

# SHĪ'Ī IDEAS OF SLAVERY: A STUDY OF IRAN IN THE QĀJAR ERA BEFORE AND AFTER THE CONSTITUTIONAL REVOLUTION

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## Abstract

*The wave of struggle against the slave trade which began in eighteenth century Europe reached the Middle East and countries in Persian Gulf in the nineteenth century. In its efforts to end slave trade, Britain concluded treaties with Ottomans, sheikhs in Oman, and the king of Masqat. This concentrated the trade of enslaved Black people from Africa in Iran. The study of this period in Iran is important because Muḥammad Shāh, the then ruler in Iran, believed that since any order that bans the slave trade is against Islam, concluding any accord in this regard was beyond his control and was related to sharī'ā. This Essay discusses and compares the opinions of Shī'ī scholars in the Qājar era, when the question of the abolition of slavery was first posed via British diplomatic channels, and subsequently during the Constitutional Revolution 1905 (Enghelāb-e Mashrūteh), to see if the introduction of Human Rights concepts at the time had any effect on fatwas about slave trade. This is done by the study of historical documents, including royal correspondence, exchange of letters among Shī'ī scholars, and scholarly fatwas. This Essay argues that jurisprudential opinions continued to regard slavery as permissible within the sharī'ā despite political and diplomatic pressures to abolish it and despite the importance of the principles of freedom and equality in the Constitutional era.*

## I. INTRODUCTION

The movement that led to abolishing slavery, at least in its traditional sense, began to spread globally in the mid-nineteenth century. This abolitionist movement, as an organized effort that tried to end the practice of slavery, arrived in Iran (Persia, prior to 1935) with the efforts of Britain during the reign of Muḥammad Shāh Qājār. Negotiations between the shah and Britain and the British attempt to obtain a fatwa banning slavery make this period of Iranian history unique for scholars of Islamic history and law. Although the questions related to slavery were always rampant in religious texts, practices, fatwas, and teachings, the study of this era is critical because of how the positions of Shī'ī jurists on slavery were taken out of the classrooms into people's daily lives. In addition, the large number of documents available from the period allow scholars to provide nuanced analysis of the positions of Shī'ī jurists on slavery.

This Essay attempts to understand the historical period in which the fatwas on slavery were issued. The early period, extending from the reign of Muḥammad Shāh Qājār (October 23, 1834 to September 5, 1848) and shortly afterward during the reign of Nāṣir al-Dīn Shāh Qājār (September 5, 1848 to May 1, 1896), was characterized by the importance of slavery in Iran and British diplomatic pressure to abolish slavery. During that period, law in the modern sense had not yet fully developed in Iran. 'Ulamā' (or *mujtahidīn*) regulated the daily affairs of ordinary people through their fatwas derived from an interpretation of the Qu'rān and the teachings of the Prophet and the twelve Imams, and the shah was considered to be the head of the Shī'ī religion.<sup>1</sup> To that aim, this Essay explores fatwas, religious and political documents, and texts to obtain an objective narration of Shī'ī jurists' positions on slavery.

The Essay relies mainly on the use of primary documents (in Arabic and Persian), as translated by the authors. Such

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1 See Nikki R. Keddie, *The Roots of the 'Ulamā's Power in Modern Iran*, in NIKKI R. KEDDIE, ED., *SCHOLARS, SAINTS, AND SUFIS: MUSLIM RELIGIOUS INSTITUTIONS IN THE MIDDLE EAST SINCE 1500*, 216–29 (1972).

an exposition of the primary sources will demonstrate the legal concept of slavery in Iran and its differences with the concept of slavery in the West. The first part of this Essay is dedicated to studying the historical background and the second part analyzes the fatwas and religious documents of this period. The third part of the Essay looks to the Constitutional era (*Enghelāb-e Mashrūteh*, 1905–11): a period in which Iranians became acquainted with modern socio-legal concepts such as equality and freedom. At this time, many *mujtahidīn* and religious scholars, by issuing progressive fatwas, tried to show that Islam is compatible with modern law and the modern legal system.<sup>2</sup> Developments during the this era, especially when juxtaposed against the earlier Qājār period, show the lack of influence of modern legal concepts on fatwas regarding slavery.

## II. SLAVERY DURING THE QĀJĀR PERIOD

Throughout the history of Iran, from antiquity to the first half of the twentieth century CE, the use of enslaved people with different names and functions such as servant (*gholām*), maid (*kanīz*), or eunuch (*khājeh*), existed in various social, military, political or economic fields.<sup>3</sup> Until the middle of the nineteenth century, captivity in wars and invasions was the primary supply source for such slavery. But at the beginning of the nineteenth century and during the Qājār rule in Iran, slave traders and dealers imported large numbers of enslaved people from East Africa to the southern ports of Iran. This led to an increase in enslaved African people in the late nineteenth and early twentieth centuries who were transported from the these ports to the domestic

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2 See MANGOL BAYAT, *IRAN'S FIRST REVOLUTION: SHI'ISM AND THE CONSTITUTIONAL REVOLUTION OF 1905–1909* (1991).

