Religiosity and Violence Reconsidered: Shi'i *Ulama* Responses to Modernization and the 1906 Constitutional Revolution[1]

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In the late nineteenth and early twentieth century, the two major religious leaders of Twelver Shi'i Islam in Iran – Akhund Mullah Mohammad Kazim Khurasani (1839–1911)[2] and Sheikh Fazlullah Nuri (1843–1909) – opposed each other over what would prove to be one of the most vital moments of modern Iranian history, a moment which led the country to change from despotism to constitutionalism, and, accordingly, had vast sociopolitical implications for the Iranian state and society.[3] Their conflict, which became public, is preserved in the standpoints they took toward the 1906 Constitutional Revolution. Interestingly, this conflict arose despite the fact that both scholars came from the same school of thought (Usuli Twelver Shi'ism[4]) and studied Islamic jurisprudence

under the same *marja'-i taqlid* (revered teacher and source of emulation), Ayatollah Sayyid Hasan Shirazi.

His preliminary support notwithstanding, Shaikh Nuri argued consistently against the Constitution from the moment its executive decree (*Farman-i Mashruṭih*) was approved by Muzaffar ad-Din Shah Qajar on August 5th, 1906.[5] After Muzaffar ad-Din's death, his successor – Muhammad Ali Shah Qajar – abolished the Constitution and bombarded the parliament in 1908. This led to a division between the pro-constitutionalists and those who sought to see constitutionalism terminated, in both the *ulama* (body of recognized scholars) and Iranian society at large. While Nuri's support of the Shah decriminalized the extensive use of violence and the murder of many constitutionalists, Akhund Khurasani – along with two other grand Najaf Ayatollahs, Shaikh Abdullah Mazandarani and Mirza Hossein Khalili Tehrani – supported the new parliament (*Majlis*) and tried to nullify Nuri's acts through their pro-constitutionalist *fatwas*.

Broadly, this article aims to explore this history as a means of examining the relationship between Usuli Twelver jurisprudence and patterns of violence that occurred during this time. In more precise language, it aims to provide an answer to the following question: Given that Nuri and Khurasani both purported to share the same general intention, that of guiding society to act in accordance with the Usuli Twelver Shi'i understanding of Islam, what can we make of the fact that Nuri's *fatwas* appear to legitimize, incite, and perhaps even *instrumentalize* violence, whereas Khurasani

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5. Even before the formation of the first *Majlis*, Nuri regretted supporting Bihbahani and Tabatabai, the two major pro-constitution clerics, as he became disillusioned with the outcome of their movement for both personal and religious reasons. For further discussion see Mangol Bayat, *Iran's First Revolution: Shiism and the Constitutional Revolution of 1905–1909* (New York: Oxford University Press, 1991), 134.

appears to be much more cautious and prudential about issuing any *fatwas* that may legitimize or incite violence? While Nuri (a traditionalist) and Khurasani (a moderate) were both influential *mujtahids,* their competing *fatwas* make it clear that they had different understandings of how their influence and authority should be wielded. This article will argue for the value in exploring their different positions through the theoretical lens provided by Robert M. Cover, a constitutional legal scholar whose career was dedicated to interrogating the complex relationship between jurisprudence and violence.[6]

While it might seem incongruent to accuse Nuri of inciting violence when his *fatwas* did not explicitly condone or call for violence, Cover helps us make this leap by providing a theoretical lens which clarifies how "on one level judges may appear to be, and may in fact be, offering their understanding of the normative world to their intended audience. But on another level, they are engaging a violent mechanism through which a substantial part of their audience loses its capacity to think autonomously."[7] While

6. While the present discussion will primarily rely on Cover's essay, "Violence and the Word," in *On Violence*, ed. Bruce Lawrence and Aisha Karim (Durham, NC: Duke University Press, 2007), I refer readers to *Narrative, Violence and the Law: The Essays of Robert Cover*, ed. Martha Minow, Michael Ryan, and Austin Sarat (Ann Arbor, MI: University of Michigan Press, 1995), to get a more robust sense of Cover's overall project. While Cover's work does not speak to the Iranian context specifically, I nevertheless hope to demonstrate the value his theoretical insights can bring to the particular line of inquiry being pursued. A similar approach can be seen in Mansour Bonakdarian's "A World Born through the Chamber of a Revolver: Revolutionary Violence, Culture and Modernity in Iran, 1906-1911," where he utilizes studies of violence in the French and Irish contexts to inform and "reinforc[e] [his] broader inquiries and conclusions." See "A World Born through the Chamber of a Revolver: Revolutionary Violence, Culture and Modernity in Iran, 1906-1911," *Comparative Studies of South Asia, Africa and the Middle East* 25, no. 2 (2005): 318.
7. Cover, "Violence and the Word," 302.

Khurasani's prudential approach seems to demonstrate an acute awareness of this fact, Nuri's *fatwas* indicate that he was either ignorant of it, or – more damningly – that he was willing to use his authority as a *mujtahid* to incite his followers to engage in violent acts, despite the fact that his actions went against the example set by Khurasani, who then held the position of *marja'-i taqlid*, which literally means the most learned source of emulation – a position expressly created by the Usuli *ulama* to guard against the threat of human error that naturally accompanies the use of reason in *fiqh* (Islamic jurisprudence). In other words, it will ultimately be asserted that the violence condoned by Nuri's *fatwas* is not a true reflection of some character of Twelver Shi'i doctrine or jurisprudence specifically, but is, rather, a reflection of the violence inherent in all judicial interpretation (as will be explained below), and, more specifically, of Nuri's misuse of the judicial authority bestowed on him as a *mujtahid* – something that clearly comes into focus when we compare his response to Khurasani's via the theoretical lens provided by Cover.

As Khaled Abou El Fadi notes in *Rebellion and Violence in Islamic Law*, "Muslim juristic discourses incorporate the rules of Islamic law, but also engage in a rhetorical dynamic through which the jurists adjudicate, advocate, protest and aspire for certain goals. […] Therefore, it is necessary to contextualize these discourses within certain historical events, and to examine these discourses in light of a historical continuum."[8] Following El Fadi's lead, this paper will thus begin with an examination of the history of Twelver Shi'ism in Iran, to provide the historical context necessary for understanding the Usuli *ulama* – specifically, why it has adopted the particular hierarchical structure it has, and how this relates to

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8. Khaled Abou El Fadi, *Rebellion and Violence in Islamic Law* (New York: Cambridge University Press, 2001), 2–3.

the Usuli stance on administering jurisprudential advice. This historical overview will be followed by a discussion of Nuri and Khurasani's competing *fatwas*, while the final section will map out the specific ways in which Cover's work helps bring the violence of Nuri's response into focus. However, before moving on, it will first be pertinent to spend a bit more time introducing the theory of jurisprudential violence that will provide the theoretical framework of this piece.

Cover's overall project is adequately described as an exploration into the peculiar positionality of judges, a positionality which requires them to both condemn and limit violence while simultaneously instantiating it. As Cover puts it:

> Legal interpretation takes place in a field of pain and death. This is true in several senses: A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, even his life. Interpretations in law also constitute justifications for violence which has already occurred, or which is about to occur. When interpreters have finished their work, they frequently leave behind victims whose lives have been torn apart by these organized social practices of violence. Neither legal interpretation nor the violence it occasions may be properly understood apart from one another.[9]

While it may appear that Cover is critical of this state of affairs, it must be clarified that this is not the case. He is, rather, simply noting that the practice of interpreting and administering the law is never simply a mental or spiritual act – as all law presides over societies of embodied persons, "a legal world is built only to the extent that there are commitments which place bodies on the line;" put differently, legal interpretation "depends on the practice of violence

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9. Cover, "Violence and the Word," 293.

for its efficacy." [10]

While Cover does acknowledge that there is an important distinction to be made between "interpretations which occasion violence" and "the violent acts they occasion" – that is to say, between the legitimization/authorization of violence and the actual committing of the violent act – he nevertheless asserts that, as "the judicial word is a mandate for the deeds of others," [11] we must resist the temptation to conceptually divorce these interpretive acts from the violent acts they authorize. Accordingly, he argues that legal interpretation should be understood as one of the many possible means by which people can overcome the general revulsion towards violence that marks normal human psychology. As he states, for most people,

> evolutionary, psychological, cultural, and moral considerations inhibit the infliction of pain on other people. […] Because legal interpretation is as a practice incomplete without violence […] it must be related in a strong way to the cues that operate to bypass or supress the psycho-social mechanisms that usually inhibit people's actions causing pain and death. […] In order to understand the violence of a judge's interpretive act, we must also understand the way in which it is transformed into a violent deed despite general resistance to such deeds; in order to comprehend the meaning of the violent deed, we must also understand in what way the judge's act authorizes and legitimizes it. [12]

As this quotation suggests, Cover is thus insistent that an integral part of legal interpretation is "an understanding of what others will do with such a judicial utterance" – an understanding which requires that attention be paid to something he calls "secondary

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10. Cover, "Violence and the Word," 300.
11. Cover, "Violence and the Word," 299.
12. Cover, "Violence and the Word," 300.

rules."[13]

Secondary rules refer to the rules and principles which both prescribe and describe the relationship between the interpretive acts of judges and the actions which may reasonably be expected to follow from them.[14] As Cover puts it, "secondary rules and principles provide the template for transforming language into action, word into deed."[15] While prescriptive secondary rules "purport to set the norms for what those relations ought to be," descriptive secondary rules purport to provide "an accurate prediction" of what the terms of cooperation between a judge and other social actors actually will be. While Cover is writing with the American legal system in mind – and is therefore admittedly thinking of the secondary rules that govern, for example, the relationship between a judge and an executioner – I nevertheless maintain that this concept can be fruitfully adapted and applied to the Iranian context under study. Here, prescriptive secondary rules refer to the series of distinctions created by the Usuli *ulama* to ensure that their use of *ijtihad* (independent reasoning) did not contradict Shi'i doctrine surrounding the authority of the Hidden Imam – distinctions which, as will be discussed below, clearly define what the relationship between interpreters and other social actors ought to be. What I would like to refer to as the descriptive secondary rules of this context diverge a bit more radically from Cover's schema, and refer to the environment of despotism and rebellion that marks this history, an environment which was already permeated with violence, and which, accordingly, provided an "accurate prediction" of what the terms of cooperation between

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13. Cover, "Violence and the Word," 299. It will be important to note that Cover did not coin this phrase himself, but rather borrowed it from H. L. A. Hart.
14. Cover, "Violence and the Word," 299.
15. Cover, "Violence and the Word," 299.

legal interpretations and the actions of other social actors actually would be. [16] Taken together, I argue that these secondary rules made it readily apparent that if a *mujtahid* provided an interpretation that strongly condemned something, this condemnation had a high likelihood of being – to use Cover's words – "transformed into a violent deed." As asserted above, while Khurasani's response seems to demonstrate an acute awareness of these secondary rules and the import of attending to them to reduce unnecessary (and therefore scripturally illegitimate) violence, Nuri's response does not.

