

# **In Search of a House of Justice:**

## **Competition for Monopoly of Right in the Emerging Juridical Field in Iranian Constitutional Revolution (1906-1911)**

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## Abstract

Comprehending the boundaries and barriers of an autonomous judicial field requires understanding the players and the language of the field as well as its intertwined relationship with the field of power. Applying Pierre Bourdieu's account (1987) in the juridical field, I explore the competitions of the intellectuals and ulama [high-ranked religious figures] for the monopoly of right for defining the text of the law in the emerging juridical field amidst the Iranian Constitutional Revolutionary Movement (1906-1911). By reviewing the writings of intellectuals, the parliamentary debates, and the text of the first constitution (1906; 1907), I address the scholarly gap regarding the role of revolutionaries' demand for a House of Justice in the formation of the juridical field. Accordingly, I answer the question how the interactions and competitions of the players of this movement affected the juridical field in early 20th century by influencing the constitution through the claim for the House of Justice.

This thesis contributes to the scholarly understanding of the power relations in modern Iranian history by explaining the relationship between the revolutionaries' demand for the House of Justice and the process of exclusion within the text of the constitution. My findings shed light on the failure of the formation of an autonomous judicial power, as one of the demands of the revolutionary movement; due to the different understanding of intellectuals and ulama's of a House of Justice -as a legislative or judiciary institution. Consequently, this different understanding forms the actual text of the constitution as the main subject of struggle over the monopoly of right in the juridical field. Using the language of sharia by the intellectuals for advocating modern notions such as the rights of the nation resulted in a weaker position of the intellectuals while the symbolic capital of ulama in the field of Islamic Knowledge enabled them to oppose the claim for the right of the nation and to impose the sharia into the constitution.

**To Those Who Stand for Their Rights**

**And To Those Who Stands for the Rights of Others**

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This thesis, as an attempt to understand the first missteps in establishing modern judicial and legislative system in Iran, is first and foremost dedicated to those who lost their lives in the search for justice. I am forever thankful to all of those who fight for establishing the House of Justice and preserving the basic rights of Iranians during the last century.

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## Introduction:

### Toward *Edalat-khaneh*: A National Cry for Justice

On June 7th 2017, one hundred and eleven years after the establishment of the first parliament and ratification of the first constitution, I was working on the final stages of this thesis on the efforts for forming *Edalat-khaneh* [House of Justice] and the debates over “the rights of Persian nation” in the first Iranian Parliament. On the same day, back in Tehran, there were men and women, sitting in the public visitors’ section of the parliament, waiting for the appointments with their representatives. They were holding their petitions with the hope to prove their rights and find justice in the Parliament, “the house of people”. Some of them never got the chance: Iranian Parliament faced a terrorist attack by Islamic State (ISIS) and sixteen Iranian were shot dead.

It was not the first attack on Iranian Parliament: in 1908 Russian officers bombarded the first parliament with the *shah’s order*. The same parliament which was established after a revolutionary movement with the promise for preserving the right of the nation and establishing the House of Justice. Until this day, the House of Justice has remained an unrealized persistent demand, to the point that President Hasan Rouhani criticized the lack of a Justice House in Iran, in mid-May 2017 during his presidential election campaign.

The Iranian Constitutional Revolutionary Movement (1906-1911), as the root of this demand, was a movement in the search of law and justice: it resulted in the establishment of the first parliament and proclamation of the first constitution. This movement was built on intellectuals’ writings, who had been advocating for modernity, for some decades, in Iran. In these writings, justice and equality were among the promises of the intellectuals –such as Malkum khan, Mostashar al-Dowleh, Talibov, Akhundzade- who were promoting a political system based on

the constitution, order and law. From these writings, a cry for law, order and justice emerged during Iranian Constitutional Revolutionary Movement, and the demand for House of Justice was presented as one of the main claims by the players of the movement –merchants, *ulama* [high-ranked religious figures], and intellectuals. Establishment of parliament and ratification of the first Iranian constitution (1906) and its supplementary fundamental laws (1907) were the first steps for formation of the juridical field in 20<sup>th</sup> century Iran. Yet, the juridical field in general and the claim for House of Justice in particular were influenced by 1) the intellectuals' representation of modern notions by the mean of sharia language in their pamphlets, 2) disagreement between *ulama* and intellectuals' understanding of the notion of House of Justice, 3) the struggle of the main participants of the movement over the monopoly of right of determining the law in the juridical field.

The Iranian Constitutional Revolutionary Movement was a momentous event in the history of modern Iran by which, for the first time in Iranian history, the autonomous absolute power of *Shah* [the King] was restricted by law. Iranian scholars assert that it was because of the House of Justice, as a claim in the revolutionary movement, that the modern parliament and judicial system was established in Iran. Though this movement has been widely studied, House of Justice remains mainly neglected as one of the main demands of the revolution. The notion of House of Justice was and still is an equivocal notion: there is an ambiguity regarding the meaning of the House of Justice and what it refers to –a judicial or a legislative system. Many researchers have pointed out to the vagueness of this notion but few have tried to shed light on its meaning. In an attempt to clarify the meaning of House of Justice, Hojjat Falah Tootkar (2009) demonstrates that the main aim of the leaders of the revolution and the political activists were established the parliament. This speaks against the conviction of many Iranian studies scholars who believe that the revolutionaries were aiming for “judicial ministry” in their claim for the House of Justice. Yet, though he focuses on the understanding of the great *ulama* of this

term, he does not offer an explanation regarding the understanding of intellectuals and more importantly the consequence of these different understandings of the House of Justice, despite the fact that he focuses on the great *ulama's* understanding of this term. He remains mostly concerned with the direct relationship between the demand of House of Justice and the establishment of the parliament.

The lack of analysis from a sociological perspective on this conceptual gap and its effect on the formation of the juridical field is evident, since the scholarly works on the Iranian Constitutional Revolution are not concerned with the consequence of the ambiguity of House of Justice on the interactions between the key players of the movement, the text of the law, and the formation of modern judicial field. In order to analyze the role of the players in the juridical field in early 20<sup>th</sup> century and the formation of the constitution, I apply Pierre Bourdieu's field theory. Bourdieu emphasizes the players' competition for the monopoly of right in the search of determining the law, in highlighting the interactions of players in the juridical field. I use the books and pamphlets written by intellectuals, newspapers, the text of constitution as well as parliamentary debates to offer an explanation of the player's intertwined relations within the field of power -including the field of knowledge- and their struggle to enforce their group interests and benefits within the text of the law. In this context, I answer the question "How the interactions of players in the Iranian Constitutional Revolution formed the juridical field in early 20<sup>th</sup> century Iran by effecting the first constitution through the claim for *Edalat-khaneh*?" For answering this question, I analyze writings of the intellectuals and the text of the law, as well as the interactions and competitions of players of this movement by analytically narrating the events of the Iranian Constitutional Revolution.

To situate my analysis in its historical context, I first offer a brief background on this movement. The Iranian Constitutional Revolution was rooted in the 19<sup>th</sup> century reforms in Iran's state. In the 19<sup>th</sup> century, losing major lands at the Northern border to Russia as a result of failure in a



few wars brought about a series of reforms, started by Abbas Mirza (1803–1828), the crown prince. These reforms were followed by three other short-term reforms in the Naser-ed-Din Shah era (1848-1896), headed by Mirza Taqi Khan AmirKabir (Prime Minister, 1848-1851), Naser-ed-Din Shah (the king himself 1858–1861), and Mirza Hussein Khan Sepahsalar (Prime Minister, 1871-1873). The reforms in Naseri era, which one of its significant characteristics was judicial reforms and reducing the influence of the Islamic law and clergymen, faced severe backlashes by the oppositions including the clergymen and *ulama*, courtiers, government officials, and women of the royal harem, and finally failed to fulfill its purpose. (Adamiyat 1983; Adamiyat 2006; Amanat 2004; Teymoori 1978) The failure of numerous reform attempts, accompanied by deterioration of the economic, social and political situation of the country in the last three decades of 19<sup>th</sup> century, resulted in the excessive discontents of different groups of the society.

The economic disputes between Iranian and foreign merchants and the state's discriminatory tariffs against Iranians merchants ignited revolts in the different cities of Iran which soon turned into a movement requesting law. Early in the 20<sup>th</sup> century<sup>1</sup>. The bastinadoing of two Iranian merchants, who were accused of increasing the price of the sugar, resulted in massive protests financed by the merchants. The protests were followed by the help of *ulama*, a number of intellectuals and the public who took sanctuary in a holy shrine in Tehran. The key participants in the movement sent the list of their claims to *Shah*, including a call for the establishment of

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<sup>1</sup> One of the substantial problems of the merchants in late 19<sup>th</sup> century was the establishment of “the British Imperial Bank” and “Russian Discount and Loan Bank”. Though Iranian merchants were supporting modern banking the Russian and British banks had created a monopoly in favor of the foreign investors and merchants. In return, Iranian merchants, opposing the presence of foreign banks and their discriminatory competition, in a failed attempt tried to establish their own system of banking (Bayat 1991). These pressures on merchants and this failure of reforms were of the causes of the demand for critical change in the society. (See also: -“BANKING – Encyclopaedia Iranica.” 2016)

House of Justice. On the twenty-first day of the sanctuary, the *Shah* accepted the demands of revolutionaries and issued an order for establishing the House of Justice. However, the *Shah's* failure to fulfill his promises including organizing the House of Justice, resulted in a massive set of protests and more significant sit-ins till summer 1906, when *Shah* accept the new demands of the revolutionaries: the first parliament of Iran was established, and Iranian constitution was proclaimed.<sup>2</sup> One year after the proclamation of the constitution, the hasty version of the constitution which lacked the rights of the nation, was revised. After long debates and disputes over the constitution and the role of Islamic values in the text between *ulama* and intellectuals, the supplementary fundamental laws were approved on October 7, 1907.<sup>3</sup>

To answer my question regarding this dispute and its consequences, I first give a brief review of relevant scholarly researches on Iranian Constitutional Revolutionary Movement. I then elaborate on my methodology and my theoretical framework –Bourdieu's theory of the field. Following that, I begin my empirical chapters with reviewing the writings of two prominent modernist intellectuals of the time –Malkum Khan and Mostashar al-Dowleh- and a newspaper –*Qanun* [the law]. Here I highlight the importance of the notions of constitution, law and order, and the rights of the nation in these intellectuals approach; considering the fact that pamphlets of these intellectuals gave a conceptual basis to different players to pursue their demands during the movement. Afterward, I explain the interactions and competitions of the players of the field of power in the formation of the juridical field in the early 20<sup>th</sup> century by offering a more specific background to the constitutional movement. Finally, I move on to analyze the text of the constitution and its supplementary fundamental laws which are

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<sup>2</sup> For further information on the events of the Iranian Constitutional Revolution see Bayat 1991; Katouzian 2011; CONSTITUTIONAL REVOLUTION ii. Events – Encyclopaedia Iranica” 2016; Boozari 2011”.

