

Theoretical Foundations of Human Rights: Defining the Relation between Intra-Religious and Meta-Religious Arguments¹

Seyed Sadegh Haghghat

One of the most pivotal discussions on the theoretical foundations of human rights concerns defining the relation between intra-religious arguments and meta-religious ones. By meta-religious or meta-textual arguments it is meant those theoretical and rational arguments that are invoked before reference to textual sources of the religion. In contrast, intra-religious or textual arguments directly relate to the very text; thus, so far as it concerns religions, they take the form of narrative.

The main question that may be considered as the second part of the present author's paper to the first conference (۲۰۰۱), is how these two categories of arguments confront each other with respect to the issue of human rights and which one takes precedence in the event of conflict. The focus of discussion in this paper (as it addresses intra-religious arguments) is the religion of Islam; however, some argumentations and propositions may be of general application.

The answer to this question is first sought in the opinions of scholars and then, in line with review and critique of such differing opinions, it is tried to verify the hypothesis that human rights are originated in a combination of both intra-religious and meta-religious arguments. In other words, human rights are neither purely meta-religious phenomena nor purely intra-religious ones, but instead, they are, in accordance with the explanation presented in the conclusion to this article, based, in a special manner, on both groups of intra and meta-religious arguments. A similar hypothesis has already been examined, by this author, with respect to the relation between political philosophy and political religion and their application to a specific subject (i.e. the question of the distribution of power). (Haghghat ۲۰۰۲).

Meanwhile, Abdollah Nassri has made a compromise between the two intra and meta-religious methods in his discussion on man's expectations from religion: "There is a third method for understanding the realm of religion. In this third method, although the meta-religious method is the focus, the point is stressed that through the intra-religious method, and in the light of reason, one can establish the necessity of reference to religion in order to understand its boundaries and scope. In fact, man's inability to identify his ultimate good as well his right path he should take to attain perfection, necessitates reference to religion so that it would lead us to perfection through elaboration of the details" (Nassri ۲۵-۲۶).

At his stage, the meaning of right is briefly addressed: "Right means a power, capacity, or privilege established through the law or legal rules for its holder, through which people are enabled to impose their wills on others and require them to observe it" (Modarres ۲۶).

The core of the idea of human rights is the proposition that man, by virtue of his/her being human, avails of dignity and sanctity, and thus should be treated as inviolable (Perry ۳۳). In this field, rights mean those rights that constitute the foundations of the political and social system, not those rights that are morally binding on people (Mojtahed Shabestari ۲۰۰۰, ۲۰۳). Therefore, human rights comprise the rights belonging to the human being since birth, by virtue of being human.

Human rights may be conceived in two different ways. By the first conception, it is meant the general notion of the rights relating and belonging to human beings (because in this sense, human rights refer to natural rights which are known to be ahistorical phenomena); while the second conception refers to modern human rights enshrined in declarations on human rights. Where mention is made of human rights in Islam and in other religions, the first conception is intended, while where one speaks of the common points and the differences between Islam and human rights, reference is made to the second conception.

¹ . paper presented at the second conference on human rights: *Theoretical Foundations of*

The idea of natural rights existed in all religions, but the expression "human rights" is a product of modernity. What is sought by the hypothesis presented in this paper is the ideal human rights. Modern human rights are independent from (but not against) religious values. Although the French Declaration of the Rights of Man and Citizens includes a passing mention of God, the Universal Declaration of Human Rights does not even contain such a reference to God.

Now prior to introducing the main line of discussion, we have to make the following assumptions:

Assumption 1: Human rights have foundations; inasmuch as neutral and value-free science does not exist, it is not likely that one can define rights for the human beings without relying on certain foundations and presumptions. While Michael Freeman regards human rights as having theoretical foundations (Freeman in Sharifi ٤١), some scholars opine that if any theory should necessarily have a foundation, it may lead to *regressio ad infinitum*. MacIntyre believes human rights to be existing but non-provable phenomena (Ibid ٤٥).

Assumption ٢: Islam has human rights of its own (human rights in the first sense).

Assumption ٣: There are common grounds between Islam and modern human rights, such as the right to life, and the right of property.

