



Political and Social Developments of Iran's Legal System and Adapting It to the French Legal System

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Abstract

The era of Qajar rule coincided with the large presence of European diplomats in Iran. Many of these diplomats, in addition to their expertise in political and cultural affairs, were people of wisdom and knowledge and were fluent in various languages. Among these diplomats, there is Antoine Carey, who came to Iran from the French government to carry out a political mission, during his stay in Iran, he translated, studied, and researched Islamic and Shiite historical and religious texts. One of the works translated by him is the book "*Islamic Laws on Halal and Haram Issues*". His translation is masterful. He also wrote a detailed introduction to it, in which he discussed the political developments of the legal system of Iran and France. In this article, Carey's introduction to the book has been discussed. The research method employed in this article is the translation and analysis of Carey's work.

Keywords: Antoine Carey, Orientalist, Qajar, Legal System, Political Developments of Iran.

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Introduction

The study of Persian and Arabic texts in Iran during the Safavid and Qajar eras should be considered one of the most significant subjects of interest among Western and especially French Orientalists. Between 1820 and 1900, four prominent French diplomats succeeded in translating important works of Persian literature and Islamic religious texts into French. After finishing the translation, these diplomats placed the selected titles among the academic subjects of study in France and other active Western scientific societies at that time, so that further investigations and studies could be conducted on them. These four characters are as follows:

1) Arthur de Gobineau (1816-1872), a prominent French diplomat and orientalist, whose most important field of study and works is the introduction of great Iranian philosophers to the West and the translation of an important part of their works¹. He also conducted studies in the field of Shia jurisprudence.²

2) Jean-Baptiste³ Nicolas (1814-1875). He was in Tehran from 1844 to 1849.

3) Casimir Adrien Barbier de Meynard (1827-1908)

4) Antoine Carey who, in some ways, replaced Jean Baptiste

Antoine Carey

Antoine Carey was born in Paris in 1825. He was in the service of the French Ministry of Foreign Affairs for thirty-six years, and during these years, titles such as translator of the prime minister, then consul in the administrative affairs of Tehran, Tabriz, and Trabzon, have been recorded in his career. According to what is stated in the records of the Ministry of Foreign Affairs, he mastered several languages at a young age, including Arabic, Farsi, Turkish, English, etc.

For many years, he was the secretary of Colonel William Fenwick and then Colonel Tchirikof during the reign of Mirza Jafar Khan, Yamin al-Mamalek Esfandiari, a statesman and diplomat of the Qajar period. The duration of his presence in Iran is viewed as 1844 to 1855, during which he partook in many missions and carried out various responsibilities. For instance, in 1848 he was assigned to determine the border line between Iran and Turkey from the Caucasus to the Persian Gulf.

His translation and commentaries on some Persian and Arabic religious, literary, jurisprudential, and historical works to French have made him stand out among Orientalists. Therefore, his name is included in the list of expert French translators or orientalists of the 19th century. The most masterful work left by

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2. Roger Beziau : *Débuts littéraires de Gobineau à Paris (1835/1846) thèse soutenue à Université de Paris IV 1978.*

3. Jean Boissel, *Gobineau, l'Orient et l'Iran*, tome 1, Paris, Klincksieck, 1974.

him is undoubtedly the translation of the collection of Shia laws, which is known as "Islamic Laws on Halal and Haram Matters". This translation will be briefly mentioned and reviewed below.

Carey examines this jurisprudential treatise from several perspectives. On the one hand, he raises a discussion known as jurisprudential literature among the Shiites, which was already addressed by Arthur de Gobineau. He considered the practical treatises and other religious books that had permeated Persian literature and were written in Persian by Shia scholars as a style and an important part of Persian literature.

On the other hand, he believed that these types of works could be considered as a complete reflection of the political developments of the prominent and amazing Shia law system; as they are equal to the Western legal systems. He believed that these works are designed in some ways similar to and in some ways stronger than the existing legal system in the West, and of course, they face shortcomings in some areas as well. Therefore, like his predecessors, Carey tries to introduce these Shia jurisprudence and legal works to Western academic centers.

His writing in the introduction to the book

"Except those who have studied texts of Islamic language and civilization, most people often and generally do not know that Muslims have a very complete and extensive set of laws. Muslim law treatises contain very important branches of their literature. It is often thought that the Qur'an is the only source and text on the issue of law in Islam. One is surprised to find that many Islamic societies maintain and manage themselves and develop without any other set of laws and only with this brief (book). A text whose verses sometimes seem to contradict each other.