3 On slavery in Iran, see Thomas Ricks, *Slaves and Slave-Trading in Shi'i Iran, AD 1500–1900*, 36 no. 4 J. OF ASIAN AND AFRICAN STUDS. 407–18 (2001); Behnaz A. Mirzai, *Slavery, the Abolition of the Slave Trade, and the Emancipation of Slaves in Iran (1828–1928)*, Ph.D. dissertation, York University (2004); Jeffrey Eric Eden, *Slavery and Empire in Central Asia*, doctoral dissertation, Harvard University (2016). Sir Thomas Herbert, an English historian and writer who traveled to Iran in the early 17th century during the Safavid rule, reported the sale of Indian and African enslaved people by Iranians in Bandar Abbas, see: J.G. LORIMER, *GAZETTEER OF THE PERSIAN GULF, OMAN, AND CENTRAL ARABIA* 24, 75 (1915).

markets of Iran for sale.<sup>4</sup> This trend continued until the middle of the twentieth century. Although the exact number of enslaved people is unknown,<sup>5</sup> according to the reports of British agents living in the ports of the Persian Gulf, the number of African enslaved people entering these ports during the nineteenth century was not small.<sup>6</sup> Others estimated the number at about two to three thousand annually.<sup>7</sup> In some other documents, the annual number of enslaved people traded in the Persian Gulf was estimated to be four to five thousand.<sup>8</sup> The enslaved people present in Qājar Iran were not limited to enslaved Black Africans; others of various racial and ethnic groups, including Iranians, can be seen at that time.<sup>9</sup> This group of enslaved people were mainly captured in punitive attacks, especially against the Turkmen, Balochis, or during the regular Iran–Russia wars (Russo–Persian Wars or Russo–Iranian Wars).<sup>10</sup> Another group was supplied through trade and sale, and a small part had originally been sold into slavery due to poverty.<sup>11</sup>

Some enslaved Black Africans were transported to Iran by land pilgrims to holy cities such as Mecca, Medina, and

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4 ABBAS AMANAT, *CITIES AND TRADE: CONSUL ABBOTT ON THE ECONOMY AND SOCIETY OF IRAN 1847–1866*, 172 (1983); JAMES BAILLIE FRASER, *NARRATIVE OF A JOURNEY INTO KHORASAN, IN THE YEARS 1821 AND 1822*, 51 (1825).

5 For more information regarding the number of enslaved people imported into Iran see Mirzai, *Slavery*, *supra* note 3 at 63–66.

6 LORIMER, *GAZETTEER*, *supra* note 3 at 24–93; J.B. KELLY, *BRITAIN AND THE PERSIAN GULF: 1795–1880*, 418 (1968).

7 SHEIL, LADY MARY, *GLIMPSES OF LIFE AND MANNERS IN PERSIA* (reprint 1973).

8 Rigby to Anderson, dated Zanzibar, May 14, 1861, AA3/20, ZNL.

9 G.H. Zargari Nejad and Narges Alipour, *A Glance at the State of Kanīzān, Ghulāmān and Eunuchs during the Qajar Era*, 2 (Summer 2009) *JOURNAL OF HISTORICAL RESEARCHES* 1–18. (Original Persian text available at: [http://jhr.ui.ac.ir/article\\_16484\\_6ee3b483c3a38849288757822a8eebf3.pdf](http://jhr.ui.ac.ir/article_16484_6ee3b483c3a38849288757822a8eebf3.pdf).)

10 These wars were a series of five conflicts between 1651 and 1828, concerning Persia (Iran) and the Russian Empire, which affected Iranian history in many ways. Regarding the topic of this article, one of the first bans on slavery was imposed by the Russians on Iran. With the beginning of the Qājar rule, the entry of white enslaved and maids from the Caucasus region and beyond was significantly reduced because the Russians banned the sale and purchase of Caucasian men and women after the occupation of the Caucasus region and the conclusion of the Treaty of Turkmenchay with the Iranian government in 1827: J. BASSET, *PERSIA, THE LAND OF THE IMAMS: A NARRATIVE OF TRAVEL AND RESIDENCE* 278 (1887).

11 Zargari Nejad and Alipour, *Glance*, *supra* note 9.

Karbala.<sup>12</sup> The entry of enslaved people through pilgrims continued after the first decree banning the sale of enslaved people in 1848. Most of the other enslaved people entered Iran through the Persian Gulf. The Persian Gulf was a route through which the East African and Ethiopian enslaved people were traded to meet the needs of the eastern markets in the provinces of present-day Saudi Arabia, Iraq, and Iran.<sup>13</sup>

Unlike Europe and the United States, the abolition of slavery and suppression of the trade in enslaved people in Iran was not characterized by intense protests, rebellions, or revolts by enslaved people. Instead, as had happened before, after the conclusion of the Turkmenchay Treaty,<sup>14</sup> pressure from other countries and diplomacy caused it; the pressure which is called “government-to-government negotiations.”<sup>15</sup> As Behnaz Mirzai describes it: “The humanitarian concerns that drove the international discourse were not those that resonated in Iran, where discussions about the slave trade focused instead on religious and political concerns and issues of nationhood.”<sup>16</sup> This is why this period is the best to look at in terms of fatwas related to slavery.

With the Slavery Abolition Act of 1833, the British abolitionist movement, which had emerged in the eighteenth century largely from both Quaker and secular Enlightenment thought, achieved an important victory in Britain.<sup>17</sup> After that, the abolition of slavery gradually spread abroad to territories under the control of or influenced by the British imperial enterprise, including the Persian Gulf. After a successful attempt to abolish slavery in the Ottoman Empire and Muscat,<sup>18</sup> Britain began

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12 Id.

13 KELLY, BRITAIN, *supra* note 6 at 414.

14 See Mirzai, *Slavery*, *supra* note 3 at 66.

15 Ehud R. Toledano, *Abolition and Anti-Slavery in the Ottoman Empire: A Case to Answer*, in WILLIAM MULLIGAN AND MAURICE BRIC, EDs., *A GLOBAL HISTORY OF ANTI-SLAVERY POLITICS IN THE NINETEENTH CENTURY* 118 (2013).