<sup>3</sup> The details of the events will be discussed accordingly in the second empirical chapter “Struggle over the monopoly of Right: the Interactions and Competitions of players of revolution”.

influenced by the competition of players, in order to track the promise of rights of the nation and the outcome of the claim for the House of Justice.

This setting provides the context for my final argument that the lack of parliamentary debates on the House of Justice shows that the *ulama*'s understanding of House of Justice as a legislative system was adopted by the parliament. Therefore, there are no concrete steps for establishing a modern judicial system. Yet, the juridical field was influenced by intellectuals and *ulama*'s competition for the monopoly of the right to determine the text of the law. The intellectuals use the sharia language and logic to advocate for the modernist notions, such as the constitution, rights of the nation, the freedoms of speech and freedom of the press which enables *ulama* to reject a secular constitution. As a result, the *ulama* became the dominant figures in the emerging juridical field, as they had the symbolic capital in the field of Islamic knowledge and Islamic judicial section. Therefore, the process of the exclusion of minorities begins within the constitution by the means of religious privileges.

## Chapter 1:

# The Competitions over Monopoly of Right: A Sociological Approach

In this section, from various scholarly works on Iranian Constitutional Revolutionary Movement, I briefly review some of the relevant works to highlight a scholarly gap regarding the struggle of intellectuals and *ulama* over monopoly of right for determining the text of the law in the context of demand for House of Justice. Following that, I offer a short review of Bourdieu's theory of field, in particular his account on the juridical field which I choose as my theoretical framework to explain the power struggle for the dominance in the emerging modern judiciary system in Iran. Later in this section I elaborate my methodology where I have relied on archival data to extract the arguments of intellectuals, and discuss the competition between ulama and intellectuals over the text of constitution.

### 1.1. The Untold Story: Lack of Scholarly Studies on the Relationship between the House of Justice and the Constitution

Iranian Constitutional Revolution is one of the widely studied events in modern history of Iran since it was as a result of this revolution that for the first time in the history, the rule of *Shah* has limited by the written law. Besides, this revolutionary movement is significant for Iranian Scholars because it brought a base for persuading the ideas of modernity in the country. Different prominent Iranian studies scholars have studied various aspects of this momentous Iranian episode. Yet, the scholarship on the Iranian Constitutional Revolution, including Veneca Martin 2013; Algar 1973; Katouzian 2011; Janet Afary 1996; and Abrahamian 1983 is widely concentrated on the predicaments that ignites the protests, its consequences, and the

impacts of intellectuals. Of this well-known scholars, there are some who mainly focused on the intellectuals relating or participating in this revolutionary movement. For instance, the renowned scholar, Javad Tabatabaei (2004), is concerned with intellectual thoughts in 18<sup>th</sup> and 19<sup>th</sup> century Iran. Tabatabaei, reflecting on the traditionalist ideas and theory by conceptualizing it as “rigidity of the tradition”, bring a narration of the development of the ‘modern ideas’ in the realm of political thoughts in Iran. He follows this idea in the Itinerary of the Iranian travelers and diplomats to European countries in Naseri Era; the travelers who were mainly engaged with the features and were neglecting the modernity and modern institutions in those countries which resulted in the misunderstanding and the erroneous representation of the ‘western progress’ in their writings. Tabatabaei also follows this influence of modern notions in the transformation of the Persian language. The other Iranian scholar, Ajodani (2003), in his famous book “Iranian constitutionalism”, reviewing four of the most prominent intellectuals of the time, focuses on the concepts such as “nation”, “state”, “guardianship of the Islamic jurist” and freedom for this intellectuals. Ajodani in his book highlights the contradiction in the understanding of this intellectuals of the concept of modernity and constitutionalism. He argues against the scholars who portrait Mirza Malkum Khan a ‘progressive’ intellectuals and asserts that unlike his books, Malkum in his newspaper –*Qanun*– purposefully offers a controversial wrong understanding of modern notions. Yet, though Tabatabaei highlights the clash between the rigidity of tradition and the modern ideas, he is not focusing on the clash between *ulama* and intellectuals.

On the other hand, on the issue of House of Justice, Hojjat Falah Tootkar (2009) reviews the idea of the Iranian scholars who believe the revolutionaries were aiming at a justice court and judicial system. Yet, he sides with the perception of two prominent *ulama* of the time – Tabatabaei and Behbahani- who he claims were understanding House of Justice as a parliament. In his work, however, Tootkar neglects the ideas of intellectuals of the time and the presentation

of this demand in the newspapers of the time. Besides the ambiguity of the notion of House of Justice, the struggle of *ulama* and intellectuals in defining it –in the form of constitution or the judicial court- is mainly neglected in the studies of Iranian constitutional revolution scholars. The competition of these players of the constitution movement for the monopoly of right for defining the law directly influenced the text of the constitution and its supplementary fundamental laws.

The work of Iranian scholars mainly fail to draw a direct line between the *ulama* and intellectuals' understanding of House of Justice and its sequence effect on the competition over the text of the constitution. The role of power relations and struggles in forming the modern judicial system –via the claim for constitution and House of Justice- is yet to be studied. For that reason, I focus on the interactions and struggles among the participants of the Iranian Constitutional Revolution. Accordingly, Bourdieu's theory of field and in particular his approach toward the juridical field gives me a suitable theoretical framework since it focuses on the interactions of the players within the field.

## 1.2. Struggles over Monopoly of Right: a Bourdieusian Account on the Juridical Field

I'm theorizing the emerging juridical section -beginning with making the constitution-, as a field and analyze it in the relationship with the political field. Using Bourdieu's notion of the field as a conceptual framework, I explore the power struggle and the attempt over reaching the monopoly of right in the juridical field for determining the law during Iranian Constitutional Revolution. The formation of the field of the law, its prominent player, and its relationship with other fields, and how it became an autonomous field are well represented in the work of Pierre Bourdieu (1987). Bourdieu is predominantly referring to modern European and Western countries –in particular France, in late 20<sup>th</sup> century- when he argues for the intertwined relationship between the juridical field and the field of knowledge and the political field. Yet, acknowledging that fact, the struggle of the players can be traced to Iran in early 20<sup>th</sup> century.

in my work, I am interested in applying his account on the fields and in particular the juridical field to illustrate the different actors –intellectuals, power holders, merchants, and *ulama*- of different fields who interact with each other to form the first Iranian Constitution and its supplementary law, and how this interaction influenced the promise of justice embodied in the Constitutional Movement in early twentieth century. Besides since the early modernist intellectuals in Iran, who were concerned by the notions such as the constitution and the right of the nation, were France-educated and highly influenced by the French Constitution, approaching the formation of the modern judicial system from this perspective will be enlightening.

In an attempt to move beyond the duality of agency-structure, Pierre Bourdieu introduces the notion of field. The field in Bourdieu's perspective is "a social topology, but one that is differentiated into several domains that, while connected in the substratum of the same social space, may be treated as analytically distinct" (Martin 2003, 23), shaped and reshaped by the actions of the players within the field. According to Bourdieu, "Each agent is defined by her position in a field with its own themes and problems, at least so far as the field possesses autonomy." (ibid, 23) There are struggles over the "legitimate principles" and power relations between different fields as well as a struggle within a specific field. Yet, the fields hold a semi-autonomous position. In Bourdieu's view,

Each field has an *Eigengesetzlichkeit*<sup>4</sup> (cf. Bourdieu 1990b, p. 389; 1993, p. 72). This does not mean that external events or factors are not important for actors, but they do need to be translated to the internal logic of the field (see Swartz 1997, pp. 128, 215)—akin to the principle that the magnet may cause the field, but it is the field that has the effects on the iron filings. (ibid, 23)

The actors within and between these fields, relied on their habitus, act accordingly with their social, economic, cultural or symbolic capitals, and are engaging to achieve the dominance

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<sup>4</sup> The Weberian term meaning inherent lawfulness (Martin 2003).

within a field: “the values of cultural and economic capital are set and reset continuously in the course of ongoing conflicts within an interactive and intersubjective social context, rather than determined in advance by material conditions.” (Steinmetz 2007, 47) Therefore, the interactions of these players in the search of capital in the different subfields and in the mega field of power occur in a social setting which is not necessarily defined by objective circumstance. In fact, the struggle over the rights and attempts for the dominating a certain narration in a given field is not particularly material but subjective. One of these fields, which Bourdieu is concerned with, is the juridical field.