The fact of the matter is that the Qur'an gives shape and consistency to the main element of Islamic law; But the lack of meticulousness in understanding it and the absence of any development (in essential reading) makes its application very difficult, if not impossible. In the years after the advent of Islam and the beginning of the Prophet's mission, new Muslims went directly to the Prophet (PBUH) with their questions and problems and submitted their opinion. The judgments of this founder of Shari'ah were accepted and followed with precision and grace by this generation of the first followers (Sahaba). These rulings and opinions of the Prophet (PBUH) formed the core of a collection of rulings that led to the jurisprudential and legal decisions of each of the twelve Imams (PBUH). In fact, according to the Shia belief, the twelve Imams are the only legitimate heirs of Muhammad (PBUH).

The rapid spread of Islam in countries whose populations consisted of people

of different races and customs soon created a wide demand in the field of religious issues. Therefore, it was felt necessary to prepare appropriate collections of jurisprudence that would be responsive in all the lands under the rule and control of the new religion; The list of Shia jurists and religious scholars who lived between the 3rd and 7th centuries of Hijri who were engaged in writing jurisprudential treatises is far longer than to be mentioned in this article.

I will only mention some of these great experts¹:

Sheikh Muhammad bin Muhammad bin Nu'man Abu Abdullah, who is known as Sheikh Mufid (336 or 338-413 lunar month) trained many students. He wrote more than two hundred treatises.

Sheikh Muhammad Hassan bin Ali Abu Jafar Tusi is known as the Sheikh of the Imamiyya Shiites. In the work that I have translated, he is mentioned with the same title. He lived from 385 A.H. to 460 A.H. and is known as the most outstanding student of Sheikh Mufid's school. His works are among the most reliable sources of Shiite scholarship in all parts of the Islamic world. Among his works, one can mention the books "*Al-Astabsar*", "*Al-Khilaf*", "*Al-Nahiya fi Magdar al-Fiqh*, and *Al-Fatawi*" as well as the book "*Al-Massut*", the latter of which contains no less than 81 interpretive and literary books (jurisprudential literature).

Sheikh Seyyed Mortaza Abu al-Qasim Ali bin Hussain bin Musa, known as Alam al-Hadi (the banner of guidance) is another scholar who should be mentioned. Like Sheikh Tusi, he was one of the students of Sheikh Mofid who lived between 355 AH and 436 AH. A collection of very valuable works and a collection of 80,000 copies of books have been left by him.

But the author or figure whose work I am trying to translate is Sheikh Abul Qasim Najm al-Din Jafar bin Hasan bin Yahya bin Saeed, known as the Scholar, who has a very special place among these prominent figures in the field of Islamic jurisprudence. This doctor (a great thinker) was born in Hillah near the Euphrates in 602 AD and was brought up in a family famous for their prowess in jurisprudence. In his youth, he became famous for his wisdom, high spirits, and knowledge. This fame was mostly because he was simultaneously engaged in jurisprudence, ethics, poetry, writing, and speech.

It is said that Khwaja Nasir al-Din Tusi, a famous astronomer and minister of the Mongol Hulagu Khan, who accompanied him during the conquest of Baghdad, was honored to have attended Sheikh Mohaghegh's (the Scholar) lecture hall. He never gave in to the request of his teacher, who out of respect

1. In his interpretation, the author has used the term doctor, which here means an expert and a professional scholar.

invited him to sit on the professor's chair. Mohagheq continued in his position as professor and jurist until 676 AH when he fell from the terrace of his house. He was buried in Najaf next to the shrine of Imam Ali (AS) and a large crowd attended his funeral.

This eminent person has written a book under the title "Al-Nafe'" or the more complete title "Al-Mukhtasar al-Nafe' fi fiqh al-Imamiyyah", which is considered a brief work on the rules and laws of Imamiyya jurisprudence, and interpretations of the rules of the book Al-Ba'i Wal-Nahaye by Sheikh Tusi, the famous personality of his predecessor. He is also the author of important works on the principles of religion and basic beliefs of Islam about the principles of faith and belief, rules of jurisprudence, logic, and jurisprudence. As a poet, his collection of poems remains. But the title of his main work, which has been admired and respected by other Islamic jurists and elders, is the compilation of the laws and rulings of the Shia religion, which is known as "Shari'e al-Islam fi halal wa al-haram" (meaning Islamic prognosis in permissible and impermissible cases). Wherever the Imamiyyah religion is accepted, especially in Iran, this work has been accepted by jurists as an important jurisprudential and legal collection.

This important work is divided into four parts: the first part is on religious duties and obligations; the second part is on contracts and obligations; The third part deals with unilateral jurisprudence and legal acts, and the fourth part deals with rules related to hunting, fishing, food, and an investigation of the issue of punishment of crimes and misdemeanors from the dual perspective of Sharia law and civil law.

