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## **Performance of Justice in Qajar Society**

**Janet Afary<sup>1</sup>**

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### **Abstract**

This article examines the performance of justice in Qajar Iranian society (1789-1906) and the ways in which social hierarchies operated in the determination of justice. As in ancient or medieval European society, people were not considered equal before the law. Men were treated differently from women, while non-Muslims were subject to substantially different expectations and punishments. Sunnis and those belonging to other Shi'i schools of Islam such as the Isma'ilis and Zaidis had fewer rights than Twelver Shi'is in legal disputes and were subject to more restrictions. But even men belonging to Twelver Shi'ism, the largest branch of Shi'ism and a majority of Iranian, were not equal before the law. In addition, partly because of the duality between 'urfi customary law and sharia religious law, and partly because of clerical power, laws were neither unanimous nor centralized, which meant justice was often arbitrary. Qajar justice commonly practiced corporeal punishment and executions, usually performed in public, and these served as a means of both chastising the people and entertaining them. Finally, the institution of slavery remained in force. Slaves, as moveable properties, occupied a position between humans and commodities and were subject to very different sets of regulations and punishments. One consequence of this patch quilt of laws was that European powers, starting in the Safavid era, demanded the right to adjudicate legal disputes between their citizens who resided in Iran and the local populace. These agreements, which were known as capitulation treaties, offered protection to persecuted minorities of Iran and runaway slaves. But they also allowed foreign powers to become involved in Iran's domestic affairs and to monitor maritime trade in the Persian Gulf. All of these social hierarchies would be questioned in the course of the 1906 Constitutional Revolution and new laws would be promulgated in the hopes of creating a modern state with equal rights for citizens.

### **Keywords:**

Justice in Iran; slavery in Iran; minorities in Iran; capitulations in Iran

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## Introduction

The British officer and scholar Sir Percy Sykes believed that before the 1906 Constitutional Revolution, the shah had been an absolute monarch whose unquestioned authority was rooted in the traditions of the Achaemenid Empire: "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." (Sykes, 1930, vol. 2: 381) Yet despite this ascription of absolutism by Sykes and others, Qajar monarchs of the nineteenth century were not entirely omnipotent rulers. Rather, the patrimonial powers of the ruler were checked by the clerical establishment, along with tribal leaders and local notables, including princes and other provincial governors (Sheikholeslami, 1997).

Two sets of laws also regulated society: *'urf* customary law and *sharia* religious law, though the boundaries between the two were not always clearly marked. The state administered the *'urf* customary law. *'Urf* was pre-Islamic in origin and covered penal law (crimes against the state), such as resistance to the authorities, theft, highway robberies and murders, military and government affairs, taxation, and issues that the *mojtaheds* (jurisconsults/high clerics) had delegated to the state. This customary law varied from region to region and was generally undocumented. It was supposed to reflect "common-sense and traditions, or precedents, orally handed down" (Benjamin, 1887: 439). Governors set up *'urf* courts in

their provinces and the shah appointed and dismissed their judges. The courts known as "houses of justice" (*divān khāneh*), administered justice and the law was carried out by the police (*dārugheh*). Village heads resolved local conflicts through mediation (Sykes, 1930, vol. 2:384-386; Amanat, 2008: 125).

The shah also appointed ombudsmen, entitled *vakil al-ru'āyā* (deputy of the people) for the capital city and the provinces. This practice also had pre-Islamic roots but had become more prevalent by the Safavid era. By the late eighteenth century, the office of *vakil* had become hereditary, with a fixed salary. John Perry as compared Iran's *vakil al-ru'āyā* to the Roman Republic's tribunes of the plebs, the most important institution that checked the powers of the Roman Senate and the magistrates, and whose presence contributed to "the horizontal integration of society" (Perry, 1978: 214). The *vakil* adjudicated individual and group claims, and mediated property disputes between business partners and conflicts within guilds. The *vakil* also advocated for peasants and artisans against the tyranny of the rich and powerful and served as a vertical intermediary between the shah and his subjects.<sup>1</sup>

In contrast, *sharia* religious law was derived from the Quran and the hadiths (oral traditions attributed to the Prophet), the judgments and hadiths attributed to the Shi'i imams, and the decisions of the Shi'i jurists. *Sharia* law often dealt with religious matters and offenses; family affairs, such as marriage,

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<sup>1</sup> The existence of this institution facilitated public acceptance of the 1906 Parliament. In fact, members

of Parliament (MPs) were initially referred to as *vakils* of the Majles (Perry, 1978 :213).

divorce, inheritance, contract and land disputes; and the judicial process (Sykes, 1930, vol. 2: 384-386). The first American Minister in Iran, Samuel Benjamin, believed that the leading mojtahed was deemed reasonably impartial in his judgment and that his authority was therefore far superior to others. He observed that while a verdict based on 'urf law could be appealed to higher authorities, including the governor or the shah, that of the ulama was "accepted without demur as final" and was not referred to the governor or the shah. He thus concluded that while the "urf occupies a prominent place in the administration of justice, the Shahr (sharia) constitutes by far the more important legal authority of the land." A "word from him [the leading mojtahed] would hurl the Shah from his throne, or be the fiat and doom of every Christian and foreigner in the land" (Benjamin, 1887: 439-440).

Both the state and the ulama claimed to uphold the principles of justice, yet their notions of justice differed dramatically from those of modern times. This article will examine the performance of justice in the Qajar era and how social hierarchies mattered most in its determination. Similar to ancient or medieval European society, people were never considered equal before the law. Men were treated differently from women, while non-Muslims were subject to substantially different expectations and punishments. Sunnis and those belonging to other Shi'i schools of Islam such as the Isma'ilis and Zaidis had fewer rights than Twelver Shi'is in legal disputes and were subject to more restrictions. Nor were men belonging to Twelver Shi'ism, the largest

branch of Shi'ism espoused by a majority of Iranians, equal before the law. In addition, partly because of the duality between 'urf and sharia law, and partly because of clerical power, laws were neither uniform nor centralized, which meant justice was often quite arbitrary. Qajar justice commonly practiced corporeal punishment and executions, usually performed in public, and these served as a means of both chastisement and mass entertainment. Finally, the institution of slavery remained in force. Slaves, as moveable properties, occupied a position between humans and commodities and were subject to very different sets of laws and punishments.