16 BEHANZ A. MIRZAI, *A HISTORY OF SLAVERY AND EMANCIPATION IN IRAN 1800–1929*, 132 (2017).

17 LORIMER, *GAZETTEER*, *supra* note 3 at 247; MIRZAI, *HISTORY*, *supra* note 16 at 133.

18 The general suppression of the trade in enslaved Africans in the Ottoman states took place in 1857. See Behnaz A. Mirzai, *The Persian Gulf and Britain: The Suppression of the African Slave Trade*, in HIDEAKI SUZUKI, ED., *ABOLITIONS AS A*

negotiations with the Shah of Iran, Muḥammad Shāh. Abolition negotiations were first raised as a political issue in Iran–Britain relations in 1841. When Sir John McNeil was on his way to Iran to re-establish ties between the two governments after the Herat War, he was commissioned by Lord Palmerston, the British Foreign Secretary, to obtain a decree and royal edict from the shah to abolish slavery. Palmerston argued that given that progressive countries in Europe and the United States had repealed the law of slavery, Iran should accept the same approach.<sup>19</sup> Palmerston counseled McNeil to “urge the Shah to extend his prohibition to the importation of slaves by sea as well as by land, and to the importation of enslaved people from Africa and India, as well as from the countries bordering upon Persia.”<sup>20</sup> But because of the strained relations between Iran and Britain after the Herat war, McNeil did not raise the issue at all.<sup>21</sup>

Following this, Palmerston instructed Colonel Justin Sheil, the Secretary of State in Tehran, to request the Shah of Iran to issue a decree similar to the Muscat Treaty. In his letter to Muḥammad Shāh’s Prime Minister Ḥājī Mīrzā Āqāsī of 1847, Sheil wrote:

Your Excellency, I respectfully write this correspondence to you following our discussion on the transactions in blacks. You are aware of the strong insistence of the British government to prohibit this obscene trade. As part of this process, the British government solicits the support of the Iranian government in this praiseworthy act.<sup>22</sup>

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GLOBAL EXPERIENCE 113–29 (2016); Toledano, *Abolition*, *supra* note 15; Y. HAKAN ERDEM, *SLAVERY IN THE OTTOMAN EMPIRE AND ITS DEMISE, 1800–1909* (1996); see also CHHAYA GOSWAMI, *THE CALL OF THE SEA: KACHCHHI TRADERS IN MUSCAT AND ZANZIBAR, C. 1800–1880*, 117–36 (2011).

19 VAHID SHAHSAVARANI AND MOHAMMAD MORTEZAI, *SLAVERY IN THE QAJAR PERIOD: AN ARCHAEOLOGICAL APPROACH TO STUDY SLAVERY IN LATE ISLAMIC PERIOD* 55 (2018).

20 Palmerston to McNeil, July 9, 1841, FO 84/373, NAUK. Cited by MIRZAI, *HISTORY*, *supra* note 16 at 135.

21 See KELLY, *BRITAIN*, *supra* note 6 at 593; FEREDYŪN ADAMIYĀT, *AMĪR KABĪR VA ĪRĀN* 516 (1983) (original text in Persian).

22 Justin Sheil to Ḥājī Mīrzā Āqāsī, 1263, Q1263.6.5, VUK, Tehran. Cited by MIRZAI, *HISTORY*, *supra* note 16 at 135.

However Muḥammad Shāh considered the act of buying and selling enslaved people to be lawful under *sharī'a* and that any interpretation of Islamic law was beyond his power. In a letter to Ḥājī Mīrzā Āqāsī, he explained these points as such:

Buying women and men is based on the *Sharia* of the last Prophet. I cannot prohibit my people from something which is lawful on the *Sharia* . . . I cannot issue a decree and sign an agreement which is against the *Sharia*.<sup>23</sup>

In three different cases, Sheil and his successor, Farrant,<sup>24</sup> tried to show that abolition was in line with religion. First, they considered such a thing to be in accordance with Christianity, to which Muḥammad Shāh responded:

If according to their religion [Christianity] this traffic is considered an abominable practice, in our religion it is lawful. Why should the things which our Prophet has made lawful to us be imputed detestable?<sup>25</sup>

In the next two cases, Muḥammad Shāh tried to highlight the differences between Shī'ī Islam and other denominations. So the examples that had been provided by Shiel and Farrant of other Islamic countries like Muscat (in modern-day Oman) and the Ottoman Empire were neither necessarily relevant to Iran in this regard; he wrote:

Turks are Sunni, and they are in opposition to the Iranians. The Imam of Masqat is also from the Kha-warej, and one level better than a kāfar [non-believer].

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23 Muḥammad Shāh's autograph to Mīrzā Āqāsī reprinted in Narges Alipour, *Slave Trade Prohibition during Qajar Period as Stated by Documents (From 1257/1841 until 1300/1882)*, 42 no. 2 JOURNAL OF HISTORY AND CULTURE 149–78 (Winter and Spring 2011). Original text in Persian available at [https://jhistory.um.ac.ir/article\\_24945.html?lang=en](https://jhistory.um.ac.ir/article_24945.html?lang=en).

24 Colonel Francis Farrant replaced Sheil after his recall to London in late 1847.

25 Sheil to Palmerston, Tehran, April 27, 1847, FO 84/692, NAUK. Aghassee to Sheil, December 20, 1846, FO 84/647, NAUK. Cited by MIRZAI, HISTORY, *supra* note 16 at 139.

Then, we, who are the leaders of Shi‘i Islam, will not follow them.<sup>26</sup>

Although Muḥammad Shāh eventually changed his position and issued a decree banning the slave trade through the Persian Gulf prior to his death,<sup>27</sup> for several years before he reached this point, his way of argument against this decree led British delegates to consult with famous *mujtahidīn* in Tehran and Najaf in order to find support for their arguments that the abolition of the slave trade was not against Shī‘ī Islam. To do so, they asked six eminent *mujtahidīn* in Tehran and some others in Najaf to issue fatwas about this problem, hoping that they could use at least one of them to influence the king. The fatwas and other religious texts issued in this period are among the most valuable documents and materials to study the Shī‘ī Islamic position on slavery and servitude in practice. To do so, the next part of this article is devoted to the study of these texts.