The distinction between these different parts of the book is probably not so consistent and precise as that found in our French codex; But I thought that to facilitate the reference to the Arabic text, I should not deviate from the pattern followed by the author. Shia jurists should not involve themselves in specific issues elsewhere except in the collecting of Islamic laws and rulings. In clearer words, the intention is the differences that sometimes appear in the understanding of the text and sometimes in the implementation and practice among the jurists, and in some cases, these differences arise from the difference in the (reading and understanding) of the text of the rulings and hadiths transmitted by the Imams (AS).

Sometimes the narrations which are based on the rulings and opinions of the Imam (AS) and are at the same level of authenticity and reliability, are contradictory, and sometimes, based on the relative trust that exists in the narrator, there is doubt about the authenticity of that narration and jurists often doubt the narration. This change in the level of trust towards the narrator can be due to his degree of faith and piety, or due to his personal opinions and

Heterodoxies that he has mixed in the text of the narration. In this last case, the author declares the narrations that are less trustworthy in his opinion. In the first cases as well, if the authenticity and validity of the narrative are not doubted and if, as sometimes happens, the concept of the vote is against justice and fairness, the author declares that the Imam (AS) in the light of his infallibility, was able to, in special cases like this and according to the reasons that there was no expediency in recounting them, issue such a ruling; But (in other cases), one cannot rely on his judgment as a precedent.

Of course, this problem that I mentioned (the difference in narrative texts and their understanding) is not without a solution. It is enough to hold a meeting that will eliminate these differences and remove the materials that no longer meet the needs of modern society from the collection of jurisprudence and Shariah laws. For instance, this is how we can eliminate the inequality that exists between Muslim citizens and those who believe in other religions.

In any case, after twenty-five years of residence in Turkey and Iran, in which I first resided in Tehran as an ambassador and then as a senior official of the French high delegation, I encountered the problems that European officials often face due to insufficient knowledge of Islamic jurisprudence and laws. These difficulties are especially noticeable when there are disputes between the Europeans and the people of this region that need to be judged by the courts of the country according to the treaties made. In Turkey, the institution of mixed courts has reduced these problems to some extent. But in Iran, there is no court or judicial system, and for this reason, pre-trial disputes are always referred to the Ministry of Foreign Affairs instead of the courts. Therefore, it often happens that the European officer has problems discussing or rejecting the complaint based on the law of the country. Wanting to remove such an important gap prompted me to do this important work (translation and introduction of a valuable work in Shia jurisprudence) and I hope it will be useful and meaningful to my colleagues who must protect their national interests in Asia.

My stay in Tehran provided an opportunity to study and review valuable works. Works such as "Muftah al-Kalam" in four volumes, "Masalek al-Afham" in two volumes, and "Al-Bahrin Assembly", legal culture, etc. All these works, which have a sign of Shia scholasticism and are very valuable for the Orientals, have been remarkable due to their expansion and diversity in their fields and subjects, and each of them has offered me more than one precious gift.

I had many jurists with me in Tehran to help me in the process, without whom it would have been impossible for me to do this work with a brief text and many vague points.

Here, I consider it necessary to express my gratitude to Professor Jules

Mohl¹ (1800-1876), a member of the association and professor of Persian language at College De France. This great scientist, whose works have been appreciated and admired in Iran, after receiving a copy of my work and studying it in depth, told me about the weaknesses in it and advised me to revise them. The publication of this work occurred in the light of his positive reports as well as the committee in charge of the free publication and the department of the Ministry of Foreign Affairs who took the effort to print and publish it.

I am grateful to my scholarly friend, Charles Barbier de Meynard (1826-1908), professor at the Faculty of Oriental Languages, who was kind enough to correct this work and direct its publication. Without his friendly and selfless assistance and support, the fruition of this work might have been delayed.

I hope that this work will be well received by the scientific community and my colleagues in the East, for whom I have specially considered this work."

Conclusion

Antoine Carey is one of the European ambassadors and diplomats who was sent by France to visit Iran during the era of Qajar rule. Since this politician had expertise in various scientific and cultural fields, during his stay in Iran, he translated some Shiite religious works.

According to his research on the developments of Iran's legal system, nationality and the need to recognize it as a factor to recognize people from each other is different from the French legal system.

Such acceptance will be the basis of the society and the strength of the legal system of that government. In other words, by not accepting citizenship, the society is divided.

His field of interest was mostly jurisprudence and law, and for this reason, the vast volume of translations done by him is dedicated to these subjects. The book "Shari'e al-Islam fi al-halal wa haram" is one of the books that he masterfully translated and wrote a detailed introduction to it. In this article, Carey compared the political developments of Iran and France's legal system from a legal point of view during his lifetime and explained it completely. He pointed out the existence of differences in Shia narrative texts and their understanding and mentioned the available solutions to resolve these differences.

1. German orientalist and expert in Persian literature and the corrector of Ferdowsi's Shahnameh, who has been engaged in criticizing and reviewing Persian literary works and teaching at the important scientific center of College de France in Paris for many years.

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