One consequence of this patch quilt of laws was that European powers, starting in the Safavid era, demanded the right to adjudicate legal disputes between their citizens who resided in Iran and the local populace. These agreements, which were known as capitulation treaties, also offered protection to persecuted minorities of Iran and runaway slaves. But they allowed foreign powers to become involved in Iran's domestic affairs and to monitor maritime trade in the Persian Gulf. Traditional practices of justice would be questioned in the course of the Constitutional Revolution and new laws would be promulgated in the hopes of creating a modern state with equal rights for all citizens and ending foreign capitulation treaties.

### **The Circle of Justice and the Four Social Classes**

Before the institutionalization of Shi'ism some five centuries ago in the Safavid era, when a majority of Iranians continued to

adhere to the Sunni branch of Islam, conceptions of justice were predicated on establishing a successful and prosperous government. As in medieval European and Ottoman societies, in medieval Iran justice did not mean equal treatment of individual free men; rather, justice was a guarantor of the corporate system itself. A just ruler supported the military, which provided security. Security in turn facilitated economic prosperity, which ultimately supported the shah and completed the circle. An Islamic doctrine of the circle of justice, with roots in pre-Islamic bureaucratic empires of the ancient Middle East and the Mediterranean world, defined this social model. A prosperous and just government and its administration relied on the labor of peasants under the landowners; merchants and artisans who also contributed to the wealth of the community; the taxes on this wealth supported the military; and the military supported the ruler and his realm (See Darling, 2008 :11).

Hence the circle of justice relied on maintaining the equilibrium of four social classes: (1) men who tilled the land—peasants and farmers; (2) men of commerce—merchants, masters of crafts, and tax collectors; (3) men of the sword—governors and other political and military figures; and (4) men of the pen—those who facilitated the workings of the administration, religious judges, scientists, physicians, accountants, and poets. One of

the shah's function was to preserve the overt domination of these classes and the rights that pertained to each according to its social function.<sup>2</sup>

Nizām al-Mulk Tusi (1018–1092), the Persian Sunni scholar and vizier in the Seljuq Empire, and author of *Siyāsāt Nāmeḥ* (The Book of Government), argued that social stability required a great king with wisdom and justice. He defined justice as a balancing act. To the extent that the king upheld the rightful social hierarchies, stability and prosperity would flourish in the country (See Nizām al-Mulk, 1978: 9 and Lambton, 1962: 102). Two centuries later, the renowned Shi'i scientist and philosopher Nāsir al-Din Tusi (1201–1274) concurred that the “first condition of justice is that [the ruler] should keep the social classes [asnāf] of mankind in correspondence [motekāfi], with each other, for just as a balanced temperament results from the correspondence of the four elements [earth, water, air, fire], so balanced societies are formed by the correspondence of the four social classes (See Nāsir al-Din Tusi, 1994: 305. For an English translation of the text, see Nasir ad-Din Tusi, 1964: 230).”<sup>3</sup> This quadripartite statement became a benchmark for medieval Muslim conceptions of justice. As Louise Marlow has pointed out, “Tusi's description became immensely popular, especially in the Perso-Turko and Indo-Islamic cultural areas, where it was rapidly established as a standard, indeed a normative, model for the

<sup>2</sup> This “quadripartite social model” can be traced the Zoroastrian religion and the Sasanian State. It appears in the writings of medieval Shi'i and Sunni writers alike (See Marlow, 1997: 7 and Lambton, 1962: 91-120).

<sup>3</sup> I have cited the more accurate translation of this passage in Marlow, 1997: 7, which I have slightly modified.

conceptualization of society” (Marlow, 1997: 8.).

Likewise, the fifteenth-century Sunni writer, Husain Vā‘iz Kāshefi (d. 1504–1505) elaborated a similar view of social hierarchies for Iran’s political leaders:

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 (Cited in Sheikholeslami, 1997: 6).

This system of social hierarchy gave the shah enormous control over the lives of members of the royal court, his ministers, and 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” (Savory 1980: 34). Grand vizirs who lost favor with the shah frequently lost their lives (Sykes, 1930, vol. 2: 382-83). But the shah’s authority also provided a measure of security for the lowest classes of society, sometimes protecting them from tyrannical governors, princes, large landholders, religious leaders, and other elites as the shah and his envoys interceded on behalf of the subject populations.

In this highly-stratified society the same crime could result in a range of punishments, depending on the social class of the perpetrator and the accused, and the city or town in which the crime was committed. Iranian and Western observers alike have commented on the procedure whereby the three positions of defense attorney, prosecutor, and judge were rolled into one.

Some powerful governors, police officials, and clerics manipulated the evidence, extracted confessions through torture, and meted out sentences according to the bribes they received. Hāj Sayyāh, an Iranian world traveler who subsequently became an activist in the Constitutional Revolution, recalled that local governors and police planted evidence to frame individuals: “Often a pickpocket placed a bottle of wine in someone’s pocket . . . or the [authorities] paid a prostitute to accuse a respectable man of molesting her.” Contingent upon the payment of a substantial bribe, the accused would be released once his confession was extracted through torture (Sayyāh, 1967: 483). Ella Constance Sykes, who accompanied her brother Percy Sykes, also reported on the link between bribes and the sentences. She pointed out that clerics were often the only recourse available to the victim, when faced with an avaricious governor:

Justice is usually summary; no witness is asked to take an oath, and false testimony is common. Both sides bribe to the extent of their resources, and he who has the longest purse will usually win his case unless he is so obviously in the wrong that the governor fears public opinion, or the priesthood, usually in opposition, supports the cause of the poorer claimant... Law is as a rule cheap and speedy; but where money is in question, the governor will take his share when he has adjudicated. Although in theory all have a right of appeal to the Shah, yet few avail themselves of the privilege, knowing that in such a case everything would in all probability be

swallowed up by the royal judge and his courtiers (Sykes, [1910] 2005: 61-62).

The arbitrary nature of justice and the vast corruption of the system meant that victims were often reluctant to launch an accusation. Even wealthy and influential Muslims feared taking their case to the authorities, as the governor or the king might demand a fortune in return for a favorable verdict.