### III. FATWAS IN THE PRE-CONSTITUTIONAL PERIOD

Before examining the religious texts, documents, and fatwas relating to enslaved people in the pre-constitutional period, especially in the years when the issue of banning the slave trade was raised, it is necessary to allude to a few points. Although ostensibly the Qājār Shāh was considered the absolute and highest power in the country, his power was always limited by *sharī‘a* and the opinion of those who were the custodians of *sharī‘a* (namely the ‘*ulamā*’). Everything touching the people’s daily lives was discussed as a legitimate (halal) or illegitimate (haram) matter in the fatwas of the ‘*ulamā*’. For this reason, if the shah wanted to issue a ruling on the people’s daily affairs, such as slavery or its prohibition, he had to give a command in compliance with the *sharī‘a*. Therefore, if slavery and the slave trade were legitimate according to the *sharī‘a* and according to the fatwas of the *mujtahidīn*, the shah could not have declared

<sup>26</sup> ADAMIYĀT, AMĪR, *supra* note 21 at 517.

<sup>27</sup> The decree was issued in 1847. The original autograph of Muḥammad Shāh’s decree in Persian is reproduced at Alipour, *Slave*, *supra* note 23 at 173.



them illegitimate without a valid fatwa. In fact, in such a case, the illegal was equal to the illegitimate, and the legal was equivalent to the legitimate, which was determined by religion and not by the shah's power. This is why Muḥammad Shāh always pointed to the legality of slavery and its conformity with Islam, and the representatives of Britain also sought fatwas in this regard. To abolish the slave trade, the abolitionist position needed the support of an authoritative religious decision to end slavery.<sup>28</sup>

The second issue worth mentioning here is the nature of what Britain asked to be abandoned, i.e., trading enslaved people through the sea, in Shī'ī Islam. According to the principle of freedom (*aṣālat al-ḥurriyya*),<sup>29</sup> which considers freedom of all human beings as a basic assumption, slavery (*riqqiyya*) is not acceptable unless there is a valid religious reason behind it. In Shī'ī jurisprudence, a total of seven religious means (*sabab*) for slavery have been presented. With the realization of any of them, a person becomes another person's property, deprived of some of his human rights, and the duties of an enslaved person will be imposed on them. These reasons are slavery in war,<sup>30</sup> slavery through conquest,<sup>31</sup> slavery through buying from the guardians (*walī*),<sup>32</sup> slavery transmission through parents to children,<sup>33</sup> slavery through confession,<sup>34</sup> foundlings in non-believers' territory (*dār al-kufr*),<sup>35</sup> and buying from a non-Muslim market.<sup>36</sup> What Britain asked Muḥammad Shāh to do was to ban one of these means of slavery, the seventh means, which is slavery by buying from the non-Muslim market. Although this *sabab* does not

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28 For more on the relationship between the shah and the 'ulamā' in Iran, see HAMID ENAYAT, *MODERN ISLAMIC POLITICAL THOUGHT* (2001).

29 For further elaboration see ABŪ 'L-QĀSIM AL-QUMMĪ, *JAM' AL-SHITĀT FĪ AJWIBAT AL-SU'ĀLĀT*, vol. 2 (1992) (original text in Arabic).

30 MUHAMMAD KĀZIM AL-YAZDĪ, *AL-'URWA AL-WUTHQĀ* 21:367 (1956); MUHAMMAD ḤASAN AL-NAJAFĪ AL-JAWĀHIRĪ, *JAWHAR AL-KALĀM FĪ SHARH SHARĀ'Ī AL-ISLĀM* 1:373, 379 (1983).

31 YAZDĪ, 'URWA, *supra* note 30 at 2: 368; JAWĀHIRĪ, JAWHAR, *supra* note 30 at 24:229.

32 Id. at 30:287.

33 Id. at 24:126.

34 Id.

35 Id.

36 Id.

create slavery like the previous six causes, it grants the permission to transfer enslaved people to the Muslim market (*sūq al-Muslimīn* and *dār al-Islām*), which effectively gives a religious justification to import the existing slavery in a non-Muslim market into Muslim lands. Given the above, we can now take a closer look at these texts and fatwas.

The question the British agent asked from several *mujtahidīn* was as follows:

What do the learned Doctors in Religion and the Law decree on the following point? If they should abolish the transport of black male and female slaves and abstain from the traffic, is it any injury or not to the faith?<sup>37</sup>

In response, all the *mujtahidīn*, citing a hadith from the Prophet Muḥammad,<sup>38</sup> considered the sale of enslaved people to be an abominable (*makrūh*) act that should not be done. Still, none of them considered this act illegitimate (haram). Mullā ‘Alī Kanī’s fatwa in this regard reads:

Trading in, and buying and selling male and female slaves is not illegitimate, but it is an abomination, as is stated in the *Sunnat* (the practice of the Prophet and his family) “The worst people are those who sell human beings.” . . . If it is abandoned on this account, it is good, but if [it is abandoned] on account of its being illegitimate, it is wrong.<sup>39</sup>

The fatwa of Āghā Maḥmūd, another prominent figure of the time, was that “the act of selling men and trading in them is abominable, and it is certainly better not to do it.”<sup>40</sup> When Sheil informed the shah about the opinions of the *mujtahidīn*, he, in response, mentioned the fatwa of another *mujtahid*, which said

37 Questions to various priests in Tehran relative to the slave trade with their replies, translated by Justin Sheil, 1847, FO 84/692, NAUK, London. Cited by MIRZAI, HISTORY, *supra* note 16 at 140.