Twelver Shi'ism

We shall begin our historical overview with an examination of the defining characteristics of Twelver Shi'ism. According to Abdulaziz Sachedina, Iranian Muslims follow a particular branch of Shi'i Islam – Twelver Shi'ism – which believes "in the appearance of a messianic savior from among the descendants of Muhammad."[17] It is this key concept of the "Savior Imam, the Mahdi (divinely guided)" that is at the heart and foundation of Twelver Shi'ism.[18] For Twelvers, the Saviour Imam is thus understood as being the charismatic figure who will succeed the Prophet and establish an ideal Islamic society, a role which was first assigned to the Prophet's son-in-law and cousin, Ali, and then

16. Cover, "Violence and the Word," 299. For more on the general atmosphere of violence marking this historical period, see Bonakdarian, "A World Born Through the Chamber," where he states that violence in this environment "ranged from premeditated acts of violence to spontaneous, random, defensive, punitive, accidental […] retaliatory […] and intimidating or terror-inspiring violence (319–320).
17. Abdulaziz Abdulhussein Sachedina, *Islamic Messianism: The Idea of Mahdi in Twelver Shi'ism* (Albany: State University of New York Press, 1981), 5–6.
18. Sachedina, *Islamic Messianism*, 6.

to the male descendants of Muhammad born through the union of Ali and Muhammad's daughter, Fatima. Ali and his direct descendants are thus viewed as the "rightful'" heirs of the messianic leadership, and it is believed that they are the only ones capable of establishing a true and just Islamic society – thus the expression *Shiʻat ʻAli* (partisans of Ali).[19]

Shiʻi political aspiration has historically been met with a great deal of resistance and failure. Ali's second son, Husayn, who succeeded his elder brother as the third Imam, was killed in the battle of Karbala, and the tragedy of early and unnatural deaths persisted among the Imamate until the succession of the twelfth and final Imam, Muhammad ibn al-Hasan, the last of Ali's direct descendants. Unlike his predecessors, Muhammad ibn al-Hasan did not meet an early death – in fact, he is understood not to have died at all, but rather to have gone into a state of "occultation" (a form of concealment by God) after his father's death in 874 CE.[20] Often labeled as the "Hidden Imam," it is believed that he will return when God deems it to be the right time. Prior to the occultation of the last Imam, the Imams and their communities faced a great deal of harassment and persecution at the hands of the Abbasid caliphs (the second of the two dynasties which governed the Muslim Empire, reigning from 750 CE until the Mongol invasion in 1258 CE).[21] After the occultation of the twelfth Imam, the Shiʻi community, although tolerated, was heavily dispersed across the region

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19. The primary difference between Shiʻi Muslims and Sunni Muslims is that Sunni Muslims rely predominantly on the *Sunnah*, which is a record of the teachings, actions and sayings of the Prophet. Shiʻi Muslims rely more heavily on the *Khabar* which is a record of the traditions of the Imams (Ali and his descendants).

20. Andrew J. Newman, "Twelver Shiʻah," in *Encyclopædia Britannica*, Encyclopedia Britannica, September 04, 2019. http://www.britannica.com/topic/Twelver-Shia.

21. Newman, "Twelver Shiʻah."

spanning from Iran to Afghanistan in one direction, and to the Persian Gulf in the other direction.[22]

Twelvers view the Imamate as a "necessary consequence" of the death of the Prophet.[23] The Imam was understood as receiving guidance directly from God and thus was considered authoritative in guaranteeing that the Muslim community remained on the just path. In the aftermath of the twelfth Imam's occultation, this theological and jurisprudential authority was shifted from the Imam to a new class of religious scholars who "relied primarily on rational discourse."[24] Despite there being a great deal of diversity in views amongst Twelver theologians, the one aspect which has always kept them united is their defense of the Imam's authority; this element was simply unquestionable. In the tenth century, despite an increasing number of Twelver scholars engaging in rationalist debates and discourse, the dominant theological and jurisprudential disposition within Twelver Shi'ism was to maintain traditional views and approaches, which is to say, "they relied exclusively on reports that conveyed the words or actions of the Prophet and the Imams."[25]

While traditionalist scholars argued that human reason could not produce religious knowledge and thus would always be susceptible to error,[26] with the occultation of the twelfth Imam this argument became difficult to maintain, and Mu'tazila[27] theological

22. Newman, "Twelver Shi'ah."
23. Najam Iftikhar Haider, *Shi'i Islam: An Introduction* (New York: Cambridge University Press, 2014), 145.
24. Haider, *Shi'i Islam*, 145.
25. Haider, *Shi'i Islam*, 147-148.
26. Haider, *Shi'i Islam*, 150.
27. According to Haider, the Mu'tazila "were a theological school known for their unique interpretation (*ta'wil*) of Qur'anic passages and their application of reason (*'aql*) to scripture and other sources of religious knowledge. (*Shi'i Islam*, 13).

and jurisprudential reasoning slowly became the guiding principle of Twelver Shi'ism. As the Imams were the ones who provided their followers with answers to legal questions, very often these would be offered in the form of general rules and principles.[28] These guiding principles were later taken up by Twelver jurists and developed into "a rationalist system that consisted of 'logical analysis and reasoning within the framework of Qur'anic texts and Tradition.'"[29] However, not all Twelver jurists adhered to this rational framework, which led to the creation of two competing groups of legal scholars; the majority subscribing to traditionalism and a minority relying upon rationalist approaches.[30] This gap between traditionalism and rationalism shifted towards the end of the tenth century, predominantly because the political landscape had changed and was now being ruled by dynasties of Shi'i origin that favored Shi'i celebrations and scholars.[31] In addition, the fact that the Imam was now "hidden" and no longer accessible required a system be put in place that would allow the community to deal with new realities that did not have any precedence. It is thanks to the rise of the Safavid dynasty in 1501 CE that Twelver Shi'ism transitioned into a state religion.

The Safavids

The Safavids were originally leaders of a Sufi[32] order, and it is only during the reign of Shah Isma'il I (1501–1524) that the

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28. Hossein Modarressi, *An Introduction to Shī'ī Law: A Bibliographical Study* (London: Ithaca Press, 1984), 29.
29. Haider, *Shi'i Islam*, 151.
30. For further discussion see Modarressi, *An Introduction*, 32ff.
31. Haider, *Shi'i Islam*, 154.
32. Sufism is a form of Islamic mysticism that emphasizes introspection and closeness to God.

Safavids transformed from a Sufi order to a Twelver Shi'i dynasty.[33] This process was politically motivated and had far more to do with state building than any relationship of power between the religious institution and the state. The question as to why Isma'il imposed a form of Shi'ism that was practiced by only a small minority is heavily debated amongst scholars, but suffice it to say that "[t]he Safavids sought a foundation for their legitimacy that was more familiar to the Iranian populace. Twelver Shi'ism provided such a foundation without making any wholesale concessions to Sunni urban elites."[34]

Twelver Shi'ism clearly allowed the Safavids to demarcate themselves from the Ottoman empire which was predominantly Sunni, while attempting to create new alliances with communities that had Shi'i affiliations. In addition, with the twelfth Imam in occultation, there was less probability that political challenges would arise. However, this particular period demarcates a specific transformation with respect to the Twelver stance on the Imam's authority. Prior to the Safavids there was a general consensus among Twelver scholars that "all political authority was illegitimate during the Imam's occultation."[35] However, this did not mean that individual Twelvers did not hold important government positions, as I will expand upon below.

Before the rise of the Buyids (945–1055),[36] the Shi'i *ulama*, as just noted, adhered to a doctrine which held the state to be

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33. Haider, *Shi'i Islam*, 155
34. Haider, *Shi'i Islam*, 156.
35. Haider, *Shi'i Islam*, 157.
36. The Buyids were "an Islamic dynasty of pronounced Iranian and Shīī character that provided native rule in western Iran and Iraq in the period between the Arab and Turkish conquests." See "Būyid Dynasty," in *Encyclopaedia Britannica*, ed. Marco Sampaolo and Emily Rodriguez (Chicago: Encyclopaedia Britannica, 2017), https://www.britannica.com/topic /Buyid-dynasty.

illegitimate during the occultation of the Twelfth Imam. However, from the Buyids to the Safavids at the beginning of the sixteenth century, the narrative appears to have changed in order to allow for collaborative relations between the Shi'i *ulama* and the Sultans. The prevention of harm doctrine (*daf' al-maḍarrah*) was developed by early Imami jurists, and, accordingly, it was established that cooperation with an unjust ruler was permissible in order to prevent harm.[37] However, this did not prevent the *ulama* from using the doctrine holding the illegitimacy of any worldly authority as a weapon against those rulers who dare to overrule them.[38] This random cooperation shifted to a relationship of direct consultation and joint advisory collaboration between the ruler and the religious establishments during the Safavid dynasty.

The Safavids' decision to recognize Twelver Shi'ism as the religion of the state created the opportunity for the relationship between Twelver scholars and the ruling power to shift. Both Isma'il and his successor invited and encouraged Twelver scholars from different regions to migrate to Iran, which was a welcome opportunity for many Twelver Shi'i scholars who suffered heavy persecution under the Ottoman regime. The invitation was extended on the premise that both the people and the ruling powers knew very little with respect to Twelver Shi'i principles and legal foundations, and an education of sorts was needed if Twelver Shi'ism was to be the religion of the state.[39] The most important Shi'i scholar to settle in Iran during the Safavid reign was al-Muhaqqiq 'Ali Husayn al-Karaki.[40]

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37. Ann K.S. Lambton, *Qajar Persia* (London: I.B. Tauris, 1987), 197.
38. Enayat, *Modern Islamic Political Thought*, 170–174.
39. Rula Jurdi Abisaab, *Converting Persia: Religion and Power in the Safavid Empire* (London: I.B. Tauris, 2004), 11–13.
40. For more on Karaki see Rula Jurdi Abisaab, "KARAKI," in *Encyclopædia Iranica*, online at https://www iranicaonline.org/articles/karaki.

Al-Karaki migrated from Jabal ʿAmil (where he attended the ʿAmili seminary) to the Safavid empire and was one of the first important ʿAmili scholars to immigrate to Iran.[41] It was thanks to his support that Safavid political claims received religious backing. Al-Karaki argued that because there was legal precedence, jurists could "cooperate with and benefit from a just state even if it lacked the absolute legitimacy of the twelfth Imam"[42] – thus presenting Ismaʿil not only as a "just" ruler, but a ruler whose authority was founded in the principles of Twelver Shiʿism. Furthermore, this allowed many Twelver scholars to accept both judicial and administrative government positions. Al-Karaki also permitted that Friday prayer be re-instituted, but only on condition that a Twelver jurist, who functioned as a representative of the "hidden" Imam, lead the prayer.[43] This created a two-way relationship between the ruling power and the religious intellectuals, the Twelver Shiʿi scholars (*ulama*). The ruling dynasty authorized and legitimized Twelver Shi'ism as the state religion, and in turn Twelver scholars provided the Safavids with legitimacy and approval. As Safavid authority declined in the late sixteenth and seventeenth centuries, Twelver scholars had gained a great deal of authority within Iranian society. They benefited from large endowments that provided them with financial support, and also acquired a significant amount of influence amongst trading guilds and merchant networks.[44]

Another major shift in Twelver Shiʿism during this time was the resurgence of traditionalism. This traditionalist movement is called Akhbarism, and is predominantly credited to the efforts of the Twelver Shiʿi scholar Muhammad Amin al-Astarabadi, who

41. Abisaab, *Converting Persia*, 15
42. Haider, *Shiʾi Islam*, 157.
43. Abisaab, *Converting Persia*, 21–22.
44. Haider, *Shiʿi Islam*, 159.

criticized Twelver Shi'i scholars for using rationalist legal theory which was prone to human error.[45] During the mid-seventeenth century scholars who practiced *ijtihad*[46] came to be known as Usulis, and are usually labelled "rationalists" because they use reason to interpret the Islamic sources and evaluate Shi'i principles and traditions.[47] Thus, for al-Astarabadi and the Akhbari, religious knowledge could only be gained from the Qur'an and the traditions of the Prophet (*hadith*) and the Imams (a*khbar*).[48]

The Akhbari Usuli Divide

Most classical Muslim scholars, whether Sunni or Shi'i, are generally described as "scripturalist," which is to say their belief system is derived from the texts that record God's communication with humankind.[49] However, what should be considered as scripture has been the subject of much debate within the Muslim world. Then there is also the question of interpretation, what does something mean, or is something that happened in the past still relevant today? There are also debates about sources of knowledge beyond revelation and the limitations of what scripture has to offer. Can reason that is independent of revelation bring about knowledge? This is a key point of contention among Twelver Shi'i scholars, one which leads to debates about the validity and legitimacy of using certain techniques or methods.