Pierre Bourdieu (1987) in his article “The Force of Law: Toward a Sociology of the Juridical Field” gives an account of the formation of the field of the law, its prominent player, and its relationship with other fields, and how it became an autonomous field. Yet, though the law claims to be an autonomous field, it follows the benefits of a certain class. Bourdieu, criticizing the thinkers who neglect the “social base” of the autonomy of the field, writes:

The historical conditions that emerge from struggles within the political field, the field of power—which must exist for an autonomous social (i.e., a legal) universe to emerge and, through the logic of its own specific functioning, to produce and reproduce a juridical corpus relatively independent of exterior constraint. But in the absence of clear understanding of the historical conditions that make that autonomy possible, we cannot determine the specific contribution which, based on its form, the law makes to the carrying out of its supposed functions. (Bourdieu 1987, 815)

The juridical field is less autonomous since it is intertwined with the field of knowledge and the political field and different actors interact with each other; meaning this field is open to certain people who have access to it through the field of knowledge –those who are going to law school- or the ones who have access to the political field. Bourdieu gives an account on the instrumental point of view in studying the law, argues that this approach “tends to conceive law and jurisprudence as *direct reflections* of existing social power relations, in which economic determinations and, in particular, the interests of dominant groups are expressed: that is, as an



instrument of domination. The theory of the *Apparatus*, which Louis Althusser has revived, exemplifies this instrumentalist perspective.” (ibid, 814) Yet, Bourdieu criticizes Althusser by arguing that how ideology has formed and maintained is more important in studying this process.

For Bourdieu, the law is the way to reclassify social reality so he is concerned with the struggle of control over legal text. He is concerned with the layers of law and how different knowledge systems became valid itself. He highlights the material process of creating the legal social field, the habitus and the interests which are playing a role in determining the interpretations of the text. It is not made out of ideology but the interaction of the players –professionals- within the field: “a division of labor resulting from the competition among different forms of competence, at once hostile and complementary”. (ibid, 821) In this sense, focusing on habitus, the class interests of the specific groups is not necessarily based on rational calculation. Bourdieu, talking about the “Structural hostility“, emphasizes that the “hostility is at the origin of a permanent symbolic struggle in which different definitions of legal work as the authorized interpretation of canonical texts confront each other.” (ibid, 821) Yet, Bourdieu emphasizes that “Legal scholars, through the work of rationalization and formalization to which they expose the body of rules, carry out the function of assimilation necessary to ensure the coherence and the permanence of a systematic set of principles and rules.” (ibid, 824)

In this thesis, I am concerned with the formation of the juridical field in Iran: the emerging stage beginning with the texts of the intellectuals on the importance of justice –with a modernist understanding of it-, and its continuation as a claim for the house of justice during Iranian Constitutional Revolution and later the ratification of the first Iranian Constitution. Therefore I particularly focus on the very first legislators in the early 20 century Iran, not the lawyers and solicitors to see if the kind of hostility that Bourdieu is referring to, can be tracked down the struggles among the players of the juridical field who were competing to protect their own right

to determine the legality and illegality. These players who actualized the promises for the justice through the constitution are mainly intellectuals, *ulama*, nobilities, and the merchants; the groups who were struggling not only for the interpretation but also the creation of the text. These players, as Bourdieu (1987) highlights, were competing “for monopoly of the right to determine the law” within the emerging juridical field.

### 1.3. The Story of a Historical Exploration of Texts: Challenges of Archival Methodology

Applying Bourdieu’s theory of fields as my theoretical framework, in my thesis focused on the formation of the juridical field in early 20<sup>th</sup> century, I use historical sociology methodology, and in particular I apply archival method. I concentrate on the text of intellectuals to highlight their understanding of the notions such as justice, nation’s rights and constitution –which were crucial in shaping the first constitution after the revolutionary movement.

My main research question is “How the interactions of players in the Iranian Constitutional Revolution formed the juridical field in early 20<sup>th</sup> century Iran by effecting the first constitution through the claim for *Edalat-khaneh*?” For answering this question, I offer an understanding of the formation of the legal field in 20<sup>th</sup> century Iran via the demand for *Edalat-khaneh* [House of Justice], which was one of the main claims of Iranian Constitutional Revolutionary Movement (1906-1911). For that, I follow three steps: first, I review the understanding of intellectuals of the justice and constitution in their own writings; second I analyze the power struggle between intellectuals and *ulama* to achieve the monopoly of right in the new emerging order to define the text of constitution; finally I look into the text of constitution to track the

influence of this power struggle within the constitution and its supplementary fundamental laws, and to follow the fate of the claim for House of Justice<sup>5</sup>.

I focus on intellectuals' understanding of the notion of justice as well as law and order, since they were one of the key players in this momentous revolutionary movement. Intellectuals were the ones who introduced the key notions such as the constitution, nation, and freedom of the press and the right to the assembly which gave a basis for revolutionaries to demand the rule of law. Intellectuals understanding of these notions determined the direction of the formation of the field, therefore I believe it's crucial to reflect on their underrating relying on their own writings.

Besides, I analyze the interactions of the players of the field of politics in the Iranian constitutional revolution –including merchants, intellectuals, and *ulama*- and the effect of the struggle over the monopoly of right on the text of the constitution (1906) and its supplementary fundamental laws (1907). Using Bourdieu's theory of the field, I illustrate the interactions of different players in the field of power in an attempt to be the dominant player and achieve this monopoly in the juridical field.

My study is a historical sociology which enables me to track the problematic of current Iranian judicial system bewildered between modernist and Islamic traditional ideas, back in the history, when the first steps for establishing the rule of law were taking in the country. As Charles Tilly suggests:

The analysis should be concrete in having real times places, and people as their referents and in testing the coherence of the postulated structures and processes against the experiences of real times, places, and people. They should be historical in limiting their scope to an era bounded by the playing out of certain well-defined processes, and in recognizing from the outset that time matters –that when things happen

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<sup>5</sup> In this thesis, on the events of movements, I mainly focused on the years 1905-1907 and I'm not engaged with the bombardment in 1908 and its following events.

within a sequence affects how they happen, that every structure or process constitutes a series of choice points, outcomes at a given point in time constrain possible outcomes at later points in time. (Tilly 1984, 14)

Therefore, for following my three steps in a historical context, I found the archival method the most suitable method for collecting data. Ann Laura Stoler (2009) emphasizing on the necessity of keeping a critical approach toward the archival materials –in particular the official colonial archives- writes:

I treat these colonial archives both as a corpus of writing and as a force field that animates political energies and expertise, that pulls on some “social facts” and converts them into qualified knowledge, that attends to some ways of knowing while repelling and refusing others. (Stoler 2009, 22)

Trying to follow the same path and critically engaged with my archival materials, I explored archival documents of the time, including some pamphlets, their letters, newspapers to offer their understanding of justice and its relationship with law, order and house of justice –which later brought up by revolutionaries. To underline the perception of the prominent intellectuals of the claim for House of Justice, in particular I concentrated on two pamphlets by Mirza Malkum Khan –“the Call of Justice” and “the Notes of Law”- and “One Word [*Yek Kalame*]” by Mostashar al-Dowleh; all three pamphlets are published in the format of book in Persian language. To follow the translation of the ideas of these intellectuals on justice and law to the targeted population –elites as well as public-, I also reviewed a Newspapers of the time: *Qanun* [the law] which was published by Mirza Malkum khan before the start of the constitutional revolution. The newspaper was contained 41 issued which I reviewed them to highlight Malkum’s attempt to make the notions of modernity compatible with sharia.

Besides, I focused on the text of the first constitution (1906) and its supplementary fundamental laws to highlight the impact of the struggle over the monopoly of right in the emerging juridical field in the text, and to demonstrate the process of excluding the minorities as a result of these struggles. In the following three chapters, I elaborate my findings from these archival materials.

Finally, I used the Parliamentary debates to follow the presentation of the notion of House of Justice and its role in the formation of the modern judicial system in the first and second legislature. To do so I used the digitalized software of the parliamentary debates and searched for the following keywords: House of Justice (*Edalat-Khaneh*), justice (*Edalat*), and court (*Adlyeh*).

The digitalized archive of the parliamentary debate was helpful in following the idea of the house of justice after the proclamation of the constitution. Yet, my main obstacle in the process of writing thesis was a rather limited time for a research which resulted in my compromise in choosing my selected intellectuals and reviewing the newspapers. Besides, three weeks in my field in Tehran did not offer me the chance to go through all the related books and articles which I believe were helpful in establishing my argument. Furthermore, due to time considerations, I focused on some pamphlets written by the intellectuals before and during the constitutional revolution not by *ulama*, and for *ulama*'s perspective I mainly rely on the second-hand analyses and narratives. Reviewing the writings of the *ulama* as well as the reactionaries and the opponents of this movement on the subject of modernity and modernization, justice and constitution, would shed a brighter light on the claim for House of Justice and its influence on the formation of the juridical field in the early 20<sup>th</sup> century Iran.

## Chapter 2

# Advocating Modernity by Traditionalism: Exploring the Writings of Intellectuals

In this chapter, I focus on the presentation of the modernist concepts such as the constitution, law and order, the freedom of speech and freedom of the press, and the rights of the nation in the writings of 19<sup>th</sup> century Iranian intellectuals as the key players of the revolutionary movement. Intellectuals are in particular important because they formed the claim for House of Justice and constitutionalism through their writings and advocating a new judiciary system. Here I mainly concentrate on two modernist intellectuals –Mirza Malkum Khan and Mostashar al-Dowleh- because of their significant role as the first intellectuals who introduce these notions to Iranian audience by using the language of Sharia: they shaped the later understanding of these notions by the public and paved the way for *ulama* to demand an “Islamic” constitution.