38 MUHAMMAD B. YA‘QŪB AL-KULAYNĪ, KĀFĪ 6:114 (1987).

39 Id. at 6:141.

40 Id.

that Muslims “must fight non-believers and enslave them to convert to Islam.”<sup>41</sup>

Sheil then instructed Sir Henry Rawlinson, the British official in Baghdad, to search for a favorable fatwa between *mujtahidīn* in Karbala and Najaf. He sought a fatwa stating in particular that a ban on the transport of enslaved people through the sea is not illegitimate. Shaykh Muḥammad Ḥasan, one of the eminent *mujtahidīn* in Karbala, told Rawlinson that slavery is legitimate and “the temporal power cannot forbid a legitimate act; consequently, such a prohibition would be illegitimate.”<sup>42</sup> He also added that the possession of enslaved people is in accordance with the acknowledged and long-established customs of Islam, and the transport of enslaved people is nowhere condemned or even reprobated in the Qur’ān or the traditions.<sup>43</sup> Although he refers to the Qur’ān, it is essential to note that all the seven causes mentioned above are based on traditions and hadith—narration from the Prophet or the Imams—and the consensus of the jurists. None of these causes directly relies on the text of the Qur’ān.<sup>44</sup>

Shaykh Muḥammad Ḥasan also emphasized that the same hadith (“the worst people are those who sell human beings”) refers exclusively to those who make a business out of the slave trade, spending their whole lives in this particular commerce.<sup>45</sup> So with this fatwa, he clearly distinguished between slavery and the slave trade as a profession and expressed that what is not recommended is choosing slave trade as a profession, not intending to prohibit slavery *per se*.

The distinction between slavery and trading in enslaved people seems to be derived from an essential function defined for slavery and the main reason for the support from the *‘ulamā’*: slavery is seen as a means to facilitate conversion to Islam by

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41 ADAMIYĀT, Amīr, *supra* note 21 at 516.

42 Sheil to Rawlinson, September 18, 1847, FO 84/692, NAUK. Cited by MIRZAI, HISTORY, *supra* note 16 at 141.

43 Rawlinson to Sheil, Baghdad, November 8, 1847, L/PS/5/453, BL. Id.

44 Mohsen Kadivar, *Slavery in Contemporary Islam*, in MOHSEN KADIVAR, *HAGH AL-NAS: ISLAM AND HUMAN RIGHTS* 341–78 (2007).

45 Rawlinson to Farrant, Baghdad, January 15, 1848, FO 84/737, NAUK. Cited by MIRZAI, HISTORY, *supra* note 16 at 142.

non-Muslims. Since, for the '*ulamā*', Islam is the ultimate form of freedom of human beings, slavery helps non-Muslims enter the free people's society (*jāmi' al-aḥrār*). By becoming a Muslim, one becomes a member of this society and remains free forever. Alame Tabatabaie, the leading contemporary figure in the Shī'ī jurisprudence and interpretation of the Qur'ān, explains that whoever consistently fights against Islam stands outside the society of free human beings; that means he or she is a slave by nature (*fiṭra*), and therefore, can be abducted and sold as an enslaved person. For such a person, converting to Islam is the only way to become a member of free people's society; slavery is seen as means through which they can be educated and ready to become free human beings.<sup>46</sup> The idea of slavery as an intermediary means to become a member of free people's society is also evident in the text of the documents issued by the owner or master when a previously enslaved person becomes free because he or she converted to Islam.<sup>47</sup>

#### IV. AN EXAMINATION OF THE FATWAS OF SHI'Ī JURISTS IN THE CONSTITUTIONAL ERA

There is no generally accepted theory on the roots and causes of Iran's Constitutional Revolution,<sup>48</sup> but there is a consensus over the fact that it marks a huge and fundamental change in Iran's political and social structure.<sup>49</sup> The '*ulamā*', growing intellectual elites, and merchants of Iran's market were the main players of the revolution; all seeking to fight against the foreign dominance by Russia and Britain by precluding the growth of the shah's power in Iran through a constitution. The Constitutional Revolution also introduced the modern concept of law and legal order, as well as humanism and related concepts such as human

46 Muḥammad Ḥusayn al-Ṭabāṭabā'ī, *Kalām fi al-riqq wa'l-isti'bād*, in *MIZĀN FI TAFSĪR AL-QUR'ĀN* 6:343 (2000).

47 For samples of these documents, see NARGIS ALIPOUR, *THE DOCUMENTS OF SLAVE SELLING AND ITS PROHIBITION DURING QAJARID ERA* 278–99 (2011).

48 See Ervand Abrahamian, *The Causes of the Constitutional Revolution in Iran*, 10 no. 3 *INT'L J. MID. E. STUDS.* 381–414 (1979).

49 See Abbas Amanat, *The Constitutional Revolution: Road to a Plural Modernity (1905–1911)*, in *IRAN: A MODERN HISTORY* 315–86 (2017).

equality and freedom. The study of fatwas over slavery in this period can thus help us elucidate and understand the effect of any modern concepts and Constitutional Era debates on the traditional understanding of slavery to see if social, political, and legal changes in their day had any actual effect on fatwas on slavery. To answer this, the final part of this Essay first focuses on the fatwas issued by Muḥammad Kāẓim Yazdī and Shaykh Muḥammad Kāẓim Khurāsānī. Then it discusses the ideas of Shaykh Faḍlullāh Nūrī and Shaykh Muḥammad Ḥusayn Nā'īnī Gharavī. All of them are key and leading figures in the two opposing sides of the Constitutional Era debates.