Assumption ٤: Islam differs in certain points from modern human rights, including such issues as: corporeal retaliation (*qisas*), succession rights for men and women, limitations on freedoms enjoyed by followers of recognized non-Islamic religions as well as the laws governing such people (Haghighat and Mirmoosavi ٢٥٥-٢٢٢). Difference in rights may be attributed to difference in foundations. Islam gives prominence to divine revelation and will, while in modern human rights, the individual human being and his/her reason are regarded as the most prominent (The Authors ٩٤-٩٩, ١٢٠-١٢١, ١٦١-١٦٢). The likelihood of full compatibility between Islam - in any of its interpretations- and modern human rights appears to be out of relevance.

Assumption ٥: Religion and reason do not confront each other. Rational evidence in the event of their validity may serve as a kind of religious evidence (Javadi ٤١). The subject of this paper is to define the relation between meta-religious and intra-religious arguments with respect to the issue of human rights.

Assumption ٦: Secularism and modern human rights as a consequence, are non-religious but not against religion. It is true that secularism and human rights are necessary companions, but it cannot be held that they are hostile to religion (Nikfar ٥٥). The content of human rights is secular, not anti-religious (Mojtahed Shabestari ٢٠٠٠, ٢٢٧). Religion in human rights of today, is a matter of personal concern, rather than a matter of preference (Ibid ٢٥٦).

With a view to organizing the present paper, one may refer to the fact that in the opinion of some thinkers, religion and human rights are in conflict and thus, they discard the question of intra and meta-religious arguments. However, those who find no conflict between the two, may base their discussion on the concepts of intra and meta-religious arguments. Therefore, although some thinkers invoke both categories of intra and meta-religious arguments, they usually settle controversies over such issues as human rights, on the basis of a single category (Ibid ٢٢٠).

Based on the above, this paper is presented in three basic sections each consisting of contrasting interpretations on the respective issue. Making distinction among such interpretations would contribute to better description of the subject, while it is intended neither to exclude other interpretations than those explained in each section, nor to deny the likelihood of overlapping. The most significant limitation of this paper arises from the fact that due to elaboration on the core subject of each section and its interpretations, there is little room for detailed discussion of the respective arguments, and their analyses.

١- Conflict between Religion and Human Rights

The first possibility that can be addressed in the discussion of the relation between human rights and religion is their conflict and incompatibility. If human rights could not be justified by religion, there would be no opportunity to define the relation between intra and meta-religious arguments. The first five interpretations that follow, can be regarded as meta-religious arguments, while the last one refers to the very text of religion.

1-1 *Interpretation 1:*

If one subjects the expression "human rights" to semantic analysis, the result would be the discovery of rights which man enjoys by the mere virtue of his/her humanity and not because he has adheres to a specific religion or because he obeys the orders of God. Undoubtedly, here the conventional sense of right and not its real sense (or the objective and external reality or even a conception truly corresponding to reality). Right in the conventional sense, means a permission, a transitive right (which may be invoked against others), and entitlement (Soroush in Bastenegar ۳۳۱-۳۳۲). By introducing religion in the discussion on human rights, the rights would transform into duties, and thus the main objective of the discussion would become irrelevant.

The language of religion is the language of duties. The term 'right' as it was used in the decree issued by Imam Ali to Malik Ashtar did not bear the same sense as it has today, because in that decree the main issue was the mutual obligations of the ruler and the subject towards each other (Mojtahed Shabestari ۲۰۰۰, ۲۰۵).

Review and Critique

A kind of duality is behind the above interpretation between God and human being, as well as between rights and duties. If one considers reason as the inside evidence and religion and divine revelation as the outside evidence, and if the principle of correlativity between reason and religion is accepted, the above distinction would become questionable. Whatever reason understands serves as the path to discovery of religious obligations and the rulings of the divine legislator, because he is the supreme reason. In accordance with the theory of rational good and evil, right and duty correspond. Motahari as well, had found out this companionship between rights and obligations from Imam Ali's saying in Nahj ul Balaghat, Sermon ۲۱ which states that there is no right for man unless there is a duty on him/her (Motahari ۶۲-۶۳). The following sections would serve as critiques to the above interpretation.

1-2 *Interpretation ۲:*

Since human rights are the quest for the rights belonging to human being by the mere virtue of his/her humanity, they avail of general scope and applicability. However, the fact is that religion has become multifarious through the existence of different uncompromising tastes of the individuals. Not only religions are divided into divine and non-divine religions, but also the very religion of Islam has always suffered from conflicts among its internal sects (known as the seventy-two nations war).