Prior to reviewing their writings, I set Iranian intellectuals in their historic background by briefly reviewing the status of this group in the 19<sup>th</sup> century. The Iranian Constitutional Revolutionary Movement (1906-1911), as a movement in the search of law and justice, was influenced by intellectuals’ writings and their advocacy for reforms. Starting from Naser al-Din Shah Period (1848-1896), intellectuals were highlighting the importance of justice and constitution in their writings. Some of the noticeable pamphlets and books were written in this period by intellectuals in the form of writing plays (Akhundzade: Tamsilat), translating novels (Mirza Habib Esfahani: The Adventures of Hajji Baba of Isfahan), creating fictions (Zayn-al-Abedin Maragheei: Siahat-nameh-ye Ebrahim Beyg), writing satires, educational and scientific books (Mirza Abdul-Rahim Talibov Tabrizi), etc.. Intellectuals of different backgrounds – antireligious, agnostic, Islamic modernist– were criticizing political, economic and social

situation of the country and the lack of a constitution, law and order in Iran (“CONSTITUTIONAL REVOLUTION i. Intellectual background – Encyclopaedia Iranica” 2017). However, some intellectuals such as Malkum were hopeful of the internal reforms which were conducted by prime ministers and *shah* himself.

Approximately all of the late 19<sup>th</sup> and early 20<sup>th</sup> century Iranian intellectuals were Western-educated, and were mostly based in Europe, Russia, Istanbul and the Caucasian cities. In their writings, justice and equality were among the promises of these intellectuals who were promoting the constitution, order and law: “Persian reformers sought to equate the notion of ‘adālat with the ideals of social justice and citizens’ equal rights embodied in the French term *égalité*.” (ibid) In the following decades, the ideas of these Intellectuals were the key determinant of this movement, and intellectuals were one of the key players in the formation of the legislative system and the legal field in Iran<sup>6</sup>. Influenced by the writings of the leading intellectuals, this new generation of intellectuals were collaborating to further the revolutionary movement and its demands.<sup>7</sup> (ibid)

Among these thinkers and activists, here I focus on two of the most influential intellectuals of the time: Mirza Malkum Khan and Yousuf Khan Mostashar al-Dowleh, who were of the first thinkers that highlighted the importance of law and justice in the country. These two intellectuals are important for two main reasons: first, since they were the thinkers who introduced many of the modernist notions to Iranians, they highly shaped the following

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<sup>6</sup> Yahya Dawlatabadi and Mirza Hasan Roshdiye (who were advocates of modern system of education in Iran), Mohammad-Mahdi Sharif Kashani, (one of the prominent *ulama*’s, Abd-Allah Behbahani’s advisor) journalist Mirza Jahangir Khan Şur-e Esrafil (the editor of Şur-e Esrafil newspaper) were the intellectuals directly engaged in the Constitutional.

<sup>7</sup> The request for House of Justice, during the constitutional movement and when the protesters take sanctuary in Britain embassy, was written down by Yahya Dawlatabadi, one of these intellectuals (For further information see: Kermani 1983).

understanding of concepts such as the constitution, freedom of press and speech and so on<sup>8</sup>. Second, they tried to reach a wider audience –including power holders and *ulama*, as well as the public- by claiming that the European modernist notions and Islam are compatible.

Mirza Malkum Khan (1833-1908), the legendary reformist and the most significant advocate of reforms in Naser al-Din Shah, was a French-educated and Iranian diplomat. Malkum, who has a significant role in emerging reforms in Naseri era by writing several reformatory writings, was the one who introduced the terms such as reform, consultative council, nation, right of people in his writings such as *Ketābčā-ye ġaybī*. (Amanat 2004; Algar 1973; Adamiyat 2006)<sup>9</sup>. The concepts which Malkum introduced in his writings were followed by other intellectuals of the time and were influential in shaping the first Iranian constitution. In his writings, Malkum was primarily concerned with *qanun* [law, constitution] and was advocating for the formation of a sort of parliament.

Mostashar al-Dowleh was an Iranian Diplomat working in Saint Petersburg, Tiflis, and Paris. He was a friend of Mirza Malkum Khan and according to Nazem al-Islam Kermani, the book “*Yek Kalame* [One Word]” (referring to constitution) was the result of one of the conversations of these two intellectuals. Kermani (1983), one of the intellectuals who participated in the revolutionary movement and wrote one of the most important entries on the events of the movement, writes that Mostashar al-Dowleh’s writings were the instructor of some intellectuals.

<sup>8</sup> Here I am mainly concerned with the social implications and effects of their understanding of modernity, not its profundity or superficiality.

<sup>9</sup> For more information see: Bamdad 1992; Kermani 1983; Sasani 2003; Katiraei 1976; Mostofi 1998; Malkum 2002; sayex 2001.



## 2.1. Introducing Modernist Notions: Emphasizing on the Importance of the Constitution

In one of his writings, *Neda-ye Edalat* [the Call of Justice], on the importance of law and constitution, Malkum writes that the ‘progress of the world’ has reached to the point that every country will have a law in a quarter of century, and it depends on Iran itself to establish its own constitution or be forced to a constitution by foreigners. (Malkum 2002) Malkum’s approach toward justice and law is also evident in his newspaper *Qanun* [law]. Malkum’s reformist ideas which were represented in his articles was translated into the newspaper which was offered to the wider public.<sup>10</sup> In the very first page of the first issue of the newspaper Malkum writes:

Iran is filled with the God’s blessings. What nullifies all these blessings is the lack of *qanun* [law; constitution]<sup>11</sup>. Nobody possesses anything in Iran since there is no qanun. We designate a ruler without qanun, we dismiss a brigadier without qanun. We give away the government’s right without qanun. We put people in jail without qanun. We grant the treasury without qanun. We slaughter people without qanun. (*Rouznameh-ye Qanun*, no.1, p.1)

Malkum continues that in a country where no one is allowed to bring the issue of the constitution the majestic justice is senseless. (*Rouznameh-ye Qanun*, no.1, p.2) Malkum asserts that “the main point and demand of Iranians is that the justice has to be definitely according to *qanun*.” (*Rouznameh-ye Qanun*, no.1, p.2) He emphasizes on *Shah*’s position in favor of establishing *qanun* and conducting reforms in the same issue of the newspaper, in a tone which seems that tries to keep him aligned with intellectuals’ demands and drew a reformist picture of the *shah*. (*Rouznameh-ye Qanun*, no.1, p.3) Yet, criticizing Iranian ministers, he writes:

<sup>10</sup> *Qanun* was published from February 1890 – 1898, overall of 41 issues. Mirza Agha Khan Kermani and Seyed Jamael al-Din Asadabadi, two of the most renowned intellectuals of the time, were among its colleagues. (*Rouznameh-ye Qanun*, 1990)

<sup>11</sup> Since the word *qanun* means both law and constitution, in this chapter I will use the same Persian word *qanun*. For the name of the newspaper, I will use *Qanun* [the Law].

Iran is poor, Iran is a pity, Iran is a beggar, because Iran does not have constitutional justice, and Iran does not have constitutional justice because Iran's ministers could not accept that besides their own personal rational power, there are scientific achievements for the progress of countries. (Malkum 2002, 149)

Though Malkum's writing is called "the Call of Justice", it focuses on the importance of law/constitution and its implementation. It's a practical text which instead of elaborating the philosophical and political connotations and implications of justice and law, is more concerned with the concrete ways to impose a legislative system in Iran. In his approach, the law is for clarifying the procedures rather than implementing justice. Besides, there are only few mentions of House of Justice in his writings –for instance in *Qanun* newspaper; though there is no clear elaboration what he meant by the House of Justice in his newspaper.

Malkum emphasizes that qanun should rely on justice and that "the principles of justice has been clarified by God, the thinkers, and intellectuals gradually over the time". For Malkum, "*qanun* is the language and power of justice" and that this "power of justice will not fulfill without publics' consensus." (*Rouznameh-ye Qanun*, no.2, p.2) The consensus he refers to is a consensus over "demanding Qanun". Therefore, in an emotional call for this consensus, he writes:

If you have a religion, demand qanun. If you are engaged with the state, demand qanun. If they have ruined your house, demand qanun. If they do not pay your salaries, demand qanun. If they are selling your rights and status, to others, demand qanun. If you have family, demand qanun. If you have possessions demand qanun. If you are poor, demand qanun. If you have compassion, demand qanun. If you are a human being, demand qanun. (*Rouznameh-ye Qanun*, no.2, p.3)

Mostashar al-Dowleh with his well-known widely-read pamphlets, "One Word [*Yek Kalame*]" is one of the most influent intellectuals in the search of *qanun* and a governance of people, by the people. In this pamphlets, highlighting the importance of the Constitution, he argues that "For French people these codes are the same as Sharia-books for Muslims." (Mostashar al-

Dowleh 2010, 13)<sup>12</sup> Mostashar al-Dowleh finds the constitution of France as important to translate and introduce its codes to Persian for Iranians. Yet, to do so, he makes an attempt to make it compatible with Islam.

## 2.2. Reaching to a Wider Audience: Emphasizing on Modern Notions by the Language of Sharia

Having a progressive approach, which weights the modernization and modernity in European countries as a model, Malkum emphasizes that Islam is not against progress and there is no belief which promotes progress for the sake of human tranquility as much as Islam (Malkum 2002). Malkum constantly drew a connection between Sharia and the modern western concepts such as the constitution, freedom of speech and etc. to insure his audience that these notions do not damage or negatively affect Islamic values. For instance, he equates the Islamic advice for “command what is accepted and forbid what is reprehensible” to freedom of speech and freedom of the press. He encourages the presence of *ulama* in “the parliament of constitution” to follow this Islamic advice. According to Hamed Algar, Malkum has “deliberate refusal to confront the substantive differences between European and Islamic law and an attempt to conceal them behind the presence that qanun meant nothing more than a codified sharia and was therefore innocuous from a religious point of view” (Algar 1973, 191). He assures his readers that it is not necessary to take “all the rituals and habits” from foreigners, and claim that there is a consistency between the idea of progress and the Islamic beliefs:

The idea of all the progressives is that the rules of our religion is the principle of the progress which all the prophets unanimously declared it to the world, and others have used it as their source of power.