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45. Haider, *Shi'i Islam*, 160.
46. *Ijtihad* is an Islamic legal term referring to independent reasoning or the rigorous mental process of a jurist in finding a solution to a legal question.
47. Abisaab, *Converting Persia*, 106.
48. Abisaab, *Converting Persia*, 106.
49. R. M. Gleave, *Scripturalist Islam: The History and Doctrines of the Akhbari Shi'i School. Islamic Philosophy, Theology, and Science* (Leiden: Brill, 2007), 3.

According to R.M. Gleave "the epistemology and legitimacy of *ijtihad* was affirmed and given a scholarly pedigree which could be traced back to the Prophet."[50] As noted earlier, the need for *ijtihad* prior to the occultation of the Imam was not deemed necessary, since theologians could consult the Imam directly. However, the need for interpretive approaches became necessary once the Imam was no longer accessible. Thus, under certain changes – namely, the prolonged in-accessibility of the Imam and social situations which had no precedence in the texts and the establishment of a Imami tradition of scholars – Shi'i jurists had no choice but to adopt a position which would allow for the practice of *ijtihad*.[51] By the time al-Astarabadi arrived on the scene, nearly all Shi'i jurists accepted the legitimacy of *ijtihad*, however debates and disagreements regarding application and latitude were still very fervent in scholarly circles. However, al-Astarabadi and his Akhbari followers "argued for a return to the earlier Shi'i attitude of a rejection of *ijtihad* on the grounds that legal certainty was available [through the *akhbar*]"[52] The Akhbari rejection of *ijtihad* also meant that they had distinct legal opinions concerning their relationship with the state and role within society – they rejected the legitimacy of any government during the occultation, the validity of performing communal Friday prayer, as well as the distribution of community taxes.[53] Gleaves argues that it is only after al-Astarabadi that the Akhbari approach to questions of legal hermeneutics gained coherence.[54] From this point onward, Akhbari legal theory seems to be preoccupied with refuting Usuli approaches and positions with respect to law, thus defining itself through a rejection of Usuli

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50. Gleave, *Scripturalist Islam*, 7.
51. Gleave, *Scripturalist Islam*, 7.
52. Gleave, *Scripturalist Islam*, 7.
53. Gleave, *Scripturalist Islam*, 9.
54. Gleave, *Scripturalist Islam*, 178.

doctrine.[55]

"Usuli" comes from the Arabic word *usul*, which means "roots" or "foundations" of law, "but in the case of the Shia, it was used with special reference to a type of legal theory that recognized the use of human reason (*aql*) and unrestricted legal reasoning (*ijtihad*) by qualified *ulama*."[56] These principles of Islamic jurisprudence are referred to as *usul al-fiqh*:

> The field of *usul al-fiqh* encompasses theoretical discussions of the nature of the religious law, its relationship to reason and ethics, and its derivations from the Qur'an, the Prophet's Sunnah [...], *ijma* (consensus of the scholars), and *qiyas* (analogical deductions from these three) [...][57]

Thus, Usuli scholars are referred to as those scholars who are experts in *fiqh* (Islamic jurisprudence) principles.

A clear distinction that can be drawn immediately is thus that the Akhbari reject the validity of *ijtihad* while the Usuli both support and promote it – and indeed, Gleave notes that most hermeneutical disputes between the Akhbari and Usuli were related to *ijtihad*.[58] Accordingly, the Akhbaris sought to invalidate any hermeneutical approach or method used by the Usuli, since its employment (in their opinion) would lead to uncertain (*zanni*) results; to human errors. Another distinguishing feature of the Akhbaris is their argument that the Qur'an can "only be understood

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55. Gleave, *Scripturalist Islam*, 178.
56. Juan E. Campo, "Usuli School," in *Encyclopedia of World Religions: Encyclopedia of Islam*, 2nd ed. (Facts On File, 2016), https://search.credoreference.com/content/entry/fofislam/usuli_school/0?institutionId=899.
57. "Uṣūl al-fiqh," in *Encyclopædia Britannica*, ed. Gloria Lotha, Noah Tesch, and Ahmed El Shamsy (Chicago: Encyclopædia Britannica, 2018), https://www.britannica.com/topic/usul-al-fiqh.
58. Gleave, *Scripturalist Islam*, 183.

after having read its interpretation by the Imams [and thus] the Qur'an can only be understood through the *akhbar*."[59] This position is in opposition to that of the Usulis, who view the Qur'an as an independent source which can be approached through *ijtihad* to allow for a comprehensible interpretation. The role, qualifications and authority of the jurist is a third point of disagreement between the Akhbaris and Usulis. Here, the question becomes should a believer (who lacks knowledge and understanding of the law) accept the opinions and interpretations of a *mujtahid*[60] (someone who uses *ijtihad* in the interpretation of Islamic law).[61]

For the Akhbaris, the basis of scholarly authority is to be found in the *hadiths* and the *sunna* – not from knowledge gained from a broad range of disciplines. This particular point of contention will be important to remember when we discuss the educational reforms introduced during the constitutional revolution. For the Usulis, however, conjecture and reasoning were permissible and necessary to both complement and supplement the Qur'an and the *sunna*.[62] In addition, while the Usulis understood the community as being divided into two groups – the *mujtahid* (those who lead the

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59. Gleave, *Scripturalist Islam*, 187.
60. According to the Oxford Dictionary of Islam, a *mujtahid* is "one who exercises independent reasoning (*ijtihad*) in the interpretation of Islamic law. Qualifications include training in recognized schools of Islamic law and extensive knowledge of the Quran and hadith. In Sunni Islam, the title is reserved for the founders of the four official schools of Islamic law, although modern Islamic reformers call for the revival of *ijtihad* as a means of accommodating new ideas and conditions." See John L. Esposito, ed., "Mujtahid," in The Oxford Dictionary of Islam, Oxford Islamic Studies Online, http://www.oxfordislamicstudies.com/article/opr/t125/e1596.
61. For further discussion see Andrew J. Newman, "The Nature of the Akhbārī/Uṣūlī Dispute in Late Safavid Iran. Part I 'Abdallāh al-Samāhijī's "Munyat al-Mumārisīn," *Bulletin of the School of Oriental and African Studies,* 'University of London 55, no. 1 (1992): 22–51.
62. Newman, "The Nature of the Akhbārī/Uṣūlī,"39.

community) and the *muqallid*[63] (those who follow)[64] – the Akhbaris maintained that all members of the community were followers of the Twelve Imams and that there was no *mujtahid*.[65] During the Safavid dynasty Usuli scholars also promoted "the view that ordinary Shiis should without question follow the authority of a living jurist before that of a dead one,"[66] a view which created a greater rift between rationalist and traditionalist Twelver scholars. Initially the Akhbari *ulama* gained popularity within the Shi'i community, and this may be due to the fact that there was a general sense of unease with Usuli rationalism and the possibility that the fundamental principles of Shi'i religion, based on the Qur'an and the teachings of the Imams (*akhbar*), would be undermined. However, in the early to mid-sixteenth century the Akhbari *ulama's* control of legal interpretation was met with fervent opposition, and many lay members of the Shi'i community were calling for more freedom in Shi'i jurisprudence.[67]

This did not stop the Safavids from financing "akhbari scholars in the seventeenth century out of the belief that they could provide a more stable religious foundation for the state's legitimacy than the Usuli."[68] The rise of the Akhbaris persisted despite

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63. A *muqallid* is often understood as someone who follows and is derived from the Arabic term *Taqlid*. According to the Encyclopedia Britannica "*Taqlīd*, in Islamic law, is the unquestioning acceptance of the legal decisions of another without knowing the basis of those decisions [...] In its use among the Shi'ah, *taqlīd* refers to the necessity for a layperson to accept and follow the opinions of an expert in Islamic law (*mujtahid*)." See "Taqlīd," in *Encyclopedia Britannica*, ed. Darshana Das, Thinley Kalsang Bhutia, Emily Rodriquez et al., (Chicago: Encyclopaedia Britannica, 2020). https://www.britannica.com/topic/taqlid.
64. Newman, "The Nature of the Akhbārī/Uṣūlī," 41.
65. Newman, "The Nature of the Akhbārī/Uṣūlī," 41.
66. Campo, "Usuli School."
67. Modarressi, *An Introduction*, 52.
68. Haider, *Shi'i Islam*, 161.

opposition, and they remained influential throughout the seventeenth and eighteenth centuries. Despite its unpopularity in many parts of Iran where Akhbari scholars were in control of the urban city centers, the Usuli *ulama* persisted in the region and their foundational texts continued to be studied in many Twelver seminaries.[69] The decline of the Akhbari *ulama* can be dated to the late eighteenth century, and the primary cause of this decline seems to be linked to dissent within "the community because of [Akhbari] rejection of the possibility of multiple valid opinions on a given legal issue."[70] The fate of the Akhbaris was sealed when Usuli scholars secured the patronage of the new Qajar rulers of Iran (1785–1925).

Later in the nineteenth century, the Usuli *ulama* introduced the concept of *marja'-i taqlid*, which literally means the source of emulation or imitation; the authority to be followed. According to this concept, each lay believer (*muqallid*) was obliged to follow the "most learned jurist of their age."[71] At this point the Usuli *ulama* organized itself into a hierarchy of religious experts, leaving the *marja'-i taqlid* at the top – a position which required a great deal of popularity not only among scholars but among the merchants and tradesman as well. However, it should be noted that a *mujtahid* was under no formal obligation to recognize the chosen *marja'-i taqlid* as the most learned, and, if he didn't recognize him as such, then that *mujtahid* was under no formal obligation to concur with his interpretations. In this sense, the clerical hierarchy of the Usuli *ulama* should not be understood as being completely rigid – it is unlike, for example, the Papal hierarchy within the Catholic Church. Accordingly, while most *mujtahids* were likely to concur

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69. Haider, *Shi'i Islam*, 161.
70. Haider, *Shi'i Islam*, 161.
71. Haider, *Shi'i Islam*, 162.

with the example set by the *marja'-i taqlid* – because, as noted, this position was only bestowed upon someone who had popular support amongst the *mujtahids* – following his example was a choice rather than an obligation.[72] In 1849, Shaikh Murtaza Ansari was acknowledged as the first *marja'-i taqlid*, or "source of emulation," for the global Twelver Shi'i community.[73]

Qajar Period and Modernization

The eighteenth century proved to be a difficult period for the Safavid Dynasty, who saw their empire decline and then come to a definitive end in 1736. New powers emerged – the Qajar tribe of Turkomen origins took control in 1794, and in 1796 Agha Muhammad Khan was officially crowned as Shah of Iran and founder of the Qajar dynasty.[74] During the Qajar period the Persian empire shrank considerably. At the beginning of the nineteenth century it encompassed Azerbaijan, Armenia, most parts of Georgia, and western Afghanistan, "but by the end of the century, all this territory had been lost as a result of European military action."[75]

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72. As Aron Zysow puts it, "individual *moqalled*s [*muqallids*] are enjoined to attach themselves to the most learned (*a'lam*) *mojtahed* of their day [the *marja'-i taqlid*] ... *Mojtahed*s [*mujtahids*], on the other hand, are not permitted to practice *taqlīd* unless on a matter beyond their competence." However, to clarify, to say that *mujtahids* are not permitted to practice *taqlid* means that they are not permitted to unquestioningly follow another *mujtahid* when they have the knowledge and training to independently reason on their own. They can, however, choose to follow him.