*a. Yazdī and Khurāsānī: Two Boats, Same Port*

Muḥammad Kāẓim Yazdī (1831–1919) was a prominent Twelver Shī'ī *marja'* based in Najaf, most famous for his anti-constitutionalist stand during the Iranian Constitutional Revolution. Before he manifestly opposed the constitutional approach following the execution of a prominent religious leader by pro-constitutionalists, he was among the pious apolitical '*ulamā'*' who had originally refused to support the constitutional movement despite insistent pressure by pro-constitution clergy.

As a religious leader, he was most likely aware of the changes taking place in the system of slavery and its abolition. His role in the struggle against the British Empire is noted in historical sources relating to events of the 1920s;<sup>50</sup> there is also a record of telegrams, correspondence, and questions from both constitutionalist and anti-constitutional groups to him available in a collection of documents published from the Qājār period.<sup>51</sup> Moreover, he took an active role against political events in

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50 GHASSAN R. ATIYYAH, *IRAQ, 1908–1921: A SOCIO-POLITICAL STUDY* 231–32 (1973); Waleed K. Almasaedi, *Iraqi Shi'ites and Identity Conflict: A Study in the Developments of their Religious-Political Identities From 1920–2003*, thesis submitted to the faculty of the Virginia Polytechnic Institute and State University (2020), [http://vtechworks.lib.vt.edu/bitstream/handle/10919/102108/Almasaedi\\_WK\\_T\\_2021.pdf](http://vtechworks.lib.vt.edu/bitstream/handle/10919/102108/Almasaedi_WK_T_2021.pdf); Marsin R. Alshamary, *Prophets and Priests: Religious Leaders and Protest in Iraq*, thesis submitted to Massachusetts Institute Of Technology (2020), <http://dspace.mit.edu/bitstream/handle/1721.1/130603/1249943171-MIT.pdf>.

51 HAMID ALGAR, *RELIGION AND STATE IN IRAN 1785–1906: THE ROLE OF THE ULAMA IN THE QAJAR PERIOD* (1969).

Muslim countries including Tripoli and Iran.<sup>52</sup> But it is surprising that in his opinions and fatwas about several issues related to enslaved people, there is no significant difference with the fatwas of jurists, for example, five centuries before him.

It is worth noting that when a *mujtahid* is not directly asked to give his opinion on slavery, he may still be compelled to express his position in this regard in response to other questions. Examples of this indirect expression can be found in *al-'Urwa al-wuthqā*, which is the most prominent compilation of *fiqh* works authored by Muḥammad Kāzīm Yazdī.<sup>53</sup> In one of his fatwas on the subject of Islamic endowment (*waqf*), he indirectly reiterates the endorsement of slavery and treatment of an enslaved person as a possession that can be endowed under *sharī'a*. He believes that freeing an endowed enslaved person, even if it is said that he was transferred to the beneficiaries of the endowment, is undoubtedly invalid because of the consensus and the hadith that indicate the inadmissibility of disposing of an endowed asset by selling, giving, or similar actions which lead to transferring ownership.<sup>54</sup>

Other examples of his fatwas show that his opinion on slavery is based on the concept of *istilā'* (literally, "the might") of Muslims over non-believers when equality in society was among the basic principles of the constitutional movement in Iran. This includes situations in which the beneficiary of a Muslim endowment beneficiary becomes apostate or in which a non-believing enslaved person converts to Islam. According to him, the enslaved person is not obliged to serve non-believers, including endowment beneficiaries.<sup>55</sup> The endorsement of

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52 One example is a fatwa he issued when the Italian government was mobilizing its forces to occupy Libya in North Africa, and Russian troops were occupying some parts of north Iran and British troops the south. Zuhayr Sulayman, *The Islamic Revolution of 1920 in Iraq*, <http://www.icit-digital.org/articles/the-islamic-revolution-of-1920-in-iraq>.

53 This three-volume Arabic book includes diverse chapters on *fiqh* and expresses 3260 (Islamic) legal rulings issued in 1919. After the book's publication, many *mujtahidīn* wrote their jurisprudential opinions in the form of explanatory or critical footnotes on Yazdī's fatwas in this book. So far, thirty-seven people have written footnotes on or separate summarizations of this book.

54 YAZDĪ, 'URWA, *supra* note 30 at 6:349.

55 Id. at 6:356.

slavery can also be seen in his fatwas on ownership,<sup>56</sup> personal issues of an enslaved person (such as marriage),<sup>57</sup> and agency.<sup>58</sup> The premise of all these fatwas is that a group of people can still be the subject of ownership, like any other property. In other words, the efforts to completely abolish slavery and the Constitutional Era ideas about the freedom and equality of all human beings had not changed the jurisprudential approach of this famous jurist or the conclusion of his arguments.

Let us now look at the other side of the spectrum, the supporters of the constitutional movement, and pose the same question regarding the influence of Constitutional Era developments on their jurisprudence. Shaykh Muḥammad Kāzīm Khurāsānī (1839–1911), commonly known as Ākhūnd Khurāsānī, was a high-level figure in the same rank as Yazdī. Khurāsānī is known for using his position as a *marja'* for a potent political leadership in the Constitutional Revolution, where he was one of the main clerical supporters of the revolution. He believed that a “constitutional form of government” would be the best possible choice in the absence of the Imam and regarded the “constitutional revolution” as a *jihad* (holy war) in which all Muslims had to participate.<sup>59</sup>

Among Khurāsānī's most famous works are *The Sufficiency* (*Kifāyat al-usūl*) and his important commentaries on *Makāsib* by Shaykh Murtaḍā al-Anṣārī (1781–1864). Khurāsānī's commentaries on *Makāsib* are a valuable source for knowledge of his jurisprudential opinions. In *Makāsib*, Anṣārī raises the question of whether an owner can sell a runaway enslaved person, given that he cannot now deliver him to the customer. Anṣārī's answer is that he cannot, unless he adds something else to the runaway

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<sup>56</sup> Id. at 6:607.