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<sup>12</sup> Yet, he elaborates five main differences between the Constitution of France and sharia books, including: “It is the result of a consensus between the state and the people, is universal in its application, is easy to understand, deals solely with temporal affairs, and embraces customary law” (“CONSTITUTIONAL REVOLUTION i. Intellectual background – Encyclopaedia Iranica” 2017)

Therefore, according to our reason and our religion, we have to immediately take all these principles of the progress whether from Japan or England. (Malkum 2002, 138)

Malkum writes that the principles of *qanun* is the same everywhere and that “the principle of the best laws is what god’s sharia teaches us.” The problem, according to Malkum, is the lack of the implementation of the laws.

Assuring his reader that his demand for *qanun* and progress is not against Islam, and trying to reconcile the modernist ideas of progress with the Islamic values, Malkum goes as far to claim that: “the principles of this law is as compatible with principles of Islam that one can assert that the other countries has taken their great laws from Islam.” (*Rouznameh-ye Qanun*, no.5, p.2) He also claims that he’s intentions and his word will be immediately accepted by a wise Muslim. Highlighting the importance of House of Justice in his newspaper, Malkum continues: “for Iranian state and people to continue living in this world, their life, possession, honor and rights ought to be completely preserved from the violation, by the help of a reliable House of Justices [*Edalat-khaneh*].” Following that bringing other examples of the rights of people which have been violated, he concludes: “you are asking what is the path and solution? Our answer and the world answer is confined to these two words: *qanun* and *qanun*. (*Rouznameh-ye Qanun*, no.7, p.2)

Malkum constantly argues in favor of compatibility of *qanun* with the religion: “we do not tend to create new laws. Our wish is only that the masters of the religion and the wisest of the people get together and implement the laws of the sharia of God in a proper way.” (*Rouznameh-ye Qanun*, no.7, p.2) Malkum recognizes the important of *ulama*’s collaboration with the demand for *Qanun* and calls for their advocacy for *Qanun* along with journalists and activists in schools, mosques, and public places. (*Rouznameh-ye Qanun*, no.1, p.3) He emphasize that “it does not mean we do not have any law in Iran [...] our books, and the oral memory of our *ulama* is filled

with the good laws. The debate is over their implementation.” (*Rouznameh-ye Qanun*, no.1, p.2)

Same as Malkum, Mostashar al-Dowleh argues on the compatibility of Islamic values and modern notion of rights of people and constitution by bringing 19 principles and articles of Constitution of France. The very first article, which Mostashar al-Dowleh highlights, is equality in courts and in execution of the law. In this section emphasizing on the equality of all individuals regardless of their positions in front of court and the constitution, Mostashar al-Dowleh brings different verses from Quran and hadith. He concludes the section by writing that:

Now, we must say forthrightly and in all fairness and without bias what this entails. What court in the Islamic world functions in accordance with the principles above? And what judge in a traditional court (*urf*) is given a code of law so that he can treat the subjects, who are an honoured trust from God, in accordance with it? (Mostashar al-Dowleh 2010, 31)

It is worth noting that despite Malkum’s claims that his writings and what he advocate is Islamic and compatible with sharia, he mainly lacks an Islamic narration and direct use of the Quran and Islamic texts in his writings. In fact, he mostly tries to convince the audience by his promises. Unlike Malkum, Yousuf Khan Mostashar al-Dowleh, who was an advocate of a republican form of government, reaches for a religious language and uses the verses of Quran or Hadith in talking about constitution.

Mostashar al-Dowleh—same as Malkum— equates the freedom of press and freedom of speech with the Islamic rule of “command what is accepted and forbid what is reprehensible”. Besides, Referring to Constitution of France, Mostashar al-Dowleh brings the right of the presence of Jury in the courts of law. Explaining the French word jury, once again he offers an Islamic example, a narration from prominent 10<sup>th</sup> century Islamic Figure Sheikh Tusi in order to Islamize the idea of the presence of the jury in the courts. On the issue of “ruler,” Mostashar

al-Dowleh claims that “The Islamic religious law and the opinions of the learned men of Europe are in agreement on this point: the ruler is God himself: “Is not God the justest of judges?” (95:8).”<sup>13</sup> (Mostashar al-Dowleh 2010, 83)

On the other hand, indirectly criticizing the reactionary feedbacks of conservative parts of society and *ulama* toward the idea of reform and constitution, Malkum notably brings the example of the Christians clergymen. He draws a line between Muslim and Christian religious figures and claims that unlike Muslim *ulama* which “put their mission completely according to science, and promoting and completing all the laws in the world”, the Christian clergymen were denying the laws of countries with all their power and are “the worst enemy of scientific rules”. Emphasizing on the importance of establishing a “parliament of constitution”, he continues that one of the biggest mistakes of Iranian prime ministers is that they did not use such a mission of Muslim *ulama*. (Malkum 2002, 143)

In reviewing the writings of two Iranian intellectuals of late 19<sup>th</sup> and early 20<sup>th</sup> century—Malkum Khan and Mostashar al-Dowleh-, I have come to the following main conclusions: first, the main focus of the texts of intellectuals is on the law and order rather than justice: these intellectuals are more concerned with the importance of regulations and laws for governing the country. In particular Malkum’s idea of law is closely connected with a good governance. Second, the tone of these writings is defensive as intellectuals try to justify their modernist ideas. By promising or actually citing the verses from Quran –as Mostashar al-Dowleh does-, they constantly emphasize that the law and order is not in contrast with religion. They evidently use the logic and the language of religion to reach a wider audience. Yet, they are not master of this language and have no social or symbolic capital in the field of religious knowledge and sharia.

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<sup>13</sup> It is worth mentioning that Akhundzade in a letter criticizes Mostashar al-Dowleh’s approach and his efforts to make the Constitution of France compatible with the Islamic Law. He argues against the equality in Islam by bringing the issue of women rights. (Mostashar al-Dowleh 2014)

Third, from the very beginning, the process of exclusion –which later became evident in the constitution and its supplementary fundamental laws- is trackable in the notes by the intellectuals. Though they are focusing on the rights of the nation, their attempts to make law and order compatible with sharia, consequently drives them to neglect the right of religious minorities as well as women. In the next chapter I follow the effect of these writings on the interactions of intellectuals with other players of the movement in an attempt to reach the monopoly of right in defining law the emerging juridical field.

## Chapter 3

# Struggles over the Monopoly of the Right: the Interactions and Competitions of Players of the Revolution

In this chapter, I illustrate the interactions of *ulama*, merchants and intellectuals as the key participants of the Iranian Constitutional Revolutionary Movement amidst the revolution and after the ratification of the constitution in December 1906. Through explaining the alliance of the players of movement over their common enemy and diverse benefits, I answer the question that how players' different interests during the movement resulted in a struggle over the monopoly of right in the defining the law in emerging juridical field in Iran.

### 3.1. Common Enemy and Diverse Interests: Alliance of *Ulama*, Intellectuals, and Merchants

Iranian Constitutional Revolutionary Movement which has its intellectual roots in the writings of intellectuals such as Malkum khan, Mostashar al-Dowleh, Talibov, and Akhundzade, consists of different players with various backgrounds and interests who were in the search of different goals. Not only the intellectuals but *ulama* and merchants, as the key players of the revolutionary movement in the political field, were not homogenous groups but there were different trends and approaches within these groups<sup>14</sup>. Yet, they successfully set an alliance against the state and *shah*.

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<sup>14</sup> Yet, though prominent religious figures were more or less continued their support of the constitutional revolutionary movement, there were not a constant revival inside the religious field. (Amir Arjomand 1981:184).



The collaboration and coalition of merchants, *ulama* and intellectuals, was a non-regular -yet not uncustomary<sup>15</sup>-, alliance to overcome the absolute power of the monarchy. It can be perceived as an understanding between these different players to further their goals through a collaboration; a strategic alliance –with the instrumental rationality- which seeks to reduce the power of *shah* and establish legislative power in order to bring law by the help of merchants’ financial supports, intellectuals conceptualization and *ulama*’s popularity to reach a greater audience.

The Iranian Constitutional Revolutionary Movement which was affected by the writings of intellectuals who for some decades were advocating modernity and were writing on the necessity of establishing an institution for law and order, ignited by the discontent of Merchants. In the 19<sup>th</sup> century the Iranian merchants enjoyed a rather good relationship with the court and officials. Yet, some merchants were suffering from discriminatory competition between Iranian and foreign merchants. (Bayat 1991) In Naseri era, the merchants were advocating imposing regulations and conducting reforms including engaging in international trade, “restricting foreign competition”, and establishing a national bank system to pursue their own interests. (ibid, 46) Consequently, for merchants, the Constitutional Revolutionary Movement was a movement against the absolute power of a corrupt empire which was constantly exploited by foreigners who were imposing treaties, concessions and even discriminatory regulation of customs system.

On the other hand, one of the main reasons of merchants to advocate for implementation of the law was that “No work of Shi’ite jurisprudence dealt adequately with the problems of a modern economy and foreign trade.” (“CONSTITUTIONAL REVOLUTION i. Intellectual background – Encyclopaedia Iranica” 2017) Hence, the merchants, in an attempt to preserve their own

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<sup>15</sup> The 1890s movement against Régie Concession of selling Tabaco as a nationalist anti-imperialist movement is an example of previous collaborations. (see Amir Arjomand 1981, Abadyan 1981)

properties and in the search of endless accumulation of capital, demanded the legislative supervision on monarchy and state's foreign concessions. In short, for the merchants it was a movement in the search of law which could reduce the influence of foreign powers in trades and determine tariffs.