73. Haider, *Shi'i Islam*, 162.

74. "Qājār dynasty," in *Encyclopedia Britannica,* ed. Grace Young and Gloria Lotha (Chicago: Encyclopædia Britannica, 2017), https://www.britannica.com /topic/Qajar-dynasty.

75. Patrick Clawson and Michael Rubin, *Eternal Iran: Continuity and Chaos*, Middle East in Focus Series (New York: Palgrave Macmillan, 2005), 31–32.

In 1797 Muhammad Khan was succeeded by his nephew, Fath-Ali Khan, who would reign for the next thirty-seven years. During this period Iran lost its Caucasian states to Russia, and, as a result of the costly wars, "grew poorer and had to submit to a humiliating peace treaty that became the basis of [Iran's] relationship with other European countries throughout the nineteenth century."[76] During Fath-Ali Shah's reign, his son Abbas Mirza was crowned prince and was appointed as governor of Azerbaijan. The prince proved to be incredibly astute and wished to modernize the empire by introducing new reforms. When the Russo-Persian wars began in 1805 the Shah asked the British for help, but the British were not willing to offer Iran assistance, and thus the Shah had no choice but to turn to France, who at this point were well positioned to oppose Russia and Great Britain thanks to Napoleon Bonaparte.[77] Unfortunately, diplomatic alliances with the French and the British over the course of the next ten years proved to be less than fruitful, causing Iran to make a great deal of concessions and relinquish a portion of their territory.

The Qajar government was, from the outset, unpopular. Many of the high-ranking positions both within the army and the government were either of bureaucratic background, chosen from the princely class, or members of the royal family,[78] and outside of the capital (Tehran area) the Qajar government did very little for the people apart from collecting taxes.[79] This discontent led to two different paths of development in terms of centralization in Iran,

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76. Mansoureh Ettehadieh Nezam-Mafi, "Qajar Iran (1795–1921)," in *The Oxford Handbook of Iranian History*, ed. Touraj Daryaee (Oxford: Oxford University Press, 2012), 321.
77. Ettehadieh Nezam-Mafi, "Qajar Iran," 322.
78. Ettehadieh Nezam-Mafi, "Qajar Iran," 325.
79. Nikki R. Keddie, "The Roots of the Ulama's Power in Modern Iran," *Studia Islamica*, no. 29 (1969): 34.

one at the state level and one within religious institutions. While state centralization attempted to introduce modernization mainly in education and administrative departments, they failed due to opposing interests from the old judicial system, religious institutions, technocratic intellectuals, and foreign colonial states. These opposing interests finally led Iranian society to be polarized once again between rationalists and traditionalists.[80]

Here we need to step back a moment, in order to better ascertain why it is that the Qajar monarchs chose to align themselves with the Usuli *ulama* and not the Akhbari *ulama*. Above we had noted that Astarabadi had accused the Usuli *ulama* of using *ijtihad* to offer interpretations that were filled with human error. The approach that *ijtihad* offered was problematic, Akhbari scholars argued, because it lacked certainty – in other words, how does one ascertain if the approach has been applied properly? Hence there was a need for people with authority to decide on the application of these principles to particular situations and circumstances. Muhammad Baqir Bihbahani, a Usuli jurist, argued that this is the role of the *mujtahid*, who is both trained and knowledgeable, and who follows the principles of reasoning (*'aql*). Bihbahani's position led to bitter disputes with Akhbari scholars, and culminated in Bihbahani declaring that the Akhbaris were infidels (*kuffar*) because they would not accept the validity of *ijtihad* or the authority of the *mujtahid*.[81] According to Moorjan Momen "Bihbahani brought the threat of *takfir* [(ex-communication)] into the central field of theology and jurisprudence, where previously only *ikhtilaf* (agreement to hold differing opinions) had

80. Monica M. Ringer, *Education, Religion, and the Discourse of Cultural Reform in Qajar Iran*, Bibliotheca Iranica. Intellectual Traditions Series, No. 5. (Costa Mesa California: Mazda, 2001), 10.
81. Moojan Momen, *An Introduction to Shi'i Islam: The History and Doctrines of Twelver Shi'ism* (New Haven: Yale University Press, 1985), 127-128.

existed."[82] Returning to Iran from Najaf, Bihbahani utilized the Qajar's support to politically promote his theological interpretations against the Akhbaris and the Sufis. Bihbahani built a network of Usuli patrons predominantly made up of Persian students who studied with him in Najaf, with the intention of returning to a position of authority to take down the Akhbaris and the Sufis, both of whom held positions of authority at the time.[83]

In 1797 Shaikh Ja'far Kashif al-Ghiṭa Najafi, a close student of Bihbahani, became the most widely followed scholar in Iraq and Persia. That same year, Najafi issued a proclamation which stated that Fatḥ-'Ali Shah was "permitted" to mount the throne as his deputy (*na'ib*) on the condition that a prayer caller (*mu'aḏḏin*) be appointed to each brigade of the army, that a prayer leader be appointed to each battalion, and that the troops listen to a preacher once a week.[84] A strategic move, since at the time Fath-Ali Shah was suspected of favoring the Akhbari School of jurisprudence and was solicited by the Akhbari scholar, Mirza Muhammad Nayshaburi, to support the Akhbari cause. Najafi quickly crushed his adversary by issuing a treatise entitled, *Kashif al-Ghiṭa' 'an ma'a'ib Mirza Muhammad 'aduv al-ulama'* (Removing the veil from the vices of Mirza Muhammad, the enemy of the scholars), where he warns the monarch against the dangers of associating with the Akhbari. Najafi's son, Musa, continued his father's legacy of anti-Akhbari rhetoric by delivering the *fatwa* which played a role in the death of Mirza Muhammad Akhbari at the hands of a mob in Kazemayn in 1818, leading to the almost complete disappearance

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82. Momen, *An Introduction to Shi'i*, 127.
83. Amanat, *Iran: A Modern History*, 205.
84. Hamid Algar, "KĀŠEF-AL-ĜEṬĀ', JA'FAR," in *Encyclopædia Iranica*, XV/6, pp. 648–649. Available online at https://iranicalonline.org/articles/kasef_al_geta_jafar.

of the Akhbari *ulema*.[85]

Although the Qajar dynasty received its legitimacy from the Usuli *ulama*, the crowned prince realized that some changes were needed. The war with the Russians made Abbas Mirza aware of Europe's military superiority, which led Mirza to make substantial efforts to reform and modernize the Iranian army. Mirza thus turned to France and Britain for assistance in modernizing and centralizing the army, and employed a number of foreign instructors to come to Iran and train the military personnel.[86] Mirza also sought to take advantage of European scientific and intellectual advancements, and from 1811 to 1815 he sent several students to study in Britain.[87] These initial steps towards modernizing the army and bureaucracy were never completed because of his death, and none of the successive Qajar rulers were concerned with modernization. However, these small attempts at change were followed by reforms implemented by prime minister Mirza Taghi Khan Farahani, best known as Amir Kabir, who was appointed under the next Qajar ruler Nasir al-Din (1848–1896).

Amir Kabir, who had acquired a significant amount of administrative experience from his time spent in both Russia and Turkey, took the opportunity to implement some necessary reforms to modernize, develop, and strengthen the state. Amir Kabir was not interested in creating a balance between the state and the *ulama*, rather his financial reforms were meant to centralize not only the finances of the state but the judicial system as well. Amir Kabir's ultimate goal was to create a well-structured and prosperous Iran with undisputed authority exercise by the central government.[88]

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85. Algar, "KĀŠEF-AL-ĞEȚĀ', JAʿFAR," 648–649.
86. Ettehadieh Nezam-Mafi, "Qajar Iran," 325.
87. Ettehadieh Nezam-Mafi, "Qajar Iran," 325.
88. Keddie, "The Roots of the Ulama," 35–36.

These new reforms angered the *ulama* who disputed the legitimacy of the state – as authority only rested with the hidden Imam – and often sought to exercise an independent and rival authority.[89] Amir Kabir thus took specific steps to curb the influence of the *ulama* within the Iranian state. The primary objective of Amir Kabir's reforms was to regulate and centralize the government to increase administrative accountability and efficiency thus reducing the *ulama*'s juridical authority.[90] His efforts were impactful but short lived – much like the crowned-prince before him – and his own premiership (1848–51) abruptly came to an end when he was exiled by the Shah and shortly after assassinated.

A third attempt to centralize the state came about in the last quarter of the nineteenth century with Mirza Hussain Khan Moshir al-Dowleh Sepah-Salar, prime minister from 1871 to 1873:

> [He] aimed to create a centralized judiciary, a unified fiscal policy and an efficient army. His efforts to remedy the divisions between the jurisdiction of the mujtahids' civil law courts and the divan's enforcement of an unwritten customary penal code encountered with antagonism from two sides: the *Ulema* and the local governors such as Zel el-Sultan in Isfahan, [who] viewed centralized supervision as meddling in their authority.[91]

Sepah-Salar was opposed by the *ulama* and a number of governors, who feared the prime minister's westernizing reforms and complained that he was offering preferential treatment to foreign entrepreneurs at the expense of local tradesmen. The case that was brought before the Shah was that of British entrepreneur Julius de

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89. H. Algar, "AMĪR KABĪR, MĪRZĀ TAQĪ KHAN," *Encyclopædia Iranica*, I/9, pp. 959–963. Available online at: http://www.iranicaonline.org/articles/amir-e-kabir-mirza-taqi-khan.
90. Ringer, *Education, Religion, and the Discourse*, 67.
91. Amanat, *Iran: A Modern History*, 274.

Reuter, who had been granted a monopoly on building railways, tramways, irrigation, roads, the foundation of a bank, and the exploitation of forest and mines.[92] This opposition forced the Shah to dismiss his prime minister and cancel the Reuter concession.

