



# HOUSE OF INJUSTICE

An Iranian Philosopher on why an Independent Judiciary  
is the Key to Democracy

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**A**wretched judiciary is tyranny's strength, and a strong judiciary makes for wretched tyrants. Today in Iran, the weakest and most wretched branch of power is the judiciary.

In democratic states, the most unprotected of people find some protection in the law and the judiciary. We've heard it said that democracy is history's destination, and the last stop for the convoy of civilization; we can at least agree that the right to self-determination is the highest demand and right of the modern human being.

Muslims and Arabs are currently welcoming the enchanting peacock of freedom and burying the cruel dragon of tyranny. These are auspicious days, when dictators go to hell and the gates of heaven open to the victims of their cruelty. Iranians led the way in 2009, but they were thwarted and the ugly monster of tyranny beat them down again. Now, it is the turn of Tunisia, Egypt, Libya, Yemen, and then Syria to spread the wares of justice and to bring down the walls of enslavement.

It is a pleasant dream: the ogres of oppression in chains, and the angels of justice on the wing. But if this sweet dream of rule by the people and freedom ends with—and is reduced to—elections alone, it will have been a dream unfulfilled. We Easterners have been so stung by the arbitrariness of despots that we see freedom as the end of the dark night of capricious rule and the dawn of rule by the people, the collective will, general elections, and referendums. We consider free elections and the sending of the people's representatives to the legislature and the executive as the pinnacle of democracy. As soon as a nation opts for free elections, we feel confident that the people have been victorious in their struggle, that repression has been defeated, and that the return of tyranny has been made impossible. But we overlook a mighty truth: the judiciary plays an enormous role in strengthening rule by the people, in wresting people's rights from the power-holders, in bolstering the law, in

◁ Evin prison, Tehran,  
May 11, 2009.

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underpinning civic life, and in consolidating justice and liberty. This truth is so mighty that we can go so far as to say that the judiciary is the core of rule by the people, and the parliament is its form and crust. And it goes without saying that turning the crust into the core and the core into the crust will leave us with an inverted system.

Take Iran today. Officials hold elections with a hundred ruses and tricks, and send fraudulent deputies into parliament to legislate. We cry to the skies at all this cheating, express our hatred of these bogus deputies, and at this betrayal of our votes. Peaceful protesters march in the streets and are shot for asking, "Where is my vote?" We suffer a thousand indignities. Our sons and daughters end up in torture chambers. They are beaten and raped. Shattered and desolate, they crawl into a corner of a hospital or a psychiatric ward. We pay this high a price in order to have an honorable parliament, representative deputies, and useful and just laws. Should we not ask ourselves whether we would need to pay this grievous price if we had an effective judiciary, and strong, independent judges? And whether such deadly weeds would grow in our garden, whether we would have so many political problems, and whether our people would have to suffer such horrors if we had judicial officials who put the fear of God into the nation's traitors, who shamed offenders before the public and punished their wrongdoings, and who sided with the wronged and upheld justice?

Iran's leader once said: "The people should fear the state." I say, yes, they should fear, but not the police, not the leader, not torturers, not interrogators, not marauders, not informants, not lawbreakers; they should fear courts and the judiciary. Torturers, MPs, and the leader, too, should feel that the judiciary will stand up to them. It is impossible for rule by the people to be robust and effective whilst the judiciary is feeble and ineffectual.

Our tyrannical rulers boast of possessing the same dominion and justice as Ali. They repeat, night and day, in mosques and from pulpits, that an infidel took Ali, the caliph, to a judge and emerged victorious. Never mind the leader; not even the lowly, sanctimonious clerics on the peripheries of the leader's retinue ever risk being taken to court. Their immunity is unassailable. And—numerous though their sins may be—their holiness never falters.

The situation has reached a point where we must take the lamp of courage, as we did in the early days of Iran's Constitutional Revolution, and start looking for a house of justice again. We have sought justice and interpreted it as freedom, whereas we should seek freedom and interpret it as justice. We never rejected justice, but we failed to revere it as we should have done. We took the crust and neglected the core, and now neither our core nor our crust is functioning. We're glad neither in our hearts nor our bodies.

We forgot that, in a tyrannical system, the first organ that stops functioning is the judicial heart, and that when our heart is so feeble, having a strong and robust body is little more than a naïve and ridiculous dream.

What's more amazing is the deviousness of our peddlers of religion who disregard all the experiences of other countries and seek the answer to everything in Islam; but, despite the emphasis placed by Islam on this issue, they've stripped the judiciary of all its independence.

Not long after the 1979 revolution, we saw and we realized that clerics believe in neither freedom nor choice/elections. They view both freedom and choice as products of liberalism, permissiveness, and immorality. We realized that they are better acquainted with duties than with rights. We realized that all the books on *fiqh* barely contain half a chapter, nay, half a page, on the people's rights. The graduates of the religious schools in Qom and Najaf are uninterested in modern philosophy and law. They seek their ideal and their utopia in pre-modern, duty-oriented communities, which are the breeding ground of tyrants. And it is only perforce and as political ornamentation that they have submitted to the corrupt offspring of Western culture; i.e. a parliament.

Their conception of the Prophet, too, is much the same. One man, who had been disqualified in an election, took his grievance to one of the clerical members of the Guardian Council and said: "If you don't uphold my right, after Judgment Day I'll complain about you to the Seal of the Prophets." The cleric smiled and said: "Let me set you straight; the Seal of the Prophets believes in neither freedom nor elections."