On the other hand, for *ulama* the revolution was an anti-imperialist nationalist and yet Islamic movement. According to Amir Arjomand, "the prominent mujtaheds of Tehran were under constant pressure, not infrequently in the form of threats of assassination, to assume their responsibility of leadership of the nation, to act as spokesmen for the people and not to relent before obtaining their demands in full." (Amir Arjomand 1981, 176). *Ulama*, considering their symbolic capital within the field of power and their popularity among the public, were the flag-bearer of this movement:

The leading role of the *ulama* in the popular movement of 1905 to 1906 becomes easily understandable once that movement is viewed as contemporaries viewed it: a struggle between the people (*mellat*) and the government (*dawlat*) which was not only tyrannical but was also selling the country to foreign imperialists. (Amir Arjomand 1981, 176)

As for intellectuals, they were persuading the goal of a constitutional regime to limit the power of the *Shah* by law in order to conduct their reforms. For intellectuals who were concerned with modernity, it was a movement which could granted the basic rights for Iranians. Yet, it is worth noting that it was a movement by the concession and alliance of different groups and players within the field of power. As Iranian scholar, Homa Katouzian, argues while pointing at "chaos and disintegration" of society, "it was not just the merchants and shopkeepers, but virtually the whole of the (urban) society which rose, not against the landlords but against the state" (Katouzian 2011, 764).

Yet, the ignition of the movement was at some point financially-driven, and "on the eve of the Constitutional Revolution many merchants, landowners, urban notables, and even members of the royal family were heavily indebted to foreign banks. Nearing insolvency, they saw

economic independence as a way out of their financial troubles.” (“CONSTITUTIONAL REVOLUTION i. Intellectual background – Encyclopaedia Iranica” 2017) Besides, the concession of different players was extended in Muzaffar al-Din Shah Era as the government trying to gain capital for its expenses and *Shah*’s set trips to Europe, and accepted to increase the customs revenues by hiring Joseph Naus, a Belgian expert, as the head of custom service in 1898 to regulate the Iran’s customs system. (“CONSTITUTIONAL REVOLUTION ii. Events – Encyclopaedia Iranica” 2016; Bayat 1991). As Ervand Abrahamian writes:

The refusal of the government to erect protective tariffs further antagonized the local manufactures. One British report starts bluntly that although free trade was ruining many branches of native industry, the government was ignoring all requests for higher import duties. The privileges granted to foreign merchants undermined not only local manufactures but also the local merchants. (Abrahamian, 1983, 59)

The Iranian merchants reacted to this reforms and form a series of demonstration in large cities such as Tehran, Isfahan, Tabriz and Shiraz starting from 1900. In 1905, by the support of *ulama* and intellectuals, merchants organized a movement in the capital, Tehran. (“CONSTITUTIONAL REVOLUTION ii. Events – Encyclopaedia Iranica” 2016). In organizing these protests there were mutual interests between groups of religious figures, intellectuals, and merchants which helped them to further their diverse interests and goals<sup>16</sup>. Nevertheless, these protests which were carrying on the voices of justice, equality, and demand for law, was heavily relied on the writings of intellectuals who were representing these ideas in their books and newspapers for decades; the ideas which were presented to a wider audience through the prominent religious who were linking the public to intellectuals.

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<sup>16</sup> Notably, there were religious figures who were against the movement from the beginning, including Sayyed Rayhanollah, Shaykh Abd al- Nabi, Molla Mohammad Amoli and Sayyed Ahmad Tabatabai (For more information see: Amir Arjomand 1981).

Amidst these unrests in the capital in 1905, a culturally sensitive matter, the publication of an old photography of Naus in clergymen clothes, helped merchants to mobilize the public and clergymen against Naus. This incident resulted in the more collaborations of merchants, clergymen, some intellectuals, and public. The situation deteriorated when, Ayn-al-Dowleh, the Tehran governor accused the merchants of keeping the sugar in order to increase the price and bastinadoed two respected merchants. The *bazaar* [traditional powerful market in Iran] went on strike, and the clergymen and merchants took sanctuary in a holy shrine. The sanctuary of intellectuals, leading clergymen and the public, which was substantially financed by the merchants, extended in the following months: some migrated to the holy shrine of Najaf in Iraq and some take sanctuary in British Embassy at Tehran. Supporting the revolutionary movement demands by prominent religious figures –such as Sayyed Mohammad Tabatabaei and Sayyed Abdollah Behbahani<sup>17</sup>- can be understood as a strategic move (“CONSTITUTIONAL REVOLUTION i. Intellectual background – Encyclopaedia Iranica” 2017). Finally, in summer 1906, eight prominent Tehrani merchant met Tehran governor and requested *majles-e mab’ūṭān-e mellī* [an elected national assembly] (“CONSTITUTIONAL REVOLUTION ii. Events – Encyclopaedia Iranica” 2016). A group of merchants along with conservatives and reformist courtiers and clergymen made the arrangement for formation of the first parliament which opened on 7 October 1906. On December 30, 1906, the constitution ratified by *shah*<sup>18</sup>.

<sup>17</sup> Tabatabaei was a “well-known figure whose father had been in sympathy with Malkum and who had himself demonstrated liberal proclivities since the late period of Nāṣer-al-Dīn Shah”, and Behbahani was an “influential mojtahed whose call for political reforms was motivated by expediency, as well as genuine liberal conviction.” (“CONSTITUTIONAL REVOLUTION i. Intellectual background – Encyclopaedia Iranica” 2017)

Behbahani and Tabatabaei are of those players who sees the House of Justice as a legislative part:

*“Behbahani stated clearly that he preferred the term adalat-khaneh to majles-e shura, and that in July 1906, in what was perhaps his most important speech, Tabataba’i demanded the creation of the ‘majles-e mashru’a-ye adalat-khaneh’, adding that he was not demanding mashrutiyyat so soon.” (Amir Arjomand 1981:177)*

<sup>18</sup> For more information on the events of the Iranian Constitutional Revolutionary Movement see: Kasravi (1984), Kermani (1983)

### 3.2. The Internal Competitions of Intellectuals and Ulama

After the ratification of the constitution and during the first two terms of the parliament in Iran, the old alliance for limiting the power of the monarch demolished and new coalitions emerged. In the absence of women and peasants, the first parliament constituted of 6 group/class of people. In the first parliament, Qajar princess with 5% (8 Members of Parliament), *ulama* and *Tulab* [students of Islamic studies] with 29.2% (47 MPs), government officials and grandee with 22.3 (36 MPs), merchants with 17.4% (28 MPs) and guilds with 18% (28 MPs), were of 160 representatives in the first parliament (Ashraf 1980, 119).

The struggle over the monopoly of right on text in the new order has begun: the power of *Shah* was bounded by the constitution and new form of politicizing became possible. Before the constitution, *ulama* had the multiple rights as the religious figures and guardians of Islamic values. They had power over financial matters (financial religious obligations in the form of Zakat, Khoms, etc.), military (by ordering fatwa for Jihad, as they did in the war against Russia), and more importantly the judicial section in which they were the dominant players. Substantially, the main struggle was between intellectuals and ulama; although merchants were pursuing their own interests for preserving their properties which presented in the constitution, they were not highly involved in this competition for the monopoly of right over the text of law<sup>19</sup>.

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<sup>19</sup> It is worth noting that the interests of merchants and ulama were not always aligned. For instance, In Naser al-Din Shah Era, the “council of merchants in Tehran” proposed to “extended its jurisdiction over all matters pertaining” among other reforms and authorizations; a proposal that *Shah* accepted and led to council elections but the councils faced severe opposition by clergymen and officials. These oppositions resulted in the abolishment of the council a year after its establishment. According to Bayat (1991) such a council could never achieve its goals since the structural situation does not tolerate centralization of power, the role of *orfi-shar'i* courts was not clear, and the presence of the officials, clergymen and court members who were against the restrictions and regulations in the economy was significant.

The constitution, therefore, not only tightened the hands of *Shah* as an absolute power, but potentially could significantly affect the power and dominance of the *ulama*. It brings regulations in which *ulama* has no longer have supremacy. As Arjomand argues “it was only after the signing of the Fundamental Law and during the debates on its Supplement (to be ratified in October 1907) that the crystallization of the *ulama*’s attitudes towards constitutionalism, or more specifically towards parliamentarianism, took place.” (Amir Arjomand 1981,177) Therefore, the fight began over the presence of Sharia through the debates on basic rights; the rights that were about to be granted in the supplementary fundamental laws. Amir Arjomand describes the discontent between traditionalist *ulama* and modernist intellectuals in the parliament as followed:

At the end of January 1907, we hear of a number of *ulama* obstructing the elections of the deputies in the provinces. In February, as the Majles began discussions of the Supplement to the Fundamental Law, Shaykh Fazlollah Nuri was evolving a strategy to combat the secular reformers. This strategy was an attempt to build a traditionalist constituency by capitalizing on the issue of the differential rights of the Muslims and the religious minorities while at the same time seeking a rapprochement with the Shah. (Amir Arjomand 1981,178)

Sheikh Fazlollah Nouri was one of the prominent figures among *ulama* and one of the vocal voices against secular trends within the first parliament. Nouri and some other religious figures were mainly criticizing the non-competency of parliaments rule with Sharia (since representatives are not trained), equality of all people before the law, and freedom of the press and association. (Amir Arjomand 1981) Nouri’s proposition in the search of reinforcing the power of *ulama*, finally turned to law as the second article of the supplementary fundamental laws. His proposal was “subjecting all parliamentary legislation to the ratification of a committee of five *mujtaheds* of the highest rank-while organizing a group of *tullab* to demonstrate continuously outside the *Majles* in support of the principle, and to intimidate the unsympathetic deputies.” (ibid, 178) this article was a setback and an obvious failure for those

revolutionaries who were in the search of a secular constitution. According to Arjomand, who sees Nouri's attempts in opposing the constitutionalists as "ideology of Islamic traditionalism", the followings are the main objections of Sheikh Fazlollah Nouri against constitutionalists and parliamentarianism in general:

the inauguration of the customs and practices of the realms of infidelity, the intention to tamper with the Sacred Law which is said to belong 1300 years ago and not to be in accordance with the requirements of the modern age, the ridiculing of the Muslims and insults directed at the ulama, the equal rights of nationalities and religions, the spread of prostitution, and the freedom of the press which is 'contrary to our Sacred Law. (Amir Arjomand 1981, 179)

What Arjomand is describing can be seen as the internal integration of *ulama* within the field of religious culture. They were unified in the attempt to make the defining position of *ulama* in the political field and the emerging legal field, even though their approach for maintaining this dominance were not always identical.