After Sepah-Salar's dismissal the Qajar monarch experimented with several different government structures and shuffled around his ministers in an attempt to stabilize the central government, but his efforts did not offer any viable solutions. The Shi'i Usuli structure of centralization, on the other hand, was more thoughtfully elaborated, better organized, and offered a more stable structure to the community. However, the religious structure initially remained only partially centralized due to the independence given to the *mujtahids* in issuing their *fatwas*, an independence which demonstrates the pluralistic nature of Shi'i scholarship. In order to further centralize the *ulama*, in the middle of the nineteenth century Shaikh Murtaza Ansari introduced the office of the *marja'-i taqlid* (which, as noted earlier, means the source of emulation or imitation). This individual *a'lam* (most learned) was classified as the highest religious authority within the clerical hierarchy.[93] The rulings and opinions of the *marja'-i taqlid* were deemed the most authoritative and thus were to be accepted and followed by all Shi'i – they were to be imitated by all.[94] It is very probable that this background of Usuli *ulama* centralization is what allowed the *ulama* and the *mujtahids* to gain prominence and authority within Iranian society at this time. Similar to the Safavid decline, the Qajar's lack of centralization led to a loss of their authority, which led Iranian society to turn to the *ulama* for stability. The centralization of the

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92. Ettehadieh Nezam-Mafi, "Qajar Iran," 332.
93. Ḥamīd Enāyat, *Modern Islamic Political Thought: The Response of the Shī'ī and Sunnī Muslims to the Twentieth Century* (London: I.B. Tauris, 2005), 162.
94. Enāyat, *Modern Islamic Political*, 162.

establishment allowed for the consolidation of religious authority through the Usuli *ulama*, which in turn allowed the *ulama* to suppress any religious rivals.

Repression of Religious Rivals

The aim of the preceding section was to provide the historical context necessary for grasping both the social position of the Usuli *ulama* in relation to various ruling powers and Persian society at large, and the debates surrounding the use of *ijtihad* and how these debates informed the hierarchical structure of the Usuli *ulama* – and thus the prescriptive secondary rules described above. We have learned that the relationship between the Usuli *ulama* and various ruling dynasties has followed a complicated trajectory, with the *ulama* beginning in an advisory role (as we saw in the early Safavid period) and slowly gaining power and authority due to the stability and continuity they provided throughout regime changes (as we saw following the collapse of the Safavid dynasty and in the Qajar decision to favour the Usuli *ulama* over the Akhbari *ulama*). Moreover, we have also learned that the *ulama* came to be staunch defenders of rationalism following the occultation of the twelfth Imam, and that their clerical structure was created as a means of safeguarding against the threat of human error that naturally accompanies the use of reason in *fiqh*. We will now move on to discuss how the Usuli *ulama* used their growing power and authority to repress their religious rivals, often through violent means.

While this history is often written about through the lens of religious violence (i.e., as a history of competing doctrines), or through the lens of political violence – and indeed both religious and political motives were at play here – I assert that there is also

value to be gained from viewing it through the lens of jurisprudential violence. As Cover notes through his notion of the "jurispathic" character of judges,[95] a judicial system is only effective insofar as there are no other competing authorities to listen to. In other words, since "law is the projection of an imagined future upon reality,"[96] the existence of competing judicial bodies with competing normative visions presents a potential crisis of authority that risks undermining the ability of the law to function – this is why states do not permit the existence of competing judicial bodies,[97] and, moreover, why all judiciaries arrange themselves into a hierarchy, for if they did not, there would be no ultimate authority to appeal to in the instance of competing interpretations of the law. What this section seeks to offer is thus a re-reading of this history of violence, one which views the actions of the Usuli *ulama* during this time as being rooted in a combination of religious, political, and jurispathic factors.

During the Safavid dynasty it is clear that much of the religious repression imposed on "rival" religious groups was politically motivated, the motivating factor here being that the Safavid state wanted to remain in control and wished to be completely independent of other possible religious affiliations. Accordingly – as noted by Kathryn Babayan – religious repression therefore became a mechanism of control for the ruling monarch

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95. See Cover, "Nomos and Narrative," in *Narrative, Violence and the Law: The Essays of Robert Cover*, ed. Martha Minow, Michael Ryan, and Austin Sarat, 95–172 (Ann Arbor, MI: University of Michigan Press, 1995).
96. Cover, "Violence and the Word," 295.
97. Although it is true that some states permit certain groups to "self-govern" within the state, these groups and their judicial processes are never truly in "competition" with the state, as there are always limitations placed on this self-governance, and these limitations are stipulated and enforced by the laws and judicial bodies of the state.

and the state.[98] After the Safavid empire collapsed the region entered into a period of "[...] confusion, insecurity, foreign invasions, civil wars and frequent massacres."[99] It is only under the Qajar rule that Iran turned once again into a strong centralized Shi'i state, and during this time the Shi'i *ulama* (specifically the Usuli *ulama*) exercised a substantial amount of influence over the government and Iranian society. During the eighteenth and nineteenth centuries the tensions between the Usuli *ulama* and religious minorities predominantly had to do with authority and control.

As expressed by Shah Nimatullah Wali, a Sufi master and poet from the fourteenth and fifteenth centuries, the Sufis believed that:

> [p]rogressive unveiling of the hidden meaning of the holy texts by qualified individuals was imperative first to the Imam and in his absence to gifted men or spiritual elite headed by a Shaikh whose function was to lead the way to God/Tariqa. Such an initiation by an individual leader was regarded by the orthodox *ulema* as blasphemous.[100]

The path to God is considered by Sufis to be an individual experience, independent from the Usuli *ulama*, and they thus did not feel bound to obey the *ulama*. Sufi's also placed Ali in the central role of *wilayah* (leadership) and greatly respected his familial ties to the Prophet, which may explain the popularity of Sufism among Shi'is more generally and the revival of the Sufi

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98. Kathryn Babayan, "The Safavids in Iranian History (1501-1722)," in *The Oxford Handbook of Iranian History*, ed. Touraj Daryaee (Oxford: Oxford University Press, 2012), 297.

99. Abdul-Hadi Hairi, "The Legitimacy of the Early Qajar Rule as Viewed by the Shi'i Religious Leaders," *Middle Eastern Studies* 24, no. 3 (1988): 271.

100. Mangol Bayat, *Mysticism and Dissent: Socioreligious Thought in Qajar Iran* (Syracuse, NY: Syracuse University Press, 1982), 27.

orders as an alternative to the *mujtahids* – a situation which created competition for authority between the Usuli and the Sufis as well as generating anger towards the Sufis for not recognizing the Usuli clerical hierarchical structure and the supreme authority of the *marja'-i taqlid*. According to Mangol Bayat "[it] is only when the authority of the *mujtahids* was directly challenged that persecution of thought occurred. More often than not, clerical politics rather than doctrinal disputes lay behind civil strife [...] [at] stake was the ultimate issue of who was to assume the position of religious leadership."[101]

Similar to the Sufis, the Akhbaris also constituted a religious minority and were deemed rivals of the Usulis because of their refusal to accept the *mujtahids* as legitimate and authoritative representatives of Shi'i doctrines and jurisprudence on the basis that *ijtihad* was prone to human error. The Akhbari opposition can be understood as a direct reaction to the power acquired by the *mujtahids* and the limitations they imposed on how the Shi'i doctrine was to be determined.[102] Frustrations and concerns that were also echoed by the Sufi masters. Bayat notes that these disputes climaxed at the end of the eighteenth century:

> Muhammad Baqir Bihbahani (d. 1780–91) and his son, Mulla Muhammad Ali Bihbahani (d. 1801–02), who earned himself the title of Sufi-killer […] [both] acquired reputations as the fiercest and most revengeful opponents of those who challenged Shia orthodoxy, as defined by the Safavid and post-Safavid mujtahids.[103]

The disputes were purely doctrinal, but they also represented the need of the *mujtahids* to consolidate power, further demonstrating

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101. Bayat, *Mysticism and Dissent*, xiv.
102. Bayat, *Mysticism and Dissent*, 21.
103. Bayat, *Mysticism and Dissent*, 22.

the extent to which they were prepared to go to eliminate all forms of religious disagreement and opposition. Bayat states that these disputes led "[...] to open scenes of violence in the streets of Najaf and Kerbala in Iraq, as well as major cities of Iran. Many leading Akhbaris were killed, and others were declared heretics."[104] As mentioned earlier, the Usuli *mujtahids* were able to exert a great amount of influence over their followers thanks to the clerical structure they established and the ensuing decree that all believers were to follow the directives of the *marja'-i taqlid* (the one who was deemed most learned). Consequently, the Usuli *ulama* was successful in repressing both of its significant religious rivals: the Sufis and the Akhbaris. It is equally important to note that the systematic use of religious directives by the Usuli *ulama* to repress sectarian rivals went beyond targeting the Akhbaris and Sufis; it also extended to the smaller (but influential and interconnected) religious movements of Shaikhi, Babi and the Baha'i of the nineteenth century. However, a discussion of these movements is well beyond the scope of this article and it will suffice to mention them here in passing.[105]

While this history demonstrates that the Usuli *ulama* indeed legitimized violence against their religious rivals, when we evaluate this history through the theoretical lens provided by Cover, it becomes clear that it is misguided to assert that this history simply demonstrates the phenomenon of religious and/or political violence – it also demonstrates the jurispathic character of jurists and thus the profound link that exists between legal interpretation and

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104. Bayat, *Mysticism and Dissent*, 22.
105. For further discussion see Abbas Amanat, *Resurrection and Renewal: The Making of the Babi Movement in Iran, 1844–1850* (Los Angeles: Kalimat Press, 2005); Juan R. I. Cole, "Charismatic Authority in the Bahai Faith," in *Religion and Society in Qajar Iran*, ed. Robert Gleave (New York: Routledge Curzon, 2005).

violence. This, in turn, highlights the value of utilizing this new theoretical lens for thinking through the difference between the responses of Nuri and Khurasani.

Two Distinct Shi'i Usuli *Faqih*

In order to focus our investigation of this particular period, we will examine the actions and reactions of two specific Shi'i Usuli jurists (*faqih*); Akhund Khurasani and Shaikh Fazlullah Nuri. These two *mujtahids* were prominent Usuli jurists of the late nineteenth and early twentieth century, and both played an important role in the way the Constitutional Revolution unfolded in Iran. However, before we begin our examination of these two jurists it will first be pertinent to begin with a discussion of the prominent jurist Shaikh Murtaza Ansari, who was not only the first *marja'-i taqlid*, but also the teacher of the school of thought that both Nuri and Khurasani attended. Ansari had a direct and indirect impact on the religious and political life of Khurasani and Nuri. However, while both men went to Najaf – a city that had become the center of Shi'i learning since the demise of Safavids[106] – only Khurasani had the opportunity to learn from Ansari directly. Nuri, who was four years younger, only succeeded in attending the seminars of Sayyid Mirza Hassan Shirazi. It is important to note that Shirazi became the source of emulation (*marja'-i taqlid*) after the death of Ansari in 1864.

Ansari studied under Mullah Ahmad Naraqi (1829–30), who was recognized as an outstanding authority in jurisprudence (*fiqh*), *usuli* philosophy (*falsafah*), and mysticism (*'erfan*). While

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106. For more on the history of Najaf, see: Meir Litvak, "SHI'ITE SEMINARIES IN IRAQ," *Encyclopædia Iranica,* online edition https://www.iranicaonline.org/articles/iraq-xi-shiite-seminaries.