Hermeneutic discussions also relate to varying interpretaions of a single text based on different presumptions. Thus, even if we take God's existence for granted, his rights cannot be established with certainty.

History has witnessed innumerable developments made in religious ordinances and ideas by clergies and religious leaders. Once, the Christian church used to incinerate the deniers and heretics; and today, some Muslims do not tolerate the participation of women in parliaments. That is the reason why such capricious opinions cannot be relied as the bases for the rights of God and human rights, so that people are invited or forced to observe them (Soroush ۱۹۸۳, ۲۷۵-۲۷۷). The thirty-years war in Europe, as well as the war between Muslim Shiites and Sunnites in certain periods of history evidence this fact.

Review and Critique

The historical evidence to the inefficiency of religious sects does not stand up to theoretical scrutiny. Failure of the followers of a religion may have been due to matters unrelated to religion, such as opposing tastes, profit- seeking, or other human and non-human features. The scope of the present paper extends to Islam the first (the Qur'an and the Prophet's

tradition), as well as Islam the second(the interpretaions thereof), but not Islam the third (the practice of Muslims).

The variety of interpretations in different religions does not prevent the believers from their commitment to their fundamental beliefs. In classical hermeneutics, understanding of the text as well as its central meaning is assumed. In the ontological hermeneutics of Gadamer too, such assumptions are made with respect to understanding of the text. Although Islam the second is not necessarily Islam the first, there is no other way to understand the Qur'an and the Prophet's tradition but to systematize our methods, approaches, and presumptions.

1-3 Interpretation 3

Since one cannot get to 'ought' from 'is', the rights cannot be based on the potential talents and the actual capacities of human beings, otherwise it would result in racism and suchlike (Ibid 376). Thus, the criterion in establishing human rights would be the mere fact of man's humanity, not man's belonging to a specific race, religion, or similar boasts.

Review and Critique

The fallacy of this interpretation lies in its grouping of religion with race, language, and nationality. Religion is the voice of God heralding the annulment of racial or other like superiorities.

1-5 Interpretation 5

God's existence as well as his owning of certain rights having been presumed, He himself, is able to defend and restore His rights with full force and authority. Defending human rights is based on a moral imperative which is backing the oppressed and the deprived whose rights have been infringed; this would not apply to God (Ibid 375).

Review and Critique

The fallacy of this argument lies in its identification between the two meanings of 'right'. The rights of God against people does in no way indicate His need to such rights or His incapacity to restore them.

1-6 Interpretation 6

Religion contains universal ordinances, while the communitarianists as well as the post-moderns today, attend to regional rights and cultures. Cultural relativists disregard the criteria derived from outside sources, including religions (Freeman in Sharifi 50).

Review and Critique

Although religion consists of universal laws and ordinances, it has also an eye on the temporal as well as geographical application of such laws, as we will see later in this paper. Neither all the laws of religion are of general applicability, nor all political philosophers are particularists. Relativists compose only a portion of the community of philosophers. While Milen speaks of human rights with a view to different traditions, customs, community ethics, religions and ideologies (Milen 62-70), Jack Donnelly still persists on the absolute universality of human rights (Donnelly 9-12).

1-7 Interpretation 7

Notwithstanding the theoretical extra-religious argumentations, we may identify the points of conflict between religions and human rights by referring to the very text of religion. For example, Islam did not abolish slavey and does not recognize equality between men and women, as well as between Muslims and non-Muslims (Soroush in Bastenegar 330).

Review and critique

The fact that there exists certain conflicts between western modern human rights and the divine religions- including Islam- cannot be doubted. The Islamic human rights are specific to this holy divine religion and should not be assimilated to and assessed against human rights that were formed and developed on a bed of the enlightenment era, as well as humanist and liberalist thinking, with the expectation that they should exactly conform. However, the

discussion whether the above-mentioned examples are plausibility in Islam, requires further pondering and review (Haghighat and Mirmoosavi ۲۸۵-۲۲۲).

۲- Human Rights As Meta-Religious Rights

Those who do not regard human rights to be in conflict with religion, may rely in their argumentation on meta-religious evidence. Thus, in identifying human rights, they basically refer to rational arguments, and accord them priority in case of conflict with textual evidence. Therefore, the argument revolves around the idea that human rights are finally defined out of the scope of religion. Soroush stresses the point that the discussion here is over the conflict between religion and human rights which would not imply that religion does not have any say of its own (Soroush in Bastenegar ۳۳۹).