The players of the Iranian Constitutional Revolutionary Movement who actualized the promises of the law through the constitution were struggling not only for the interpretation but also the creation of the text: what Bourdieu calls Structural hostility. It is important to notice that, these players with different interests formed an alliance which after the ratification of the constitution resulted in the struggles for the perusing their different interests. These players were united in limiting the power of the state, and in imposing a government of law by establishing the constitution.

These players, however, followed different interests, *ulama* were advocating for a nationalist traditionalist resistance and intellectuals were mainly concerned with the rights of nation, and freedom of the press and the right to assembly. Yet, even if they understood the meaning, connotations, and implications of the modernist ideas, intellectuals failed to represent them thoroughly to their audience—from power holders to *ulama* and the public. Having an orientalist perspective, these intellectuals tried to impose the modern ideas by covering them as thoroughly

compatible with Islamic values - against other intellectuals' warnings-; to the point that they claimed these modernist notions have been extracted from Islam. Therefore, since the intellectuals were using the language of *ulama*, to promote their 'modern', 'progressive' ideas, when it came to the fight of monopoly of right in the field of judicial system on the text –for fulfilling the promise of House of Justice-, the *ulama* could simply become dominant group because of their control over the language of sharia. They could simply highlight where intellectuals were 'manipulating' sharia to fit it in the term of a secular constitution inspired by France and Belgian constitutions. The symbolic capital of *ulama* enabled them to declare an act or opinion un-Islamic; that's why the supplementary fundamental laws is highly affected by *ulama* as the key players of the field of religion. Due to *ulama*'s familiarity with the language of Islamic law –Sharia- they successfully reached the monopoly of right in determining the Iranian constitution. The manifest and latent effects of these different interests on the text of constitution will be discussed in the following chapter.



## Chapter 4

### The Victory of *Ulama*: Imposing Sharia into the Constitution

In this chapter, I discuss the way the issue of justice and rights was presented in the constitution (1906) and its supplementary fundamental laws (1907). For that I review the impact of the players' interactions in the field of power in the articles of the constitution including: the representation of the merchants' interest in the constitution for preserving their properties, the demonstration of the rights of nation in constitution and its supplement, and finally the exclusion of minorities from the basic rights. Subsequently, I claim that due to the victory of *ulama* in the competition, and by the help of the ambiguity of the notion of the House of Justice, the House of Justice as the main claim of the revolution was not delivered.

The Constitution ratified in December 1906, though the first parliament established five months earlier. In August 1906, a committee consisting of six elites were gathered to work on the constitution. However, due to deteriorating the shah's health condition, the committee only worked for two months on the fundamental laws and the result was a constitution with 52 articles which was mainly concerned with the procedures of the parliament and was silent on the subject of people's rights. Therefore, after the coronation of new *shah* -Mohammad Ali Shah-, a supplementary fundamental laws was necessary. After almost 8 months of working on the supplement to the constitution by a new committee, the supplementary fundamental laws, which was driven from Belgian Constitution (1831), ratified by the parliament On October 1907 and signed by the *shah*. ("CONSTITUTIONAL REVOLUTION iii. The Constitution – Encyclopaedia Iranica" 2017) The effect of the competition of merchants, *ulama* and modernist intellectuals for the monopoly of right for determining the law within the judicial field, which I elaborated in the previous chapter, can be traceable in three main realms in the text of the constitution: Juridical field, economic field, and Basic Rights.

#### 4.1. The Rights for the Few? Representing the Interests of Merchants

The parliament engaged with the issue of banking from the very beginning of its formation and it was of the first debates in the first session of parliament. Establishment of the National Bank of Iran in 1907 was one of the first and most important agenda of the parliament in order to diminish the British and Russian financial domination (“BANKING – Encyclopaedia Iranica” 2016). Abolishing the unregulated revenues and “*pīškaš* (gifts) made to the *Shah* in return for appointments”, and abolishing the benefices from land (*toyūl*) were of the other financial measures by the parliament (“CONSTITUTIONAL REVOLUTION ii. Events – Encyclopaedia Iranica” 2016).

Iran constitution, which established in the first parliament has 13 articles directly engaged with the financial matters and reduced the power of the king and state<sup>20</sup>, for instance “the Majlis held sole jurisdiction over taxes, revenues, and financial laws” (Boozari 2011: 47). The issue of budgeting, transferring national resources, the formation of public companies, state loans, and regulation of financial matters and treaties were other articles engaging with the financial matters and ensuring the benefits of Iranian merchants. In the supplementary fundamental laws, there are another eleven articles<sup>21</sup> concerning with the economic status of the country which by appointing the members of the financial commission and tax regulation mainly guarantees the beneficiary of the Iranian merchants and traders as opposed to foreigners.

Besides, the supplement to the constitution recognized the establishment of a court of property and financial claims [*maḥkama-ye melki o naqdi*] (“JUDICIAL AND LEGAL SYSTEMS v. JUDICIAL SYSTEM – Encyclopaedia Iranica” 2017) along with three other civic courts; a court which merchant were trying to establish since Naseri era. The rule of law was necessary

<sup>20</sup> Namely articles 18, 19, 20, 21, 22, 23, 24, 25, 26, 46, 49, and 56.

<sup>21</sup> Including articles 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, and 105.

for merchants because of their concrete need for preserving their property, proceeding accumulation of capital and protecting their benefits<sup>22</sup>.

#### 4.2. The Rights for Many? First Steps Toward a Modern Judicial System

In the constitution and its Supplementary fundamental laws, there are some article such as article 29 of the constitution and articles 10 and 27 of the supplementary fundamental laws concerned with regard to justice courts and judicial section. For instance in the article 10 states that

No one can be summarily arrested, save flagrante delicto in the commission of some crime or misdemeanor, except on the written authority of the President of the Tribunal of Justice, given in conformity with the Law. [...] (“Iran’s 1906 Constitution | Foundation for Iranian Studies” 2016)

In article 27 on the power of the realm, the judicial power –“determining of rights”- stands next to legislative power and executive power. According to this article “This power belongs exclusively to the ecclesiastical tribunals in matters connected with the ecclesiastical law, and to the civil tribunals in matters connected with ordinary law.” (ibid) Yet, 19 articles (article 71 to 89) directly relate to judicial matters: seven of them (article 80 to 86) are concerned with the order of the courts of law and the appointment of the presidents, members of the judicial tribunals and the Public Prosecutor, and the functions of a judge of a judicial tribunal. The two sections of judicial power - ecclesiastical law and civil tribunals- is evident in article 71:

The Supreme Ministry of Justice and the judicial tribunals are the places officially destine for the redress of public grievances, while judgement in all matters falling within the scope of the Ecclesiastical Law is

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<sup>22</sup> Four courts was predicted in the Supplementary Fundamental Law including “financial claims (*maḥkama-ye melki o naqdī*), the criminal court (*maḥkama-ye jazā*), the court of appeals (*maḥkama-ye estināf*), and the court of cassation (*divān-e tamīz*)” (“JUDICIAL AND LEGAL SYSTEMS v. JUDICIAL SYSTEM – Encyclopaedia Iranica” 2017). Though an autonomous secular system never was formed and the law and education of the courts relied on Sharia.

vested in just mujtahids possessing the necessary qualifications. (“Iran’s 1906 Constitution | Foundation for Iranian Studies” 2016)

Article 73 clearly states that “the establishment of civil tribunals depends on the authority of the Law, and no one, on any title or pretext, may establish any tribunal contrary to its provisions.” According to article 72 “disputes connected with political rights belong to the judicial tribunals, save in such cases as the Law shall except.” In a related subject, article 79 is concerned with the jury in political courts that states: “in cases of political and press offences, a jury must be present in the tribunals.” (ibid) This article and the presence of the jury was one of the subjects of the opposition of Sheikh Fazlollah Nouri.<sup>23</sup>

#### 4.3. Some Are More Equals: Exclusion of Minorities from the Basic Rights

In the supplementary fundamental laws, there are 18 articles dedicated to “the right of the Persian nation” (ibid). These basic rights were for decades the demand of modernist intellectuals as it was reflected in Mostashar al-Dowleh’s “One Word”. The most important article of the rights of the nation is article 8, where the law indicates that “the people of the Persian Empire are to enjoy equal rights before the Law.” (ibid) This article was one the subject of the other disputes between traditionalist *ulama* and modernist intellectuals. The articles 11 and 12 of the supplementary fundamental laws is concerned with individuals’ right to the judicial section. According to this article: “No one can be forcibly removed from the tribunal which is entitled to give judgment on his case to another tribunal.” (ibid) Article 12 states that: “no punishment can be decreed or executed save in conformity with the Law.” (ibid) The other articles are concerned with the protection of a person’s house and dwelling, preventing Persians from being exiled, and property ownership (articles 15 to 17).