Ansari was already a *mujtahid* when he left Karbala, he remained with Naraqi in Kashan for four years to expand both his knowledge of *fiqh* and his training. Ansari would become an established and recognized scholar of *fiqh* writing influential works such as *al-Makasib in fiqh*, and *al-Rasa'il in uṣul*. His publications along with the major work of his student – Akhund Khurasani's *Kifayat al-Uṣul* – are essential to completing Shi'i seminary studies today.[107] According to Roy Mottahedeh, Ansari's "reputation for piety and generosity certainly contributed to his rise to leadership among the jurisconsults" but it is his teachings that he is most celebrated for.[108] Ansari:

> admitted the uncertainty of much of the sacred law and emphasized that only jurisconsults could manipulate reason and tradition with the authority necessary to produce a 'best guess.' The rest of the believers, called 'imitators,' were free to choose among these best guessers but not to guess for themselves.[109]

Mottahedeh notes that it was Ansari's intellectual reasoning and teaching which allowed the jurisconsult school to arrive at its maturity.[110] Ansari remained a modest man and was never interested with materiality or the economy of the world, something evident in his lack of interest for personal wealth. He also greatly disliked being a judge and he was extremely reluctant to hand out *fatwas* (answers to specific questions that only a qualified jurist was able to give) and thus he never actively exerted his authority within the

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107. S. Murata, "ANṢĀRĪ, SHAIKH MORTAŻĀ," in Encyclopædia Iranica, ed. Ehsan Yarshater (London: Routledge & Kegan Paul, 1982), 102–103.
108. Roy Mottahedeh, *The Mantle of the Prophet: Religion and Politics in Iran*, (Oxford England: Oneworld Publications, 2009), 210.
109. Mottahedeh, *The Mantle*, 210.
110. Mottahedeh, *The Mantle*, 211.

Shi'i community.[111]

Up and until this point it is important to keep in mind that the majority of the Shi'i *ulama* was independent of the state. The *ulama* was financially viable thanks to the support given by the community to its institutions (a network of seminaries) and by the collection of alms and taxes. The *ulama* was also supported by patrons who were largely made up of the merchant class. However, this is not to say that all of their financial support was from non-state patrons – the Qajar state funded the "titles attached to specific religious function such as Shaikh al-Islam and Imam Joma."[112] As noted, Shirazi was deemed to be the most qualified *mujtahid* to succeed Ansari, and thus was nominated to be the next *marja'-i taqlid* upon his death. Shirazi chose to leave Najaf and to move to the Sunni-majority city of Samarra – where the Twelfth Imam was believed to have disappeared – to establish a new center for Shi'i learning.[113]

At this time the Qajar monarch, Shah Nasir al-Din, had awarded several controversial concessions to British foreigners.[114] Of interest to the present discussion is the concession given to Major Gerald Talbot, who was awarded "[...] monopoly of the sale, purchase, export, and preparation of tobacco for fifty years, a concession called the Tobacco Régie."[115] The concession was of course detrimental to the livelihood and interests of local Iranian tobacco merchants. The merchants began to protest, close the bazaars, and plead their case with the *ulama*. Consequently, Shirazi criticized the concession and issued a *fatwa* mandating "[…] all

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111. Mottahedeh, *The Mantle*, 214.
112. Mangol Bayat, *Iran's First Revolution* (New York: Oxford University Press, 1991), 15.
113. Mottahedeh, *The Mantle*, 215.
114. Ettehadieh Nezam-Mafi, "Qajar Iran," 332.
115. Ettehadieh Nezam-Mafi, "Qajar Iran," 332.

Iranian Muslims to refrain from farming, trading, smoking, or handling tobacco products – even from preparing it for consumption by the shah at his palace."[116] Since Shirazi was the *marja'-i taqlid*, this meant that Shi'i needed to follow (imitate) his instructions. As a result, this forced the Shah Nasir al-Din to cancel the concession and pay Talbot back for his losses. According to Mateo Mohammad Farzaneh, this established three important facts:

> (1) almost everyone realized that the Shi'ite clerics by the 1890s enjoyed a considerable amount of political strength that was backed by a vast social base, (2) it proved that merchants were powerful enough to influence high-ranking Iranian clerics residing in Iraq to pressure the monarchy to do as they wished, and (3) nonreligious activists and intellectuals realized that an alliance between them and the ulama had been effective in implementing their goals [...].

Thus, demonstrating for the first time the power and influence the clerical position of "most learned" could exert both upon Iranian society and the state.

Khurasani arrived in Najaf two years prior to Ansari's death in 1864, thus allowing him to benefit from Ansari's teachings. He continued to study *fiqh* for over a decade with Shirazi, until Shirazi moved to Samarra in 1874. As quickly as Khurasani recognized Shirazi as the most learned, he too would soon be recognized as the most likely candidate to succeed Shirazi.[117] Farzaneh notes that Khurasani integrated two aspects of Ansari's philosophy into his own understanding of *ijtihad*:

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116. Mateo Mohammad Farzaneh, *The Iranian Constitutional Revolution and the Clerical Leadership of Khurasani*, Modern Intellectual and Political History of the Middle East (Syracuse, NY: Syracuse University Press, 2015), 48.
117. Mottahedeh, *The Mantle*, 219.

[...] first that the practice of ijtihad must be time sensitive when mujtahids form an opinion about a certain issue, and second, that this freedom of action to change and modify their previous judgements based on society's needs should not be taken as a free reign for the mujtahids to meddle in all aspects of the people's lives. Ansari taught Khurasani that as Islamic lawmakers, they need to change or make laws in accordance with those needs that occur within each society's particular circumstances [...][118]

Khurasani adopted these important elements into his own usage of *fiqh* and in the manner he chose to approach *ijtihad*. Farzaneh also explains that Ansari "objected to the ulama's 'involvement in politics' and flatly opposed 'excessive judicial activity' by clerics [...]."[119] This stance on the *ulama*'s political involvement was also reiterated by Khurasani who limited the *ulama*'s involvement and clerical responses during the Constitutional Revolution.

Nuri also attended seminary studies with Shirazi, and, despite having learned under the *marja* for more than a decade, the two *mujtahids* did not develop a close relationship and Nuri returned to Tehran in 1882–1883. Although Nuri was a highly respected *mujtahid*, he was not known amongst scholarly circles for his knowledge of *fiqh* – unlike Khurasani. However, thanks to family connections he secured a position at royal court, as official registrar, notarizing Qajar marriage documentation and administering wills of wealthy merchants.[120] This allowed Nuri to collect a substantial sum in religious taxes from a variety of different groups, thus allowing him to secure an important amount of revenue. He was drawn into politics – along with many other leading religious leaders – in response to Nasir al-Din Shah's

118. Farzaneh, *The Iranian Constitutional Revolution*, 142.
119. Farzaneh, *The Iranian Constitutional Revolution*, 143.
120. Farzaneh, *The Iranian Constitutional Revolution*, 195.

policy of increasingly awarding concessions to foreign entrepreneurs, with the goal of defying centralization policies. Nuri also played an important role in opposing the 1890 Tobacco concessions that were awarded to General Talbot's firm. During the early 1900s Iranians quickly realized that the only way to save Iranian society from government corruption and foreign interference was to create a written code of laws that would put an end to the Shah's despotic rule and hold the government accountable. This sentiment is what led to the Constitutional Revolution.

In 1906, Shah Muzaffar ad-Din of Qajar cracked under the constant pressure of pro-constitutionalist demands and issued a decree in favor of establishing a constitution and the creation of an elected parliament. This meant that royal power was limited and replaced by a parliamentary system. By the time the Constitutional Revolution began to unfold, Nuri had "established himself in Tehran as an authority on religious affairs."[121] Initially Nuri only hesitantly agreed to the constitution, and, according to Vanessa Martin, "confined himself to saying that constitutionalism must be in conformity with the *shari'a,* and the Majlis [parliament][122] limited."[123] However, after his initial acceptance of constitutionalism Nuri quickly grew unenthusiastic towards the Majlis, and Farzaneh argues that this change in Nuri's attitude seems to coincide with "the sacking" of his court ally Ain al-Daulih, who was then the ruler of Tehran.[124] He also quickly realized that the constitution opposed his understanding of *shari'a* and Islam.

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121. Farzaneh, *The Iranian Constitutional Revolution*, 195.
122. The term Majlis normally means "council" but in this particular context the term is referring to the Iranian parliament.
123. Vanessa Martin, *Islam and Modernism: The Iranian Revolution of 1906*, (London: Tauris, 1989), 165.
124. Farzaneh, *The Iranian Constitutional Revolution*, 195.

Nuri requested that parliament amend the constitution and introduce a failsafe that would create a committee with five *mujtahids* whose role would be to determine the compatibility of all future laws with *shari'a*.[125] Parliament agreed, but did not select Nuri to be one of the five *mujtahids* to sit on the committee, instead choosing *mujtahids* that were amenable to their cause. It was at this point that Nuri became a fervent anti-constitutionalist.

After the death of Muzaffar ad-Din, his successor Shah Muhammad Ali Mirza chose to imprison all those involved in parliament and the constitution. The Shah then led a coup in June 1908 and ordered that the parliament be bombarded and the constitution dissolved. According to Martin, after the coup of June 1908 Nuri "[...] came out in full and open support of the shah. He worked for the absolutist cause not because he believed in absolutism as such, but because he considered it, in practical terms, the best means of protecting Islam against the most formidable enemy of the shari'a, constitutionalism."[126] His relationship with other *ulama* clerics was not favorable at this time. Nazim al-Islam, a historian of the constitutional era, notes that when Nuri was told that the Qajar ruler had flogged a pro-constitutionalist cleric, he remained silent and did not raise any concerns about this violent hostility towards a clergy member of the Usuli *ulama* – an unfazed attitude which stemmed from the fact that he believed that any act against the constitutionalists was an act to preserve and protect Islam.[127] Certain members of the *ulama* – who saw their role as preserving and protecting the principles of *shari'a* and Islam – thus perceived the constitution and parliament as wanting to implement changes that were in direct violation of those principles. Change

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125. Farzaneh, *The Iranian Constitutional Revolution*, 195.
126. Martin, *Islam and Modernism*, 165.
127. Nazim al-Islam in Farzaneh, *The Iranian Constitutional Revolution*, 196.

and a shift towards western forms of thinking, education, and institutional structures therefore came to be viewed as placing Islamic religious principles in danger of extinction.

Fatwas of Discord

What tole did the *ulama* play in the Constitutional Revolution? How exactly did the *ulama* respond to the growing concerns of the different facets of Iranian society? There is scholarly consensus that the most influential factor which led to the drafting of a constitution and the establishment of a parliamentary structure was the *ulama* itself.[128] The Usuli *ulama* believed that *shari'a* should be interpreted to provide Muslims with guidance on how to live the best life possible in accordance with Islamic values and principles. However, with the rise of the Qajar dynasty came an oppressive and autocratic government that largely mistreated the Iranian population and forced a new movement of thinkers to take center stage – a movement which was distinct from the *ulama* and its way of thinking. These educated thinkers[129] viewed social and political problems to be of central concern, and, moreover, viewed these problems as requiring pragmatic rather than theological solutions. According to Bayat these new thinkers "were strongly convinced that the principal causes of social decay, injustice and oppression they saw in Iran lay in human ignorance and an archaic sense of values, and that only with scientific knowledge could their society liberate itself."[130] Alarmed by the "backwardness" of their society, these new thinkers not only opposed the traditional sciences

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128. Abdul-Hadi Hairi, "Shaykh Fazl Allah Nūni's refutation of the idea of constitutionalism," *Middle Eastern Studies* 13, no.3 (1977): 327.
129. Bayat, "Mysticism *and Dissent*," 133.
130. Bayat, "Mysticism *and Dissent*," 133.

of Shi'i theology and the despotic regime of the Qajar monarchy, they also sought to introduce Iranian society to western political and scientific ideas.