### **Rise of the *Usuli* Clerics and the Decentralized Practice of Justice**

With the emergence of the Safavid dynasty, the Shi'i clerical establishment gained greater power and authority throughout the new state. In theory, Twelver Shi'i jurists maintained that in the absence of the Hidden Imam all forms of temporal rule were illegitimate and unauthorized. But in reality, the clerics cooperated with the Safavid state and became state functionaries, gaining unprecedented authority in the process.

Even before the rise of the Safavid dynasty, Shi'i jurists had developed a detailed legal system based on logical reasoning (*ijtihad*) and created principles of Islamic law (*usul-e feqh*). However, no attempt was made to unify Shi'i law in the Safavid era. In the eighteenth century, the Shi'i *Usuli* school became dominant in the country. Usuli jurists, who regarded themselves as representative (*nāyeb*) of the Hidden Imam until Judgment Day, maintained that each ordinary believer had to follow (*taqlid*) a particular mojtahed and receive guidance from that cleric in religious matters. The Usulis instituted a series of madrasa religious schools and judicial courts across the country (Amanat, 2008: 172-173).

By the eighteenth century the ulama had split into the two different schools, *Akhbāris* and *Usulis*. The *Akhbāris* refused to employ *ijtihad* (independent reasoning) and maintained that all the reports (*akhbārs*) attributed to the various Shi'i Imams and the Prophet were equally valid. In contrast, the *Usuli* jurists turned to independent reasoning in drawing new opinions while basing themselves on the Quran and the hadiths. Gradually, the *Usuli* ulama gained ascendancy and by the nineteenth century they had acquired control of the madrasahs and the mosques, which gave them access to vast religious taxes and endowments.

The vast majority of the ulama in this era were trained as *faqih*s, specialists in Islamic law. At the head of the ulama were the venerable mojtaheds, clerics who were often educated at the Shi'i centers of Najaf and Karbala. Their training accorded them the right to interpret the Quran and the sharia, to form their own judgments on matters pertaining to the sharia, and to appoint communal prayer leaders for every village and town (Nasr, 1974: 271-93).

Throughout this period, the dichotomy between sharia and 'urf laws had remained more or less intact despite occasional skirmishes over the boundaries of these laws. As Abbas Amanat points out, "the jurists simply did not see the need for a centralized corporate identity or for disturbing the delicate balance with the state upon which they continuously negotiated their power. The state in turn preferred ambiguity whereby through consent and coercion it hoped to persuade the jurists to comply with the state's otherwise waning power and prestige" (Amanat, 2008: 126).

This situation would alter in the mid nineteenth century with the rise of the messianic Babi movement and later the Baha'i faith, both of which rejected the claim that in the absence of the Hidden Imam the Usuli jurists as a group represented him. Threatened by this dramatic challenge to their authority, the jurists joined hands with the state to forcibly eradicate Babi/Baha'i influence. In the course of this process, the Usuli clerics finally recognized the need to establish a *marja'* (clerical leader) who served as an example to others with his "higher standards of morality, learning, and social justice" (Amanat, 2008: 126).

The title of *marja'* was first conferred on Sheikh Morteza Ansari (1799-1864). Soon the position of *marja'* came to play a new political role, first in the Tobacco Protests of 1891-1892 and later in the Constitutional Revolution. At times, the *marja'* challenged the authority of the shah and the outside imperialist powers. On other occasions, when new social movements threatened the equilibrium of the ancient circle of justice of the ruling classes, the *marja'* sided with the monarch. At the turn of the twentieth century as the number of *marja'*s increased, a few emerged as distinguished *marja' taqlids* or sources of emulation for ordinary believers. A *marja' taqlid* had considerable freedom to interpret the law. Each Shi'i adherent followed a particular *marja' taqlid* and received guidance from him in all ambiguous rituals and doctrinal matters. Different Iranian communities often followed one or another *marja' taqlid*, depending on their ethnicity. Upon the death of a *marja' taqlid*, his followers selected another as their principal guide (See Nasr,

1974: 271-93. See also "Mudjtahid," Encyclopedia of Islam 1991, vol. 7, 1991: 296). These traditions mitigated against various attempts to establish a legal consensus since writing a uniform religious code of law involved establishing a consensus among various *marja' taqlids* concerning the interpretation of the law. Such a consensus would have come in conflict with the decentralized nature of the top Shi'i leadership and was resisted for much of the twentieth century (Zerang, 2002: vol. 1).

### **Corporeal Punishment: Justice for the Poor and Performance for the Public**

Traditional justice used physical punishments both individually and collectively. Retribution (*qasās*) or "an eye for an eye" was an acceptable form of punishment for many routine crimes. The penalty for carrying out an insurrection was ruthless and unforgiving. Both 'urf and sharia law sanctioned corporal punishment, including mutilation and amputation of the body, as well as collective punishment. Mutilation took place in public, often in festive ceremonies, which served both to discipline and entertain the people. Usually there was a specific corporeal connection between the crime and the method of punishment. A thief's hand was cut or a lower-class rapist who had attacked an upper-class child was castrated. Between 1893 and 1904, the public directory for the city of Shiraz alone listed "118 amputations—41 fingers, 39 feet, and 38 ears—110 floggings, 48 decapitations, 17 hangings, 11 drawing-and-quarterings (usually by four horses), 4 live-wallings [in which a person is

plastered into a wall], and 2 disembowelings” (Cited in Abrahamian, 1999: 21).

Corporal punishment turned the judicial process into a theatrical performance, which could at times establish a degree of social equilibrium at a relatively cheap cost. Such ceremonies had been common in medieval Europe and were routinely practiced by the Catholic Church. As Michel Foucault has pointed out in the case of Europe, modern justice pretends that its purpose is to protect society and to cure and rehabilitate the criminal. The criminal is incarcerated for “his own good.” He might be deprived of many rights, but we are told the purpose is to rehabilitate his mind and normalize his behavior. The pain inflicted on the body is deemed not intentional; rather, the “body serves as an instrument” for rehabilitation (Foucault, [1975] 1977: 11). In contrast, premodern justice in Europe or the Middle East did not hide the fact that one of its purposes was revenge and reassertion of power. It did not camouflage its violence with elaborate legal procedures carried out behind closed doors. It took public responsibility for the violence inherent in its practice and saw it as glorifying its strength.