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<sup>23</sup> I have elaborated this dispute in the previous chapter.

Yet, the exclusions begin with article 18 where the text empowers Sharia by indicating that “The acquisition and study of all sciences, arts and crafts is free, save in the case of such as may be forbidden by the ecclesiastical law.”(ibid) In article 20, the freedom of the press, a right which was at the core of the writings of intellectuals such as Malkum for decades, is bounded as follow:

All publications, except heretical books and matters hurtful to the perspicuous religion [of Islam] are free, and are exempt from the censorship. If, however, anything should be discovered in them contrary to the Press law, the publisher or writer be known, and be resident in Persia, then the publisher, printer and distributor shall not be liable to persecution. (“Iran’s 1906 Constitution | Foundation for Iranian Studies” 2016)

The right to assembly, the article 21 of supplementary fundamental laws is also affected by the disputes between intellectuals and *ulama* and is restricted by sharia: “societies (anjumans) and association (ijtimad’at) which are not productive of mischief to Religion or the State, and are not injurious to good order, are free throughout the whole Empire [...]” (ibid)

Therefore, despite the promises represented in the pamphlets of intellectuals such as Malkum Khan, the written law is manifesting inequality in itself and religious-driven exclusions are detectable in the constitution (1906) and its supplementary fundamental laws (1907). In fact, the formulation of the legality and illegality according to Islamic sharia is an evident form of religious exclusion. From the very first article of the supplementary fundamental laws (1907), the process of exclusion begins. According to this article the official religion of 'Persia' is announced to be Islam. The second article contains a highly messianic tone with a reference to divine and almighty:

At no time must any legal enactment of the Sacred National Consultative Assembly, established by the favour and assistance of His Holiness the Imam of the Age (may God Hasten his glad Advent!), the favour of His Majesty the Shahinshah, of Islam (may God multiply the like them!), and the whole people of the Persian Nation, be at variance with the sacred rules of Islam or the laws established by His Holiness the

Best of Mankind (on whom and on whose household be the Blessings of God and His Peace). (“Iran’s 1906 Constitution | Foundation for Iranian Studies” 2016)

This article was forced to the supplementary fundamental laws due to severe oppositions of traditionalist *ulama*, leading by prominent mujtahid Sheikh Fazlollah Nouri. This is the same article which indicates the special rule of *ulama* over the constitution as follows: “there shall at all times exist a committee composed of not less than five *mujahid* or other devout theologians, cognizant also of the requirements of the age, [which committee shall be elected] in this manner.” (ibid) Moreover, in the section dedicated to “the right of the nation”, there are three articles (article 19, 20 and 21, regarding education, publication, and communities) which are emphasizing on the sharia and demanding its preservation reserved.

Although, a considerable part of the supplementary fundamental laws is dedicated to the monarchy. Though the absolute power of *shah* was limited by the constitution, the text was highly recognized the privileged right of *shah*. Besides, the judicial system, for instance, was not free from the influence of the king and *shah* had the privilege of appointing the public prosecutor. Furthermore, the intertwined of the political field and ‘cultural’ field, the influence of the religion on the power is evident in the first article of supplementary fundamental laws that indicates Twelve Imams Islam is the “faith the Shah of Persia must profess and promote” (ibid). *Shah* has to take an oath on Quran, repeating Islamic connotations. Besides, it is indicated in article 58 that “no one can attain the rank of Minister unless he be a Musulman by religion, a Persian by birth, and a Persian subject.” (ibid)

#### 4.4. House of Justice: The Forgotten Promise?

Though in the constitution and its supplementary fundamental laws, there are articles for establishing and regulating the courts of law, these laws are functioning under the same existing religious juridical system. Consequently, *Edalat-khaneh* [House of Justice] has no concrete place in the text of the law. The claim for House of Justice was one of the most important

demands of the revolutionaries to the point that *Shah* has issued an order for establishing the house of justice. Though this command never fulfilled and the ambiguity of this notion persisted: intellectuals understanding of House of Justice was a judiciary system -as Dawlatabadi; for *ulama* on the other hand, the House of Justice was meant a legislative section. *Ulama* did not perceive and advocate this notion as a separate modernist judicial institution since they were already dominant on the ongoing religious judicial system. Therefore, unlike non-judicial laws and orders, there was no point for them to persuade the demand for a modern juridical system. Besides, not only in the text of the constitution but also in the parliamentary debates there is no direct mention of establishing a new judiciary. Interestingly, in the first parliament, during a debate with the minister of justice, one of the representatives argues that parliament is not the House of Justice and the petitioners have to stop coming to parliament to pursue their appeals (Parliamentary Debates: First parliament, session 155). This fact indicates that though at least some of the members of parliament did not perceive the notion of House of Justice as a legislative power (the way the *ulama* understood it), nevertheless they accepted *ulama*'s understanding and did not follow the steps for establishing House of Justice<sup>24</sup>. Yet, the ambiguity of this notion enabled ulama and intellectuals to be united in their opposition to the state and *shah* himself for promoting a constitution. The disagreements among these players, however, raised later and a competition took place over the monopoly of right in the language and the text of law –as the keystone of the judicial field.

In this chapter, reviewing the text of the constitution (1906) and its supplementary fundamental laws (1907), I have illustrated the representation of the struggle over the monopoly of right on text and the benefits of the dominant classes within the constitution. I also have explained the process of the exclusion within the constitution by the mean of religious priority. The exclusion

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<sup>24</sup> In the sixth parliament there is a letter from a group of merchants asking for the establishment of *Edalat-khaneh* [House of Justice] which indicates the Ministry of Justice was not perceived by the public as the *Edalat-Khaneh*.

which was imposed by the constitution, on the one hand, enabled the dominant class –the monarchy- to continue its influence ‘legally’, and on the other hand was concerned with preserving Iranian merchants’ demands. Therefore it is evident that in the struggle over the text of the constitution and its supplements, the main champions are the *ulama* who turn the first Iranian constitution to a set of articles which are highly dependent and intertwined with sharia.



## Conclusion

In this research I have been concerned with the formation of the judicial system in Iran, the early competitions regarding the monopoly of right in determining the text of law in the juridical field and its effect on the text of the constitution (1906) and its supplementary fundamental laws (1907) during the Iranian Constitutional Revolution. It was a momentous episode in the history of Iran, since for the first time in history, the autonomous absolute power of the *Shah* was restricted by the law. This movement was initiated by the help of different actors including intellectuals, *ulama* [high-ranked religious figures] and merchants with different objectives and interests. I have discussed that the available scholarly research neglected the relationships between the competition of the players of the movement and the unfulfilled promise for establishing the House of Justice. Accordingly, my question has been “how the interactions of players in the Iranian Constitutional Revolution formed the juridical field in early 20<sup>th</sup> century Iran by effecting the first constitution through the claim for *Edalat-khaneh*?”

My answer to this question is that these players of the field of power, were united over the slogan of the demand for House of Justice, however, they had different conceptions of this demand. For the intellectuals who were the flag bearers of the reforms and the introducer of the modern European notions including the constitution, the House of Justice was a judiciary section which had to be formed after the establishment of the constitution. For *ulama*, however, as the dominant player of the Islamic legal field in the 19<sup>th</sup> century Iran, this “House of Justice” directly translated into a parliament for imposing the laws. Therefore, fulfilling the promise of House of Justice was understood as a judicial power and owning the constitution rather than establishing a *new* legal system. The ambiguity of this notion enabled these players to be united

before the proclamation of the constitution, but it also enabled them to follow their own path after the revolution by emphasizing on their own understanding of House of Justice.

I have contributed to the ongoing scholarly debates on power relations in modern Iran and the sociological study of the Iranian Constitutional Revolutionary Movement by explaining the process of exclusion of minorities within the text of the law and consequently neglecting the promise of the House of Justice. This was due to the competition of intellectuals and *ulama* over the dominance and the monopoly of the right to define the law within the judicial field. Using Bourdieu's field theory and his account of the juridical field, I highlighted the understanding and the representation of the modernist ideas –such as the constitution, the right of the nation, freedom of speech and the right to assembly- in the writings of intellectuals before the spark of the movement. I have elaborated that by using the language of sharia, the intellectuals deprived themselves of a firm stance in the following competition –with *ulama*- over the monopoly of the right to the law in the judicial system. More importantly, one of the main debates between traditionalist *ulama* and modernist intellectuals in the supplementary fundamental laws was over the right of the nation, in the new order evolving after 1906 and in the first steps of an emerging modern juridical field in Iran. Within this instrumental use of sharia for imposing modernist ideas, a process of exclusion emerged from the very beginning –even in the text of some intellectuals- in which the right of the minorities –in particular, religious minorities- were neglected. As a result, the main champion in what Bourdieu (1987) calls the “competition for the monopoly of the right to determine the law”, were the *ulama* who made the first Iranian modern juridical field highly dependent and intertwined with sharia.

The struggle over the monopoly of the right on the text of law in the juridical field did not stop in the early 20<sup>th</sup> century. It has been a continuous struggle and the demand for a house of justice –with all its ambiguity- is still standing. Shedding light on this continuous competition over determining the language of law –as the basis of the judicial system- can be traced in the latter

momentous episodes in the Iranian history in 20<sup>th</sup> century. In particular, this struggle between the merchants, *ulama* and the intellectuals can be followed after the 1979 revolution in the constitution of the Islamic Republic of Iran where the exclusion of the minorities from their basic rights is maintained within the text of the constitution.

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