<sup>57</sup> Id. See also at 5:577. On the intervention of the master into the marriage of his enslaved see at 6:579–80.

<sup>58</sup> Id. at 6:211.

<sup>59</sup> When Shaykh Faḍlullāh Nūrī declared journalists non-Muslims for their support of the new Constitutional Assembly, Khurāsānī retaliated by announcing that Nūrī was himself no longer a Muslim, leading to Nūrī's execution: ROY MOTTAEDEH, *THE MANTLE OF THE PROPHET: RELIGION AND POLITICS IN IRAN* 218–19 (revised edition 2008) [orig. publ. 1985]. The reaction to Nūrī's execution in Najaf harmed Khurāsānī and other constitution supporters and led to a rivalry with Yazdī: SAID AMIR ARJOMAND, *THE TURBAN FOR THE CROWN* 52 (1988).

enslaved person in the contract of the sale. Khurāsānī opposes his teacher’s fatwa, saying that the owner can sell a runaway enslaved person without attaching anything.<sup>60</sup> It is not necessary to evaluate the reasons underlying each of the two fatwas. Instead, it is relevant to this paper to mention that Khurāsānī did not say a single word about the principle of human dignity or of freedom or that the sale and purchase of enslaved people should be banned by *sharī‘a* because of the importance of human dignity in the *sharī‘a*. A similar way of reasoning can be found in related issues such as the voiding of a contract if the subject is vague<sup>61</sup> or the sale of a enslaved Muslim person to a non-Muslim purchaser.<sup>62</sup> Here, too, Khurāsānī comments on the Anṣārī fatwa without the slightest hint that the sale of human beings is disfavored in the current era or should be prohibited.

Although the views of Khurāsānī and Anṣārī on the Constitutional movement were different and even opposed each other, their fatwas on slavery are more-or-less the consistent with each other. This paradoxical situation is not specific to these two jurists, and it is also observed among other jurists of the Constitutional Era.

*b. Nūrī and Nā‘īnī: A Discussion  
over Freedom and Equality*

During the Constitutional Revolution in Iran, concepts such as freedom and equality of human beings were among the most important drivers of the revolution and important topics for discussion among scholars, both for and against the revolution. The same concepts played a pivotal role in the development and evolution of approaches towards the abolition of slavery in the West. This part examines the works of two of the leading Iranian *mujtahidīn* Shaykh Faḍlullāh Nūrī (1843–1909) and Shaykh Muḥammad Ḥusayn Nā‘īnī Gharavī (1860–1936), who elaborated on the concepts of freedom and equality and helped define them albeit in opposing directions. Despite their political

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60 MUHAMMAD KĀZIM AL-KHURĀSĀNĪ, *HĀSHIYAT AL-MAKĀSIB* 125 (1985).

61 *Id.* at 50.

62 *Id.* at 99.



and jurisprudential differences, however, these two jurists had at least one thing in common: their stances on freedom and equality had no effect on their rulings over slavery.

The *Tadhkirat al-ghāfil wa-irshād al-jāhil* (attributed to Shaykh Faḍlullāh Nūrī), written in 1908, and the *Tanbīh al-umma* (by Mīrzā'ī Nā'inī), written in 1909, comprise an indirect debate between these two Shī'ī *mujtahidīn*.<sup>63</sup> Nūrī argued that the principles of equality and freedom destroy the strong pillar of divine law, because the consistency of Islam is based on worship (before God), not freedom, and the rules of *sharī'a* are based on difference, not equality. He then addressed some jurisprudential rulings to show, for example, that rulings do not consider men and women or non-believers and Muslim as equals.<sup>64</sup>

On the other side, without naming Nūrī, Nā'inī considered Nūrī's statements to be fallacious and responded to them in his own works. While Nūrī considered freedom and equality as two destructive principles to *sharī'a*, Nā'inī saw them as two honorable and valuable principles.<sup>65</sup> Even more so, he considers them at their core to be Islamic principles. What is relevant to this article is that although Nā'inī considers freedom and equality is this way, his fatwas on slavery and servitude are the same as those of other jurists. It is as if he does not entertain the possibility that enslaved people could be the subjects of these two principles. For example, Nā'inī makes similar statements to other jurists in describing the issue of selling a runaway enslaved person. Additionally, he showed no objection to the case of slavery nor the slave trade.<sup>66</sup> Nā'inī—contrary to his reliance on the principles of equality and freedom in his debates with Nūrī—did not invoke those principles here.

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63 To read more about the differences and arguments of the two against each other's opinions see: Seyed Masoud Noori, *The Life of Sheikh Fazlullah Noori and a Comparison of His Political Thought with the Views of Mirza Naini*, 73–74 SOCIAL SCIENCE MONTHLY REVIEW 79–85 (Nov.–Dec. 2003); Seyed Masoud Noori, *Shia Political Philosophy in the Thought of Mirza Naini*, 73–74 SOCIAL SCIENCE MONTHLY REVIEW 31–37 (Nov.–Dec. 2003).

64 MEHDI ANSARI, SHEIKH FAZLOLLAH NOORI AND CONSTITUTIONALISM 59 (1990).

65 Noori, *Life*, *supra* note 63.

66 MŪSĀ AL-NAJAFĪ AL-KHWĀNSĀRĪ, MUNYAT AL-ṬĀLIB FĪ SHARḤ AL-MAKĀSIB (“Rewriting the Lesson of Mīrzā'ī Nā'inī”) 387–88 (1954).

