law was less explicit and forthcoming than that of the Belgian, Bulgarian, or Ottoman constitutions. And the same was true in 1911 when universal male suffrage was adopted. Nor was the linguistic diversity of the nation respected, since all voters were required to read and write in Persian.

As far as gender rights are concerned, as several feminist scholars have persuasively argued, the strict demarcation of private and public realms in Western civil society has often had the intended or unintended result of giving men greater control over women's lives and of codifying many existing patriarchal traditions, including ones that were not widely practiced. The same thing would happen in Iran.[62] The electoral laws of 1906 barred women from participation in the new political process by denying them the vote. Family law, in particular, remained fully defined by the *mojtaheds*, an indication 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, women gained numerous new rights to education, employment, and political participation, but the state continued to codify many religious and patriarchal traditions, and sometimes placed new limits on women's activities.[63]

But the new constitution also recognized the Ithnā 'Asharī branch of Shi'i Islam as the official religion of the country and gave a Council of Clerics substantial rights and privileges that were in direct contradiction to the liberal spirit of many modern constitutions. National identity was subsumed under the Shi'i Ithnā 'Asharī religious identity. The 'ulama' gained veto power over the Majles, and they retained control of the religious courts, which gave them power over family law. Some of the civil liberties that were granted in the 1906 constitution, such as freedom of press or association, were curtailed in the 1907 laws. Other civil liberties that were introduced in the 1907 law were often restricted by religious qualifications.

It should be noted that with a brief exception in the Second Majles (1909–11), this Council of Clerics remained only on paper and did not actually function. Nevertheless, Article 2, and various limitations on civil liberties, together with the bifurcated judiciary, served as a great deterrent to the democratic process, and

[62] For a classic treatment of the subject, see Jean Bethke Elshtain, *Public Man, Private Woman: Women in Social and Political Thought* (Princeton: Princeton University Press, 1991). See also Patricia Boling, *Privacy and the Politics of Intimate Life* (Ithaca: Cornell University Press, 1996).

[63] One can argue that in the course of the Constitutional Revolution a bargain was reached between the modernists and the clerical establishment over women's bodies. This agreement was broken in the late Pahlavī era, with grave political consequences. For a discussion of changes that took place during the Pahlavī era see Parvin Paidar, *Women and the Political Process in Twentieth-Century Iran* (Cambridge: Cambridge University Press, 1995).

robbed it of its original liberal spirit. In the years that followed, Article 2 also gave an alibi to the conservative clerics, who claimed that their goal was simply to reinstate the constitution, in place of Pahlavī authoritarianism. In 1959, in an essay on the Iranian Constitution, Laurence Lockhart perceptively predicted that, "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."[64] This was to become Āyatollāh Khomeynī's argument as he campaigned against the Pahlavī monarchy in the decades that followed.

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[64] See Lockhart, "The Constitutional Laws of Persia," 381.

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