Bayat refers to these new thinkers as secularist, and, despite their opposition to traditional forms of religious thinking and jurisprudence, these thinkers did find themselves sharing common ground with some Usuli *mujtahids*,[131] who were also equally appalled by the government's growing corruption, chronic financial crises, and unconscionable practice of granting concessions to foreign entrepreneurs – they too wanted change, and believed a constitution would offer a means to hold the Qajar monarchy accountable for its actions. There was a clear divide within the *ulama* on the question of the constitution and whether the constitution could provide the solution needed to overcome the overtly despotic Qajar rule. The *ulama* in favor of constitutionalism believed that constitutionalism could agree with Islamic law by allowing *mujtahids* to participate in the parliamentary structure. Thus, the *mujtahids* would participate in the drafting of the constitution and would ensure that all changes made to the constitution in the future agreed with *shari'a*. The *ulama* that opposed the constitution viewed constitutionalism as being in complete opposition to the principles and values of Islam.

Now that we have situated the context of both scholars and how the Usuli *ulama* was divided in their perception of the constitution we will move on to examine Khurasani and Nuri's direct responses to the Constitution. Nuri opposed the parliament and the constitution and labeled both as "un-Islamic." To protest parliament, he left Tehran with a group of like-minded clerics and followers and took up sanctuary in the Shah Abdul-Azim Shi'i

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131. Bayat, "*Mysticism and Dissent*," 178.

shrine. From June 21st, 1907, to September 16th of that same year, Nuri and his followers began a round-the-clock sit-in, referred to as *bast*. During this almost ninety-day protest, which was partially funded by the Qajar royal court, Nuri warned the public that constitutionalism violated *shari'a* and that it had been conceived of by foreigners to benefit and further their own interests in Iran.[132] He had compiled his critiques in response to the 1906 Constitution in a letter which he issued on July 29th, 1907, and afterwards published as a seven-page leaflet.[133] In his letter Nuri explains his fears and reasons for opposing the Constitution:

> [t]he opening of the talk and the origin of the negotiations were in response to the lawlessness of the government that required us, the people of Iran, a limited establishment of principles and regulations regarding the court's duties and its secretariat's operations. And then, as the Assembly's negotiations commenced, and the principles of the Constitution and its limitations were described and debated through the speeches and the bills and the media, it expressed elements that nobody had expected and caused unimaginable horror and bewilderment to the spiritual leaders, and Imams of the congregations as well as the whole of the religious community."[134]

It was therefore very early on that Nuri positioned himself as the voice of anti-constitutionalism. For many traditionalist Shi'i scholars and followers, the constitution was believed to be a foreign

132. Farzaneh, *The Iranian Constitutional Revolution*, 198.

133. Homa Rezvani, *Lavayeh Agha Sheikh Fażlullāh Nuri* (Tehran: Nashr-i Tārikh-i Iran, 1983).

134. پس عنوان سخن و مبدء مذاکرات بی قانونی دوایر دولت بود وحاجت ما مردم ایران هم به وضع اصول و قوانین در وظایف درباری و معاملات دیوانی انحصار داشت و بعد همینکه مذاکرات مجلس شروع شد و عناوین دایرباصل مشروطیت و حدود آن در میان آمد از اثناء نطقها و لوایح و جراید اموری بظهور رسید که هیچکس منتظر نبود و زاید الوصف مایه وحشت و حیرت روساء روحانی و ایمه جماعت و قاطبه مقدسین و متدینین شد. Translated by author. To see the full leaflet in the original Persian, please refer to Rezvani, *Lavayeh, 28.*

"Western" innovation that was simply inappropriate for Iranian society. Nuri's stance thus reflects this position, and he sought to align himself with the Qajar ruler in order to promote this position effectively, as even the Shah was obliged to follow "a certain Mujtahid [to be legally able] to execute his rulings."[135] However, as Farzaneh argues, Nuri's anti-constitutional stance appears to have been based on "his self-centered understanding of his position as a mujtahid rather than his doctrinal appreciation for the position."[136] The resulting perception is that Nuri was limited in his understanding of *shari'a* and its application.[137] The anti-constitutionalist literature published by Nuri and his followers thus portrays Nuri as an ideologically self-centered *mujtahid* who objected to anything and/or anyone that threatened his dogmatic interpretation of *shari'a* or his personal interests.[138]

Nuri's opposition was not solely to the constitution and parliament, but it also extended to individuals and institutions which he viewed as extensions of the pro-constitutionalist agenda. He rejected the establishment of new schools, especially those for women and young girls. Nuri equated knowledge of "secular" sciences with infidelity to Islam, and thus believed these new schools with their western-secular curriculums would eventually wipe out Islamic education. He considered the press as being corrupt and opposed to Islamic values due to their publication of European literature and refusal to print any of his anti-constitutional opinions. Nuri further insisted that the concept of equality between non-Muslims and Muslims was also in contradiction to the *shari'a*, and also believed that the Naturalists and Babis were atheist cults

135. Hamad Algar, *Religion and State in Iran: 1785–1906: The Role of Ulema in the Qajar Period* (Berkeley: University of California Press, 1969), 23.
136. Farzaneh, *The Iranian Constitutional Revolution*, 197.
137. Farzaneh, *The Iranian Constitutional Revolution*, 198.
138. Farzaneh, *The Iranian Constitutional Revolution*, 198.

which needed to be banned. Nuri and his anti-constitutionalist
followers did not differentiate between the clerics who supported
parliament and advocates of secularism; they viewed all adversaries
as being one single entity and they categorized all of them in the
same pejorative fashion.[139]

In response, Khurasani avoided entering into *fiqhi* debates
with Nuri in public. Instead, six days after the circulation of Nuri's
leaflet, Khurasani issued a telegraphic *fatwa* from Najaf on August
3rd, 1907 and insisted that the purpose of the constitutional
assembly was:

> [n]othing but to strengthen Islam and protect Muslims and to regulate
> the public sphere, thus to eliminate oppression, to offer relief to the
> oppressed, help out the saddened, to enjoy virtue, to forbid vices, and
> strengthen the nation and the state to promote the wellbeing of the
> subjects and preserve the essence of Islam, in absolute accordance
> with our beliefs, Sharia and customs, therefore, the assembly is
> preferable and even an obligation and his opponents and dissenters
> are opposing the enlightened Sharia and disputing with the owner of
> Sharia [the Prophet].[140]

It is important to note that both Nuri and Khurasani agreed on the
necessity of compatibility between the Constitution and Islam.
However, Nuri sought to make changes to the Constitution which
would grant advantages to Iranian Muslims and create inequality
between Muslim and non-Muslim citizens. Nuri pointed out that the
parliament's desire for equality amongst its citizens would

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139. Farzaneh, *The Iranian Constitutional Revolution*, 198–199.

140. جز تقویت اسلام و حفظ دماء مسلمین و اصلاح امور عامه نداریم علیهذا مجلسی که تاسیس آن برای
رفع ظلم و اغاثه مظلوم و اعانت ملهوف و امر بمعروف و نهی از منکر و تقویت ملت و دولت و ترفیهء حال
رعیت و حفظ بیضه اسلام است قطعا عقلا و شرعا و عرفا راجح بلکه واجب است و مخالف و معاند او مخالف
شرع انور و مجادل با صاحب شریعت است. Translated by author. To see the original
Persian telegram, please refer to Rezvani, *Lavayeh, 28.*

inevitably lead non-Muslims to be equal with Muslims, under the same constitution. Muslims would therefore lose their advantages under Islamic law, and adherents of other religions and foreigners would have a say in the affairs of Muslim Iranian society. Additionally, it can be argued that Nuri's insistence on Islamic law over the common law of the Constitution revealed his perception that common law mimicked Western concepts and judicial ideals, and that this, in turn, would reduce the power of the religious establishment and its executive power over the Shah and his prime minister. According to Nuri, the Qajar rule should not be accountable to Parliament or the Constitution, but only to God and *shari'a*. Nuri insisted that "the judicial and legislative powers had to remain with the Ulema"[141] – arguably demonstrating the relationship of dependence between Nuri and the Qajar monarchy.

While *Shari'a* courts played an important role in the Iranian judicial system during the Qajar state, it is important to note that not all matters were settled in *shari'a* courts. The state administrated *urfi* (customary) law and penal law in matters of the state, while *shari'a* law often only dealt with religious matters. The division between the *urfi* and *shari'a* court system was intentionally kept obscure, especially under Shah Nasir al-Din, so that the Shah could continue his arbitrary policies without being challenged by either jurisdiction.[142] While Nuri feared the 'dangerous' possibility that the constitution would allow for the application of customary law (*urfi*) in place of *shari'a* law, Khurasani believed that the obscurity between the different court systems left the Shah in an advantageous position to continue his despotic ruling, and thus needed to be replaced by common law which was in accordance with *shari'a* law.

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141. Janet Afary, *Iranian Constitutional Revolution 1906–1911* (New York: Columbia University Press, 2005), 87.
142. Farzaneh, *The Iranian Constitutional Revolution*, 64.

In a letter from September 30th, 1909, Khurasani defines constitutionalism as a system where legal limitations and conditions are set to compel the monarchy and government officials to work within the boundaries set by the law.[143] Thus, for Khurasani, the Constitution was a way to keep the state in check.

Nuri also attacked many of the reforms which the constitutionalists wished to implement into Iranian society, this included new educational institutions with Western curricula, which Nuri claimed was a ploy by the constitutionalists "to build 'brothels and factories' [...] under the guise of 'schools to educate women and schools for children.'"[144] These types of statements and attacks against new educational institutions which promoted Western forms of education were clearly meant to provoke the more traditional and conservative Iranians, who wanted things to change but did not want their Islamic identity to change. These blanket statements against the establishment of 'new schools' as introducing foreign teachings and ways of thinking that were un-Islamic is perhaps more indicative of Nuri's antagonism to the Western curriculums that was taught at these new schools and not necessarily the institutions themselves.

Despite the anti-constitutional *ulama's* desperate actions to promote oppressive responses to the new schools, the new methods and subjects taught in these new facilities spread widely in all cities throughout the capital and even reached other cities in the periphery. The first higher education technical school was established four decades earlier by Amir Kabir. The demand for admission at Dar al-Founun was so high that instead of the anticipated thirty students, one hundred and five students were admitted in the first year.[145] Similar technical schools were

143. Farzaneh, *The Iranian Constitutional Revolution*, 166.
144. Farzaneh, *The Iranian Constitutional Revolution*, 199.
145. Ringer, *Education, Religion and the Discourse*, 74.

established in 1859, in Tabriz, where a majority of the teachers were graduates from Tehran's Dar al-Founun.[146] The technical schools offered an alternative body of knowledge from that of Islamic schools (*madrasa*) and offered the possibility of acquiring a European education that stood apart from the scholastic religious education offered by the *madrasa*.

But these technical schools were not of great concern; the serious threat came from primary schools founded by cleric, teacher, politician, and journalist Haji Mirza Hassan Tabrizi, better known as Hassan Roshdieh (1851–1944). The Roshdieh primary school was first established in Tabriz in 1888, and similar schools then opened up in other parts of the country during the final year of Nasir al-Din Shah's reign.[147] Unlike the Dar al-Founun technical schools in Tehran and Tabriz, the Roshdieh primary schools were not geared to train the elite governmental cadre. They offered general primary education, and by targeting all school aged children they posed a threat to existing traditional primary schools (m*aktab*).