We slowly discovered and digested these facts, and stopped working with the clerics. But we found what they did to the judiciary in the Islamic Republic indigestible. If the books on *fiqh* do not speak about freedom, elections, and parliaments, and if clerics have not made any effort to square these concepts with *fiqh*, there most certainly is a very mighty tome in *fiqh* on the subject of grievances and adjudication. Experts in *fiqh* are proud to have studied it at length and in detail, and have produced some innovative and subtle ideas on this subject. And the independence of judges is the keystone and the keynote of all their views. And it has to be said that, every now and then, there were some very good judges during the Islamic caliphate. But what is there to be said on this subject when it comes to the Islamic Republic's absolute rule of a cleric—which has left little to behold when it comes to the law and adjudication? If our legislature and executive are slumbering, our judiciary is thoroughly dead; if the former two are weak, the latter one is wretched.

The judiciary, which is supposed to be the people's refuge, is now such a reprobate that the people must seek refuge in God. The charms and the bribes of power holders have rendered judges totally ineffectual. Those who rob the people of their security can live in full security. Murderers can slay writers and intellectuals in broad daylight and then enjoy a night of restful sleep. Members of the *Basij* militia viciously break students' arms and legs, and receive a pat on their backs for their efforts. Torturers

rape detainees and are rewarded with bonuses. The heroes of the nation are locked up in jail or in their houses, and the judiciary is as silent as death.

And the ruling cleric's mercenaries travel the world to explain to non-Muslims that the people's rights are fully respected in the Islamic Republic; that there is no cause for alarm, and that the judges who are appointed by the leader do not issue verdicts on the orders of the leader's lackeys and secret agents. And the amazing thing is that benevolent individuals in Iran keep demanding free elections instead of asking why the judiciary has so parted ways with justice.

In the newly liberated Muslim countries, too, all the talk is of parliament and elections. It is as if all that's required is for a few deputies to be freely sent to parliament; then, the gates of democracy will swing open before the people and the air will fill with the heady scent of justice. The victory of Islamic parties in the recent elections in several countries has further fanned the flames of this conception.

Scarcely anyone is speaking of the strength and soundness of the judiciary, and hardly anyone is mentioning judicial independence, which is the fount and the central pillar of rule by the people.

My message and my advice to you dear people who have recently embraced freedom and rid yourselves of the ogre of tyranny is this: Do not focus all your political efforts on your future parliament. Devote a share of your time to ensuring that your judiciary is honorable and independent. Remember that a wretched judiciary is tyranny's strength and a strong judiciary makes for wretched tyrants. It is this noble organ that will drive away that ignoble ogre. Rule by the people will not be strengthened and will not endure other than with the support and backing of a popular, strong, and independent judiciary that upholds the law.

And the people who are thinking about Islamizing the state and implementing the sharia—those who view liberalism and secularism as a monster—should know for their part that judicial independence is one of the firm, self-evident principles of the precepts of *fiqh*; it has nothing to do with liberalism and secularism. And working to this end is pleasing both to God and to man; it will bring you blessings both in this world and the next.

I have another piece of advice: If you are determined to have a state that is based on a rejection of arbitrary rule and on respect for the people's votes (which is a laudable notion), why not also insist on the election of the judiciary's top officials, and include an article to this effect in your constitution? In this way you will ensure that you have knowledgeable, just, and honest judicial officials, who are not appointed by and are not subservient to the state, and who, with the backing of the people, will stand up to any state officials who break the law.

Watching the free elections and the comings and goings of chancellors and prime ministers from the West, being dazzled by the media frenzy, and imagining that this is what democracy and freedom mean, whilst overlooking the judiciary—which is the guarantor of this sturdy system—is not a sign of wise statesmanship.

I am aware that my words will raise two grave questions in my readers' minds. The first is, this strong judiciary will only guarantee judicial justice, whereas we also need distributive justice, which hinges on a strong parliament.

My answer is: Certainly, this is true. Rule by the people needs both fair laws and the courageous implementation of the law, and the judiciary is only responsible for dealing with disputes and punishing offenders. Be that as it may, without a strong and just judiciary, the fairest of distributive laws will not produce any benefits and will only be subverted by the nation's traitors.

The world of Islam, which has been living with the dragon of tyranny for quite some time, should throw open all its windows to elections in order to rid itself fully from this blight. It must allow the rule of the people into every sector and think of ways of tackling any concomitant ills. This will prevent the return of the dragon and the disappointment of those who have longed for and struggled for justice.

The second question is this: What kind of laws will this strong judiciary side with and, in an Islamic society, will it, for example, rule in favor of stoning adulterers and killing apostates?

When the judiciary becomes the sole arbiter, no other religious or non-religious arbiter will take it upon itself to sanction the shedding of human blood on this or that pretext. For example, the kind of sanctioning that we saw in the fatwa issued by Ayatollah Fazel Lankarani in Iran, which backed the killing of an Azeri writer, and which was followed by opportunistic, publicity-seeking cheering by the cleric's son.

It is time for Muslims and their religious and ideological leaders to submit to the religious and extra-religious principle that states: "Do unto others as you would be done by." It is time, in other words, to coordinate lawmaking and judicial affairs with the Universal Declaration of Human Rights, which is the product of collective human thought and consensus; to abandon discrimination and view all human beings as equals; to seek religiosity less in *fiqh* and more in virtue and religious knowledge and experience; and to stop clutching the husk of the sharia and clutch the precious kernel of spirituality instead.

Let clerics, for their part, be the smiling face of Islam. Let them value their soft power and not crave hard power. Let them allow the mighty notion of right into their old, duty-oriented *fiqh*. Let them stop trying to find the answer to every question in religion. Let them throw the gates open to answers that are produced by independent, rational thought. And let them rest assured that rationality will not force the sun of truth to set.