Also, as in medieval Europe, Iranian justice was enforced in a theatrical performance aimed at gratifying the public. In Foucault’s words, torture was the “art of maintaining life in pain,” of dragging out the anguish for hours and, if possible, days without killing the victim and ending his anguish (Foucault, [1975] 1977: 33). A carnival-like atmosphere often accompanied public executions. Amputation and executions served two other purposes as well. They were public ceremonies in which the

power of the state and the ulama were reactivated and occasions through which people vicariously experienced revenge and what Nietzsche called *ressentiment*.

Ja’far Shahri illustrated this through a graphic description of executions in Tehran in the early twentieth century: “The executioner was a coarse, blood-chilling drunk, who wore red clothes and tied a dagger to his waist. A fearsome-looking man, with a hat made of animal skin and thick scattered moustaches, he had a truly odious appearance and his mere sight raised the hair on your back.” Since the executioner received no salary, he made a living by parading the condemned man around town and forcing him to beg. He severed the ears and nose of the condemned and placed them on a tray. The prisoner was chained, given the tray, and made “to beg and earn money for days, if not months, before he was executed.” At other times, the executioner “passed a chain through his nose” and pulled the prisoner around in this manner (Shahri, 1978, vol. 1: 418-19).

When the prisoner became too weak to beg, the execution moved forward, and death came in an even more grotesque spectacle. While the public surrounded the criminal and watched his every move, the executioner “circled the crowd, returned to the condemned, pushed him to the ground, put his fingers in the condemned man’s nose, pulled his head back, and slithered the dagger over his throat.” At this point, a relative or friend of the condemned often bribed the executioner in hopes that he would limit the agony of the condemned man by killing him quickly. If no one paid, the poor man’s

torment would be drawn out (Shahri, 1978, vol. 1: 418-19).

Even the less brutal hangings were public productions. Here the condemned man was expected to entertain his audience:

Usually standing by the noose, the condemned performed deeds that the spectators found fascinating and gripping:

One stood to pray and asked God to forgive him. One expressed his sorrow and counseled people to “Propagate Virtue and Prevent Vice.” One blamed love, women, gambling, liquor, bad friends, parents’ lack of love, and so forth. One cried and pleaded as if there was still a way out and begged to this and that for help. One pretended great confidence and sang or danced in merriment. One threatened friends, colleagues, and relatives and cursed them or promised to take revenge! Most [of the condemned] blamed the law, the court, the judge, and the whole judiciary; they claimed to be innocent and damned the system (Shahri, 1978, vol. 1: 400).

When the prisoner was hanged, the spectators’ response varied depending on the circumstances of the case and the method of punishment. If the crowd felt the hanging was excessive or unjust, people wept for the poor soul. But if the punishment was deemed just and the condemned a cruel murderer, people “expressed their joy and clapped hands” as the man’s body dangled in air (Shahri, 1978, vol. 1: 399-400).

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<sup>4</sup> Ladan Rahbari, “All the King’s Slaves: Vulnerability and Sexual Captivity during the Safavid Period,” paper presented at *Slavery and Sexual Labor in the Middle East and North Africa*, Fourth Annual Conference of the Iranian Studies Initiative, University of California,

In this way, the execution brought a measure of social equilibrium to the populace and assured it that while life was cruel and precarious, there was some justice in this world and those who violated the social order would be punished.

### **Justice and the Enslaved**

Iran’s slave trade expanded during the Safavid era, increasing the number of military slaves who served the king as bodyguards and of those who worked as artisans and stonemasons in the royal workshops (See Minorsky, 1980 and Keyvani, 1982). Slaves were employed in major public works projects, including the construction of buildings, roads, and bridges. In this period, individuals who could not repay a loan could also be sold into slavery.<sup>4</sup>

The use of slave labor increased in the early 1800s to meet the needs of the growing cash-crop economy. Slavery was incorporated on a larger scale into nationwide commercial networks as well as local economies.<sup>5</sup> Slaves arrived from the south via the Indian Ocean and the Persian Gulf and from the north and east via land route and the Caspian Sea. Iranian pilgrims also purchased back slaves from markets in Mecca and Karbala. For this reason, Iranians called black slaves *hajji* (man) or *hajjiyeh* (woman), one who has made a holy pilgrimage. At the port city of Bushehr and in Shiraz slaves were stripped naked and

Santa Barbara. October 19-20, 2018.

<sup>5</sup> Thomas M. Ricks has characterized Iran in this era as a “slave society and economy due to the integral and essential role played by slaves.” (See Ricks, 2002: 78).

inspected by potential buyers in private homes that served as slave markets.

The enslaved women of northern Caucasus and fair-skinned Ethiopians were generally preferred for concubinage, while the more dark-skinned blacks of East Africa were used as maids, nannies, and domestics (See Ricks, 1989: 65; Floor, 2007; Sykes, [1910] 2005: 69). In addition, an internal slave trade stemmed from the desperation of indigent families, but sometimes also involved kidnapping. Local traders purchased girls and boys from mostly poor Sunni Afghāni, Tājik, Khorāsāni, Kurdish, and Baluchi parents. Border wars, such as the Russo-Iranian wars, tribal wars, and outright slave raids also resulted in new captives (Sheil, [1856] 1973: 209; Polak, [1865]1976), Vol. 1: 248; Floor, 2007: IV).

A master had a number of obligations toward his slaves. Iranian slaves were provided with food and shelter, were not shackled routinely, and could purchase their freedom. Occasionally, slaves of both sexes learned to read and write. Like prostitutes, *gholāms* (male slaves) and *kanizes* (female slaves) often had their own guilds. Marriages between slaves were common, in part because the Quran encourages masters to find husbands and wives for their slaves. When a master married his kaniz to another man, slave or free, he renounced his sexual concubinage rights over her, but not his rights to enslave the offspring of that union (Qahraman Mirza, 1995: 1752; Ricks, 2002: 84; Polak, [1865]1976: 249–51; Taj al-Saltana, [1914] 1982; Sheil, [1856] 1973: 209).