One possible exception is an indirect hint in one of his fatwas over an issue related to slavery in which he admits that slavery “is *unfortunately* not the case in our time”<sup>67</sup> (emphasis added). This sentence is worthy of our attention because: the author says that in our time, there is no more slavery; and he regrets the absence of enslaved people. An alternative interpretation of the word “unfortunately” may refer to the idea of becoming free by converting to Islam. It is said that a prevailing opinion of many Islamic scholars is that freedom is defined only by being Muslim. Therefore, slavery is a way to help people to become Muslim and, as a result, free. That means abolishing slavery blocks one of the means of becoming a free human by Islam.<sup>68</sup>

## V. CONCLUSION

The study of fatwas in the Constitutional Revolution thus shows that the discussion over human equality and freedom does not manifest into an effect on the understanding of ‘*ulamā*’ of slavery in *sharī‘a*. It is also important to note that this attitude still reigns today. Some present-day jurists have turned away from contemplating and *ijtihād* (interpretation) in such issues and simply state that “because the rulings of slave men and women are not practically used in our time, abandoning them and spending time on more important matters is a priority.”<sup>69</sup> This means that even the current jurists do not reach the conclusion that slavery has been abolished or is prohibited under *sharī‘a*. Instead, they still believe if these questions arise in society, the *sharī‘a* has to answer them.

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67 Shaykh Anṣārī discussed the rulings on the release of an enslaved woman due her to having children with her owner and has carefully separated the rules and exceptions. Nā‘inī (as his student, the author of the book, says) commented, “It is fair to say that the author [i.e., Shaykh Anṣārī] has stated the rule and its exceptions well. May God reward him on behalf of the Muslims, but this is unfortunately not the case in our time.” Id. at 372.

68 Kadivar, *Slavery*, *supra* note 44 at 345.

69 NĀṢIR MAKĀRIM SHĪRĀZĪ, *AL-‘URWA AL-WUTHQA WITH FOOTNOTES* 1:366 (2021).

It is also evident from the discussions and teachings of the jurists discussed above that during the Qājar era or after the Constitutional Revolution in Iran there was little direct or effective dialogue between the leading Western thoughts at the time and Islamic jurisprudence. This is because they seem to be two different worlds of thinking with different basic principles (if not opposing). This difference can be seen in the arguments presented concerning slavery in fatwas. Although some commentators had already referred to principles like freedom and equality in their teachings, it never became the dominant trend among Shī'ī scholars in their jurisprudence. Quite the contrary, slavery is seen as a means towards person's absolute freedom, i.e., converting to Islam. Shī'ī scholars in Iran continued to believe that slavery is a means for non-believers to convert to obtain their eternal freedom as a reward for becoming Muslim. Hence, for them abolishing slavery is equal to abolishing (a means) towards human freedom.

It is worth noting that the authors do not suggest that Islam is not compatible with principles such as freedom or equality or with the abolition of slavery; rather, it seems that these concepts were not translated to fit into a completely different system of thought. Today one could characterize the prevailing opinion among Shī'ī *mujtahidīn* as the following: that commandments over slavery in the scriptures do not mean that slavery is obligatory or even recommended and Islam opposes slavery and introduced various ways to free enslaved people, but has not abolished slavery all at once due to the unpreparedness of public opinion for its sudden abolition.<sup>70</sup> If this explanation is accepted, the ground is finally prepared for the *sharī'a* to reach the goal of abolishing slavery indirectly via the fact that slavery has become disfavored in Muslim public opinion and public opinion is prepared, indeed would welcome, abolition. Everything is ready for the jurists to issue a fatwa that slavery in our time is forbidden in light of these changed circumstances. This position has gained more and more voice among contemporary Shī'ī *mujtahidīn*, albeit it is still far from

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<sup>70</sup> See, for example, NASER MAKAREM SHIRAZI, *ISLAM AND EMANCIPATION OF SLAVES* 16 (1975).

becoming mainstream discourse. However, even those *mujtahidīn* who still find slavery permitted in *sharī'a* confine it to the wars against non-believers,<sup>71</sup> and among them, some accept slavery only if this war is led by the Imam.<sup>72</sup> Therefore, practically, there is no room for slavery in modern Shī'a, at least until the Imam is present again in Shī'ī society.<sup>73</sup>

So the yet unanswered question is: How does contemporary Islam deal with the issue of slavery? A simplistic answer that slavery is no longer a practical issue in society only postpones any possible solution. Islamic jurisprudence, anyway, needs to find an answer to this question.

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71 MUHAMMAD TAGHI MESBAH YAZDI, A GLANCE AT HUMAN RIGHTS FROM THE PERSPECTIVE OF ISLAM 168–69 (2008).

72 Slavery is allowed in Islamic law, but it is limited to capturing non-believers in religious *jihad*. However, the Shī'a hold that *jihad* as religious war can only be conducted in the presence of the Imam—the rightful successor to the Prophet Muḥammad through the lineage of 'Alī b. Abī Ṭālib—who is currently absent ("in occlusion"). The Declaration of Human Rights is also applied where all people can reconcile with each other and live in peace. ABU AL-HASAN SHARANI AND QARIB MUHAMMAD, NASRE TUBI OR ENCYCLOPEDIA OF QURANIC VOCABULARY 186 (2015).

73 The emphasis on educating an enslaved person to convert to Islam and become a truly free person seems, to a significant if not exclusive extent, to be based on the existence of a war situation as only one of the *asbāb* (means) of obtaining an enslaved person in Islam. But this basis is also relied upon by most of the jurists to justify slavery in other situations and through other *asbāb*. In this regard, when there is no longer a war situation between Muslim society and non-believers, these justifications lose their effective force; the direct consequence is that other *asbāb* also lose their reason unless there are other drives or motivations to justify them.