Monica Ringer notes that seminary schools' students (*tullab*) were incensed at the loss of jobs as private tutors and the conservative traditionalist members of the *ulama* accused Roshdieh of heresy, forcing Roshdieh schools to close and Roshdieh to flee to Mashhad, where he established other institutions for primary education. However, the traditionalists also heard about these new schools and soon destroyed them as well. He returned to Tabriz, and over the course of the next five years made several attempts to reopen new schools, a task which proved very difficult due to local traditionalist *fatwas* accusing Roshdieh of heresy, which incited attacks against the schools. This vicious cycle of reopening the schools only to have them violently attacked continued for several

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146. Ringer, *Education, Religion, and the Discourse,* 87.
147. Ahmad Kasravi, *History of the Iranian Constitutional Revolution,* 2 Vols, trans., Evan Siegel (California: Mazda Publisher, 2006), 1: 47.

years. Khurasani saw the value of Western education and tried to strike a balance between traditional Islamic forms of instructions and Western forms of thinking. In the last ten years of his life, he invested vast financial resources in founding three new seminaries and several *maktabs*, such as the Alawi School in Najaf and the Hussayni School in Karbala, which combined Western curricula with religious subjects [148] Khurasani's investment in new schools can be linked to his support of private organizations also known as *Anjomans*.

Anjoman was the designation given to political organizations during the Constitutional Revolution.[149] By the turn of the century *Anjomans* were prolific within Iranian society, with many *Anjomans* involved in cultural activities scattered throughout major cities across the country. Some *Anjomans* were established with "the task of 'awakening' Iranians, setting up new secular schools, and founding public libraries."[150] These political organizations were often understood to function like secret societies and aimed to create change and promote "modern" education. Thus, *Anjomans* were frequently associated with reformers and secularists, despite the fact that certain (moderate) members of the *ulama* supported specific *Anjomans*. This support was not shared by Nuri, who openly objected to and criticized local *Anjomans*, accusing them of heresy. Khurasani collaborated with the *Anjomans* because he understood that change and reform were necessary and could be done in accordance with *shari'a* with the aid of the *ulama*. Nuri, however, did not believe that collaboration was possible with

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148. Farzaneh, *The Iranian Constitutional Revolution*, 126.
149. M. Bayat, H. Algar, and W. L. Hanaway Jr., "ANJOMAN (Organization)," Encyclopædia Iranica, II/1, pp. 77–83. Available online at http://www.iranicaonline.org/articles/anjoman-gathering-association-society-general-designation-of-many-private-and-public-associations.
150. Bayat, Algar, and Hanaway, "ANJOMAN (Organization)."

every social group – especially not with local *Anjomans*, for he feared these groups were spreading a new form of despotism.

Khurasani chose to approach these local political organizations (whose members included intellectuals, government officials, members of the mercantile class and the *ulama*) not with violence but with support. Khurusani not only used the *Anjomans* to build schools, but also involved them in other social causes, and perceived these collaborations as being vital to Iranian society.[151] Following the coup of 1908, Khurusani appointed Assadullah Mamaqani to represent the Najaf *ulama* within the *Anjoman-i Saadat-i Istanbul* to develop connections with leading Iranian intellectuals such as Mirza Qasim Khan, publisher of Sur-e Israfil and Yahya Daulatabadi, the leader of the Azali nationalist.[152]

Nuri's primary concern was to protect the established Iranian Shi'i religious institution and belief system; he did so by opposing and labeling all individuals and organization that were pro-constitutional as un-Islamic. Thus, anyone who took part in any movement, organization, or activity that was associated with the *Anjomans* 'new' forms of education, the press, and/or minority religions, was presented as a viable threat to Islam and *shari'a.* Alternatively, Khurasani continued to provide a discourse where the collaboration with and integration of reform ideas and movements was possible alongside *shari'a.* He argued that in Shi'i Islam the only rightful government was that of the "Hidden Imam," but in his absence, Constitutionalism was the lesser of two evils and thus, an alternative, that was preferable to absolutism. Furthermore, the government was the representative of the people and for Khurasani it was the preferred choice, so long as it was with the supervision of the *mujtahids*, whose duty was to ensure justice

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151. Farzaneh, *The Iranian Constitutional Revolution,* 126–27.
152. Bayat, *Iran's First Revolution,* 255.

during the absence of the Imam, a principle enshrined in Article 2 of the Supplementary Fundamental Law.[153] Hence for Khurasani the Constitution was a protective force against the despotic monarch of the time.

Concluding Remarks

This article has sought to provide a new theoretical lens for sharpening our understanding of a historical episode which has already been heavily analyzed and written about. When discussing the violence of this period, past studies have tended to frame violence against constitutionalists as being rooted in religious, political, or religio-political factors. While the present work does not deny that acts of violence against constitutionalists were in part motivated by religious and political considerations, it asserts that this is not the whole picture – that the exploration of violence against constitutionalists is not complete unless we also inquire into the way in which this violence reflects the violence inherent in the activity of judicial interpretation in and of itself. To this end I have sought to adapt and apply Robert M. Cover's theory of jurisprudential violence, a theory which has provided us with the language necessary for conceptualizing this particular facet of this violence, and, moreover, for understanding the difference between Nuri and Khurasani's respective responses.

As noted in my introductory remarks, pointing to the violence inherent in judicial interpretation is not a condemnation of this indispensable activity, but is rather an exhortation not to minimize or overlook the significance of the fact that legal interpreters – both secular and religious – do, in a meaningful sense, "serve as 'virtual triggers for action' in routinizing violent

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153. Vanessa Martin, "NURI, FAŻL-ALLĀH."

behavior" in others.[154] As Cover astutely points out as a consequence of this fact, and integral part of legal interpretation is thus an understanding of what others will do with these interpretations – an understanding which depends upon secondary rules and principles, that is, the rules and principles which both prescribe and describe how this relationship of correspondence ought to/will unfold. Accordingly, the effort to draw a link between the interpretive activities of the Usuli *ulama* and acts of violence against constitutionalists thus required us to inquire into the secondary rules informing this context.

As demonstrated by the discussion of the ascendency of Twelver Shi'ism in Iran and of the ascendency of the Usuli *ulama* in particular, we should understand the prescriptive secondary rules in this context as being the series of distinctions created by the Usuli *ulama* to ensure that their use of *ijtihad* did not contradict Twelver doctrine surrounding the authority of the Hidden Imam. These distinctions precisely stipulated that Usuli laypersons (*muqallids*) were obligated to accept and follow the opinions of the Usuli *mujtahids* (experts in Islamic law), and, moreover, that the *marja'– i taqlid* was to act as the source of emulation for the greater Twelver community – so, if there was a disagreement between the interpretation of a *mujtahid* and the *marja'–i taqlid,* the opinion of the *marja'–i taqlid* was to take precedence within the community as a whole due to their greater number of followers. As noted above, the clerical structure of the Usuli *ulama* was not rigidly fixed; so, while it was possible for an independent *mujtahid* to disagree with the *marja'-i taqlid* – as Nuri did – this does not change the fact that the prescriptive secondary rules of this situation stipulated that the

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154. Bruce Lawrence and Aisha Karim, "Part III. The Institution of Violence: Three Connections," in *On Violence*, ed. Bruce Lawrence and Aisha Karim (Durham, NC: Duke University Press, 2007), 220.

majority of *muqallids* (both traditionalist and reformists) "ought to" (to use the theoretical language outlined in the introduction) follow the example set by Khurasani's interpretation.

The discussion of this history also demonstrates that we can understand the descriptive secondary rules in this context as referring to the environment of despotism and rebellion that characterized this period, an environment which – permeated as it was with violence already – predicted that the cooperation between the interpretative acts of the *mujtahids* and the actions of the *muqallids* would likely manifest violently. When thinking through the difference in Nuri and Khurasani's responses to the Constitution in light of these secondary rules, as asserted above, it becomes clear that Khurasani's prudential response demonstrates an acute awareness of these rules, while the response of Nuri does not.

As argued above, Nuri's interpretations surrounding the Constitution framed it as being in direct opposition with *shari'a*, and therefore as an existential threat to Twelver Shi'ism in Iran. However, the historical record and preexisting analyses of this period indicate that this position was complicated by a desire to secure his own personal interests, resulting in a superficial act of *fiqh* – a reading which is further bolstered by the fact that his interpretation explicitly disregards the opinion of Khurasani, who then held the title of *marja'–i taqlid*. In other words, while the prescriptive secondary rules of this situation clearly specified that *muqallids* should follow the opinion of the *marja'–i taqlid*, Nuri circumvented these secondary rules by issuing a *fatwa* which played into the preexisting fears of traditionalist *muqallids* – an action, which, when we take the descriptive secondary rules of this situation into account, clearly acted to legitimize and thereby incite violence against constitutionalists, as we saw in the patterns of

violence directed at Roshdieh schools and during the 1908 coup against the constitutionalists.

In the language utilized by Cover, Nuri's interpretation thus provided his traditionalist followers with the "social cues" they needed to "overcome or suppress the revulsion to violence"[155] that normally prevents people from taking violent action against others – and, in doing so, treated anti-constitutionalist violence as a means of furthering his own political goals. By contrast, Khurasani's response indicates an awareness that the Constitution represented a way out of the despotism and violent excesses of Qajar rule, and also his firm belief that it was possible to adopt the Constitution in a way that aligned with Twelver Shi'i doctrine and jurisprudence. Moreover, his efforts to demonstrate this compatibility through constructive collaborations with Constitutionalists illustrates his acute awareness of the fact that, as *marja'–i taqlid*, any interpretation he issued carried with it the potential for inciting violence. This is well-evidenced in Khurasani's response to the coup of June 1908, where he sought to reduce violence by issuing a *fatwa* noting that "it was the religious obligation (*wajib*) of all the people to assist in the formation of the public national consultative Majlis and that it was forbidden (*ḥaram*) to pay taxes to the current governors."[156] That Khurasani was so prudential in his approach thus makes it clear that he understood, to use the language of Cover, that his role as *marja'–i taqlid* required him to think deeply and carefully about "what others would do with [his] judicial utterance[s]."[157]

Khurasani's approach proved to be a great deal more fruitful and popular amongst the people of Iran, while Nuri's stance

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155. Cover, "Violence and the Word, 300.
156. Kirmānī, *Tārīkh-i bīdārī-i Īrānīyān*, 4: 270.
157. Cover, "Violence and the Word," 299.

supporting violence eventually cost him his reputation as a *mujtahid* and ultimately his life. Nuri was arrested, legally tried, and found guilty of sowing corruption and sedition, and was publicly hung in Tupkaneh Square in Tehran on July 31st, 1909, without any public objection.[158] Ultimately, Khurasani's approach proved to be more effective in creating a stable relationship with the state and society, as his efforts to collaborate with the general public and the private sector demonstrated how Islamic scholars could achieve their objectives without mimicking the violence of the state. This, in turn, resulted in an increase in their following and a better understanding of how to meet the changing needs of contemporary Iranian society.

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158. Kirmānī, *Tārīkh-i bīdārī-i Īrānīyān*, 5: 535.