Although European travelers reported that Iranians treated their slaves well, when compared to the plantation slavery of the US

in the same period, surviving documents suggest that life remained brutal for enslaved people, even those of the royal court (Azad, 1985: 412-414). Iranian and Western observers seldom commented on the emotional and sexual violence that slaves endured. The memoirs of Lady Mary Sheil, Carla Serena, Jakob Polak, and Taj al-Saltana make only brief references to the kanizes' tragic lives. They discuss jealous wives who resented their husbands' favorite kanizes, suggesting a strong antagonism between wives and kanizes.

Both military and elite households offered opportunities for manumission and integration (Babaie, et al. 2004: 2-3.). Unlike in the West, color was not as insurmountable a barrier to the economic and social integration or the promotion of former slaves (Sykes, [1910] 2005: 68). Religious precedents also offered some social mobility to male Iranian slaves. The Quran recognizes the institution of slavery and recommends, but does not require, the freeing of Muslim slaves as a sign of devotion to God and penance for one's sins (see suras 16:71; 5:89; 4:92; 90:11–13). With permission of their master, slaves could own property, testify in legal disputes, engage in commerce, or initiate marriage. Without his explicit permission, they could engage in any of these activities. Masters occasionally freed slaves on birthdays or weddings, or other celebratory occasions, or manumitted them in their wills. Gholams could also purchase their freedom by engaging in trade and retaining a percentage of the transactions. Over time, some could save enough to buy their freedom. In reality, both gholams and kanizes were sold, exchanged, rented,

inherited, or owned by several masters. Slave owners had unrestricted sexual access to their kanizes and gholams and this right was not questioned.

A legal route to manumission for a kaniz was bearing her master's child. While a child born of slave parents remained a slave, a child whose father or mother was free, and who recognized the child, could be freed and inherit property. A kaniz who gave birth to a master's child was called an "umm walid," (mother of child). If the master denied paternity, however, the child remained a slave (Algar, 1999: 4; Tucker, 1998: 172). While by tradition, an umm walid was supposed to be manumitted upon her master's death, this did not always happen. And even when the father recognized the child as his, it did not mean his heirs would follow suit by freeing the child or giving him an inheritance.<sup>6</sup>

Since slaves who were severely mistreated had the right to protest, a master's failure to abide by social customs regarding slavery could result in the intervention of a judge and sale of the slave to another owner. But since a respectable master never sold his slave, and other elite members were reluctant to purchase the slave of other families, in such circumstances a disgruntled slave owner usually released his gholām or kaniz without manumission, forcing the slave into prostitution or vagabondage (Algar, 2007;

Shaykh Rezaei and Azari, 1999: 139, 177, 184).

Iran's slave trade was drastically curtailed by the late nineteenth century. After the Russo-Persian Wars of 1926-1928, when Iran lost substantial territories in the Caucasus, the two countries signed a peace agreement known as The Turkmanchāy Treaty (1928). This agreement included a clause banning the sale of Armenians, Georgians, and Circassians of the Caucasus and gradually the supply of enslaved Caucasians dwindled in Iran. Also, in 1857 Iran agreed to cooperate with Britain in suppressing the slave trade in the Atlantic Ocean and the Persian slave. In 1882, British officers secured from Nāsir al-Din Shah the right to free any slaves found on an Iranian ship they inspected. Finally, the institution of slavery was heavily criticized during the course of the Constitutional Revolution, though a formal ban on slavery would arrive two decades later when Iran joined the 1926 Geneva Convention against the slave trade. This treaty formally ended slavery on the Iranian side of the Persian Gulf, but the trade continued in the sheikhdoms at the peripheries of the Gulf (Information on slave trade appears in Ricks, 1989; Ricks, 2002; Floor, 2007; Benjamin, 1887: 170; Sheil, [1856] 1973: 243-45; Sykes, [1910] 2005: 224-229. See also Afary, 2009: 51-60). The UAE abolished slavery in 1963 but severe

<sup>6</sup> Eric Massie, "The Bonds that Bind: Slavery and Familial Relations in the Persian Gulf, 19th and 20th Centuries," paper presented at *Slavery and Sexual Labor in the Middle East and North Africa: Fourth Annual Conference of the Iranian Studies Initiative*. University of California, Santa Barbara. October 19-

20, 2018 and Anthony A. Lee, "Ziba Khanum of Yazd: An Enslaved African Woman in Nineteenth-Century Iran" paper presented at *Slavery and Sexual Labor in the Middle East and North Africa: Fourth Annual Conference of the Iranian Studies Initiative*. University of California, Santa Barbara. October 19-20, 2018.

exploitation of migrant laborer and domestic workers, which has been compared to slavery, continues to this date.

### **Justice and Gendered Bodies**

The treatment of women stemmed from their lower position in the social hierarchy, their limited rights according to religious texts and traditions, and the accompanying restrictions imposed specifically on women's bodies. Shi'i Iranian society is one of the world's many "pollution-conscious cultures" (Douglas, [1966] 2002: 1). Notions of ritual pollution and purity are often related to a community's need for order, stability, and social stratification. Many cultures view the orifices of the body from which blood, semen, and urine are issued, as conspicuously violable locations of human vulnerability, because they expose us to unforeseen dangers. Accordingly, in cultures that give primacy to patrilineal systems of descent, women are viewed reductively as the "door[s] of entry to the group" as a safeguard against ritual pollution (Douglas, [1966] 2002: 127).

Societies of this kind exercise a variety of moral double standards in disputes where women and minorities are involved. Shi'i Iranian society, similar to Orthodox Judaism, strictly delineates acceptable parameters for behavior by gender and religion. The fear of transgression lurks just out of sight, ready at the slightest provocation to interrupt the social order. The sexual and reproductive functions of women's bodies turn them into contested sites of potential ritual contaminations (najes; pl. nejāsāt). Indeed, the concept of honor (nāmus), and the perceived need for control over female

chastity, might be closely related to a culture's fears of sexual contamination. Bodily contact with those who are defined as "others" remains a source of social and/or religious anxiety. Women's contact with unrelated men and outside groups, who are viewed as sources of pollution, poses a grave threat to the fabric of society.

As a result of these factors women's rights to justice were not the same as men's. Women were allotted only half the weight of men in legal disputes under the practices of Islamic law. Women's access to public arenas was extremely limited, their personal freedoms few in number, and their position in marriage highly precarious. Men's rights to polygyny and easy repudiation (talāq) gave them overwhelming advantages over women in legal matters.

Until the twentieth century, female pedestrians were not allowed to walk in the center of the road in Tehran. Like najes non-Muslims, they walked alongside the walls. In the first half of the twentieth century, with women entering the public domain to go to school, to shop for their families, and eventually to take jobs in steadily rising numbers, anxieties about women's emergence into the new public spheres (streets, parks, schools, universities, cinemas) increased among observant men and women. This would contribute immensely to political and social conflicts of the twentieth century (For details see Afary, 1996 and 2009).

### **Justice for Minorities and Non-Conformists**

Another characteristic of premodern justice was the unequal treatment of minorities, whether Sunni Muslims or non-Muslims,

who were treated as second-class citizens or less. In Shi'i Iranian society, the maintenance of social, and religious distinctions was of paramount importance. A majority of Shi'i theologians included Christians and Jews or "People of the Book" in the category of infidels (*koffār*) who were therefore ritually impure (Tsadik, 2007: 17).

Persecution of religious minorities and non-conformists in Shi'ite Iranian society can be traced back to the late Safavid era, but was reinvigorated a century later with the ascendancy of the Usuli school. The Usulis became zealous advocates of the doctrine of "Ordering Good and Forbidding Bad" (*amr-e be ma'ruf va nah-ye az monker*), a dogma which required "communal vigilance against ideological and moral non-conformity" of other sects and sporadic persecution of non-Muslims (Amanat, 2008: 173).

Qajar monarchs continued this policy of intolerance toward Sunni Muslims and non-Muslims (For treatment of minorities in the Safavid era, see among others: Taremi, 1996; Fischel, 1950: 119-60; Momen, 1985; Matthee, 1998: 219-46). Periodic persecution of Christians, Zoroastrians, Jews and converts to the Babi and the Baha'i faiths continued in the latter part of the nineteenth century. Sometimes on Islamic holidays, Shi'is pillaged Jewish synagogues and Armenian churches. From time to time, the homes of non-Muslims were ransacked, and

their women kidnapped and forcibly converted to Islam.<sup>7</sup> Babi and Baha'i minorities living within Muslim communities did intermarry with Muslims but were at greatest risk for violence. They were denied the customary protection of the *dhimmis* (recognized religious minorities) under Islam and frequently, on one pretext or another, were attacked and even forced to convert.

Shi'is and minorities routinely interacted during commercial and business transactions. In fact, mistreatments of religious minorities were often motivated by economic and political reasons and then justified on religious and legal grounds (Tsadik, 2007 :4). Segregation was maintained through a series of sartorial, spatial, and dietary rules and regulations. Christians, Jews, and Zoroastrians were expected to wear color-coded patches on their clothing and to observe more than fifty kinds of restrictions in their daily interactions with the Muslim community, though these restrictions were not always enforced (Levy, 1989, vol. 3 :404-9; See also Afary, 2002 :139-74). In more religiously conservative communities, non-Muslims were prohibited from walking on the streets on rainy days because "water and moisture transferred their uncleanness." Similar restrictions might be enforced during the hot seasons, since it was believed that a non-

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<sup>7</sup> Occasionally Jews, Christians, and other non-Muslim women were kidnapped, converted to Islam, and taken as wives. In March 1839, an angry Tehran crowd stormed the Jewish quarter, burned down the synagogue, looted homes, and snatched six young girls who were subsequently married to the Imam Jom'eh, Leader of the Friday Prayer. These women were not

enslaved so much as forbidden access to their community of origin due to conversion. The Jewish residents of the city of Mashhad, in northeast Iran, also underwent forced conversions in the early nineteenth century, though many covertly maintained their Jewish identity (See J. Pirnazar, 2001: 41-60 and interview with Monir Pirnazar, May 12, 2006).

Muslim's sweat "transferred his impurity" (Issawi, 1971: 63). Bathhouses were segregated in Shi'i Iranian society, though not in Sunni regions of the Middle East. Non-Muslim Iranians were not supposed to pray or sing loudly, and their weddings had to be held in private. Finally, men from minority communities who converted to Islam, called *Jadid al-Islam* (new Muslims), were entitled to their family's entire inheritance, leaving the rest of the family destitute, if they had also not converted (See Soroudi, 1994: 143 and Tsadik, 2007: 22-23). The same law meant that a Shi'i man who married a non-Muslim woman, could claim the entire inheritance of that family, after the death of the father of his new wife, leaving the woman's mother and siblings destitute.

Dhimmi were required to pay a *jaziyeh*, annual tax in cash or kind. There was no definite rate for this tax and the amount varied annually based on what the local imam decreed. A typical *jaziyeh* was two *tumans* per year, equal to ten days' worth of wages. One purpose of the *jaziyeh* was to humiliate the dhimmi and encourage him to convert. The tax collector might smack the dhimmi while receiving the funds from him or demean him in other ways (See Tsadik, 2007: 25-26).

Napier Malcolm, a Nestorian Christian missionary, catalogued various forms of legal discrimination against Zoroastrians in the southern city of Yazd at the turn of the twentieth century. Prejudice toward Yazd's large Zoroastrian community included sartorial laws under which Zoroastrians were forbidden to wear eyeglasses and rings. They could not wear certain colors of clothing, blue, black, bright red, or green. Nor would

they wear white stockings, a sign of high status. A mojtahed who caught a Zoroastrian merchant wearing white stockings "ordered the man to be beaten and the stockings taken off" (Malcolm, 1906: 47). Neither Zoroastrians nor Jews could mount a donkey or horse while in a Muslim's presence. However, as a sign of respect for experienced Jewish doctors they were at times permitted to do so. In some communities until the 1860s, Zoroastrians were banned from open trade and from sending their children to school. These fines had to be paid on the spot. In 1880, one of Yazd's leading mojtaheds ordered Zoroastrians to wear a conspicuous patch on their shirts and gave them three days to comply. Though the community reluctantly agreed, women in the community responded by turning the patch into a decorative accessory.

Periodic rampages against minority communities, on one pretext or another, were also common and provided orgiastic festive occasions for the majority. Ja'far Shahri reports that the Muslim community of Tehran ransacked the Jewish ghetto, known as 'Udlājān, once or twice a year. They recast the old Christian blood libel against Jews, claiming that they were "stealing Muslim children and using their blood to bake matzo" for the religious festival of Passover. Another common accusation, which may have been true, was that Armenians and Jews were selling alcohol to Muslims, which was permitted in their own religions but prohibited in Islam. A mob would then "rape the wives and children [of the Jews], drink their wine and liquor [*araq*],

steal their property, and haul away their wine barrels and leave” (Shahri, 1990, vol. 1: 132).<sup>8</sup>

Such punishments were also inflicted on Babis. Massacres of Babi converts and their family members, torture, and flaying the heels remained common forms of punishment in the mid nineteenth century in both cities and towns. The ultimate punishment was saved for a group of Babis convicted of regicide. In 1852, after four Babis attempted to assassinate Nāsir al-Din Shah, thirty Babi leaders were sentenced to death for heresy. They were paraded in the streets, and divided to be punished by various sectors of society, such as members of the court, Qajar tribes, members of the military, government ministers, merchants, and bazaar guilds. This was an attempt to implicate the whole community and thus lessen the possibility of revenge against one person or one group of Muslims. Thus distributed, a festive orgy of cruelty was unleashed upon them. Many were cut to pieces or blown apart with canons, but the slowest and most brutal method of torture was reserved for the ringleader, Suleiman Khan (Sheil, [1856] 1973::276).

Minority rights became a heated subject of discussion in the course of the drafting of the 1906 constitution and its 1907 supplements. Sheikh Fazlollah Nuri, the conservative cleric from Tehran who had briefly supported the constitutionalists in the summer of 1906, became a key opponent of modern democratic reforms and its civil

liberties. He held that concepts such as freedom and democracy were irreconcilable with the sharia, and opposed granting equal rights to Iran’s minorities (Zargarinejad, 1995: 162). He also refused to recognize the Parliament as a legislative body, nor would he recognize an independent secular judiciary. He maintained that the judicial and legislative powers had to remain with the ulama (Zargarinejad, 1995 :166). 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 called the MPs who pushed for the ratification of these civil rights as “base, knavish and dishonored people.” The sharia 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” (Zargarinejad, 1995: 159-161 and Mojtahedi, 1979: 58-60).

Iran’s minorities also fought for their rights during the Constitutional Revolution. Zoroastrians complained about the prejudice and harassment they faced daily and demanded the ratification of Article 8 for 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

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<sup>8</sup>. Tsadik estimates that there were 40,000 Iranian Jews out of a population of 10 million in the early twentieth century (See Tsadik, 2005: 276). There is also a long

history of Muslim polemics against Jews, some of which were composed by Jewish converts to Islam who wished to prove their allegiance to the new religion (See Tsadik, 2005: 95-134).

asked in one such petition (See Mozakirat-e Majles Rabi' II, 6, 1325 (May 14, 1907): 169. See also Mozakirat-e Majles, Jamadi 1, 5, 1325 (June 17, 1907)).<sup>9</sup> Armenians threatened to seek sanctuary at European legations if such rights were not ratified (Mojtahedi, 1979: 60). 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>10</sup> As a result of these pressures, Article 8 of the Supplementary Constitutional Law, which recognized all [male] Iranians equal before state law, was ultimately ratified. Equal rights for minorities were also incorporated into articles dealing with the nation's finances. These articles nominally outlawed the practice of collecting jaziye taxes from non-Muslims and paved the way for the more extensive reforms of the Pahlavi era.

### **Capitulations Rights and Iran's Justice System**

In the nineteenth century, European imperialist powers began to take advantage of Iran's unequal judicial laws to further interject themselves into its political system and carve a greater sphere of influence for themselves. The arbitrary nature of Iranian justice, and the fact that in conflicts between Muslims and non-Muslims, sharia law prevailed, gave an opportunity to European states to demand ever increasing capitulation

rights for their citizens living inside Iran. Capitulation refers to a treaty in which a sovereign state, unilaterally relinquishes authority over some of its domestic judicial matters to a foreign state. In a legal dispute involving a native and a foreigner, the foreigner is either immune from prosecution, or he may involve his consulate for adjudication, in which case he receives a more favorable verdict.

Capitulations agreements dated back to the Mongol domination of Iran. Britain and France had acquired some limited capitulations rights in the Safavid era and extended it to their well-to-do co-religionists in Iran. In 1715, shortly before his death, Louis XIV requested protection for Catholic citizens of Iran as part of a trade agreement with that country. But after Iran's defeat in the 1926-28 Russo-Persian wars, the Iranian government agreed to grant much more extensive extraterritorial rights to the Russians. Soon, Britain and France also began to demand increased capitulations rights for their citizens. They became advocates of religious minorities, merchants and local dignitaries, who sought protection at their consulates in disputes with Muslims and also sheltered and manumitted runaway slaves (Nateq, 1996).

Various groups of Iranians applied for these protections. Slaves were aware that Britain and Russia had abolished slavery in the territories under their control and granted manumission documents to some

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<sup>9</sup> But members of the Zoroastrian community refused to align themselves with Jews and Christian Armenians, perhaps because they ranked higher in the old religious hierarchy of Iran.

<sup>10</sup> I am grateful to Hourii Berberian for a copy of this statement. See also her *Armenians and the Iranian Constitutional Revolution of 1905-1911* (Boulder: Westview Press, 2001).

runaway slaves who proved they were captured, rather than born in slavery.<sup>11</sup> They appealed to European legations, narrated their captivity tales, and sometimes secured their freedom.<sup>12</sup> The Iranian government and the merchant community loudly protested this intervention into Iran's internal affairs. But they never tried to deal with the primary justification for these Western interferences, namely the institution of slavery.

Parsi merchants from British-ruled India, who were in continuous contact with their Zoroastrian co-religionists in Iran, pressed the shah to protect their communities and Nāsir al-Din Shah issued several edicts (*farmāns*) that outlawed some of the sartorial, sumptuary, and trade restrictions on Zoroastrians and Jews. But the edicts were ignored by the ulama and Parsi merchants continued to turn to the British legation for redress of their legal claims.<sup>13</sup>

Other beneficiaries were wealthy Shi'i Iranians who became Russian citizens. When a Russo-Iranian citizen was in a legal dispute, he no longer had to bribe the Iranian governor to win a favorable verdict. He could simply appeal to the Russian legation to settle the matter (Zerang, 2002, vol. 1: 106-8). Elite Iranians quickly realized they could use this provision to their advantage. They sent their

children to Russian schools, requested Russian citizenship, and then refused to pay taxes or even to pay back large debts to local governors and merchants on the grounds that they were Russian citizens and not subject to Iranian law (Chelongar 2003, pp. 74-75).

Hasan Taqizadeh was the one leading Iranian politician who understood the connection between Iran's unjust treatment of its own people and the manner in which European powers had used this issue to interject themselves into Iran's judicial system and dominate both Iran's domestic politics and its waterways in the Persian Gulf (See Mojtahedi, 1979: 58-59).

Taqizadeh had several concerns: He pointed to the fact that European consulates had developed close contacts with recognized religious minorities who had few legal rights and offered them legal protection in their disputes with Shi'i Iranians. The Russians lent their support to wealthy Armenians, the British backed successful Zoroastrian merchants, and the French assisted Jewish doctors and merchants. In this way, foreign powers interfered in Iran's internal affairs. Taqizadeh believed that if the laws were changed and Iran's minorities were granted equal protection, this would be a stepping

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<sup>11</sup> Capitulation agreement, going back to the early sixteenth century, often included provisions for refugee slaves. The capitulation agreement between the Ottoman Sultan Suleyman and French monarch Francis I (1515-1547) included articles that provided sanctuary for runaway slaves, if they managed to reach the house or the ship of a French resident (See Chelongar, 2003: 15).

<sup>12</sup> The embassies were cautious not to grant too many certificates of manumission (Floor, 2007: IV; Polak,

[1865]1976), Vol. 1: 251-254). See also Eric Massie's forthcoming dissertation on this subject. University of California, Santa Barbara 2019.

<sup>13</sup> Nasir al-Din Shah's reformist minister, Mirzā Taqi Khān Amir Kabir (d. 1952), did initiate a wide array of administrative, economic, military, health, and cultural reforms. But he also ordered the killing of many Babis and the execution of the founder of the new movement the Bab (Malcolm, 1906: 50).

stone in establishing the foundations for a modern secular nation with equality before the law for all. He believed that these domestic reforms would also help end European excuses for intervention and the justification for capitulation agreements (See Mojtahedi, 1979: 58-59).

But Taqizadeh also saw Iran's minorities as an underutilized asset for the nation. Armenian and Zoroastrian merchants had extensive economic ties with their co-religionists abroad. Also, many minorities had attended the Christian missionary schools or, in the case of Iranian Jews, were educated by the more secular Alliance Israelite, and therefore had a Western education and were familiar with Western languages. This background made them valuable assets for a modernizing Iran (Nateq, 1996). Finally, Taqizadeh was convinced that a modern nation, which hoped to have 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. Thus, to modernize and build Iran's economy and society, the judicial system also had to be reformed.

During the Constitutional Revolution, Iranian minorities, particularly Armenians and Zoroastrians (as well as secret Babis) played a critical role in calling for greater democratic rights in the nation and fighting for such rights. Some of the leading orators of the Constitutional Revolution had Babi affiliations. Armenians appealed to their coreligionists in the Caucasus who came to the aid of the embattled constitutionalists in Azerbaijan and Gilan. They played a pivotal role in ending the Minor Autocracy of 1908-

1909 and reestablishing the constitutional order in Tehran in 1909.

Even though Capitulations rights were strictly enforced by the Russian and British government in Iran, it was the Armenian Chief of Police of Tehran, Yefrem Khan, who bravely took it upon himself to arrest Russian and British citizens who broke the law. He incarcerated wealthy Iranian merchants who refused to repay loans, arrested British administrators who got drunk and troubled the neighborhood, and stood up for the junior Iranian soldiers of the Cossack Brigade who were abused by their Russian officers (Chelongar 2003: 110-111).

Constitutionalists tried to end capitulation rights, but did not have the power to do so. After 1917, the new Soviet regime, unilaterally renounced the unequal Tsarist treaties with Iran, including all capitulation rights acquired after the Turkmanchāy Treaty. The struggle to end other European capitulations agreements occupied the Iranian state in the first half of the twentieth century (Chelongar 2003: 119), while legal reforms that reduced inequalities between Iranian men and women and Muslims and non-Muslims continued in the second half of the twentieth century, and until the 1979 Revolution.

### **Conclusion**

Modern definitions of justice are quantifiably different than those supported by history and tradition. Whereas traditional distributive justice sought to apply different standards to uphold the social hierarchy, the stated intent—albeit not the reality—of modern global justice is to treat people of different classes, ethnicities, and genders equally at a

formal level. The Constitutional Revolution attempted to alter some of these premodern notions of justice. Article 8 of the 1907 Supplementary Constitutional Law declared all (male) Iranians equal before the law.

Iranian minorities, Armenians, Zoroastrians, Jews, and Babis and Baha'is all participated in the revolution, even if they had to down play or hide their religious affiliation. Social democratic newspapers, such as *Sur-e Esrāfil* (1907-1908) and *Iran-e Now* (1909-1911) shamed the public over the treatment of minorities and the continuation of slavery. New public spaces such as schools and councils opened up to women and the segregation of streets and other public spaces gradually ended. In the next several decades, casual social contact between unrelated men and women, Muslims and non-Muslims became increasingly acceptable, whether in

the streets, at the universities, or in the workplace, while slavery finally died out. Eventually, religious minorities left their quarters and became more integrated in urban communities. The notions that Iranian (male) citizens should be treated equally before the law regardless of station and social standing, that mutilation and amputation were cruel and inhumane punishments, that slavery ought to end, that laws should be uniformly applied in different cities and towns, and that Iran's minorities should be equal before the law were all introduced during the Constitutional Revolution. But the introduction of these unprecedented civil liberties did not end the many social hierarchies of Iranian society and the struggle over the theory and application of the new laws continued to define Iranian politics in the twentieth and twenty-first centuries.

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