The following eight interpretations, except the last one, rely on meta-religious evidence to demonstrate the meta-religious character of human rights:

۲-۱ Interpretation ۱

"Human rights is not a purely religious and jurisprudential issue. It is a theologico-philosophical, and beyond that, a meta-religious topic. This means that the issue of human rights, like the discussion of good and evil, determinism and free will, God, and the prophets, should be considered as prior to the understanding and acceptance of religion, affecting this understanding, and outside the scope of religion. Neither liberalism would be able to restore human rights in their entirety, nor religion is totally unfamiliar with this subject" (Soroush ۱۹۹۳, ۲۸۱-۸۲). The origins of the discussion on human rights can be traced to the expectations of man from religion. On this basis, the mandate of religion with respect to the rights of human being is confined to defining general values.

Review and Critique

If human rights are not *entirely* religious, and if on the other hand, religion is familiar with the concept of human rights, one may conclude that human rights cannot be regarded as an absolutely meta-religious issue. Thus, the boundary between the intra-religious and the meta-religious arguments on the subject of human rights must be identified.

It does not appear that there be a convincing argument for avoiding reference to the inside of religion on such issues as human rights. If God has made ordinances and propositions in a general form with respect to human rights, wouldn't this fact be sufficient to justify reference to intra-religious arguments in order to discover the extent of God's ordinances and rulings on the issue?

There is no denying that a major part of human rights stand outside the scope of religion. Even those who invite us into the religion, set out their discussion with meta-religious arguments (See: Javadi ۸۹-۱۲۶). The above interpretation does not face any problem to this extent. However, it fails to show that the main source of reference, especially in cases of conflict, would be meta-religious arguments. If determination of the criteria and identification of details are wholly left to human reason, it might be a likely cause of controversy and conflict of ideas; in the same way that the conflict between socialists and liberals has not been resolved in the whole course of history.

The boundaries of man's expectation from religion are drawn in the dialectic between intra-religious and meta-religious arguments. Thus, one cannot finally resolve the issue by resorting to a single pack of arguments.

۲-۲ Interpretation ۲

"Things that own a prior nature and substance cannot become inherently religious, because one thing cannot simultaneously have two natures and two substances... Therefore, there cannot be a science of sociology, for example, which is inherently religious, or a philosophy which is basically Islamic or Christian. In the same line, an inherently religious government is also impossible, unless by way of incidental existence. And is it different from what the seculars claim?" (Soroush ۱۹۹۷, ۴۳۸-۳۹).

By extending this line of discussion to the issue of human rights, one may conclude that 'religious human rights' cannot exist otherwise that by way of external reality or in a figurative way, which is accepted by seculars as well.

Review and Critique

In order to characterize the above concepts as *religious*, it would not be necessary to identify the nature of government and suchlike with religion. Their unity with religion in the capacity of extrinsic existence would suffice, and this fact would not render such unity and identification incidental.

In addition, it is of little relevance whether human rights, or ethics are of an independent reality; what matters is whether religion, in its own substance, has intermingled with some kind of morality (and human rights). The question is not the characterization of those concepts and issues as religious issues. The point is whether the divine religion contains any ordinances or recommendations on such issues (See: Larjani ۱۹۹۷, ۵۷-۵۹).

۲-۳ Interpretation ۳

Similar to the the second interpretation by those who believe in contradiction between religion and human rights, some scholars have invoked the multiplicity of interpretations from religion as the reason for the meta-religious feature of human rights and the necessity of their meta-religious character:

"Which interpretation, among many, of Islamic religious texts should serve as the basis for determination of human rights? What do certainties of Islam mean? The fact that the holy Qur'an contains ordinances is one thing, and the question if those ordinances still bind Muslims today is another. Islam has neither churches nor any dogma. Whatever the Islamic scholars say can only be regarded as their opinions and not more. Metaphysical human rights belong to the heaven and not to the earth. In practice, these heavenly human rights may lead to brutal conflicts and blood-shedding" (Mojtahed Shabestariop.cit. ۲۵۵).

Review and Critique

As already noted, the concern of Mojtahed Shabestari is to present a system of human rights capable of practical implementation. For this reason he avoids theoretical discussions regarding the real world. In the event that we find any relation between human rights and religion in our theoretical discussions, we have achieved our objective in theory, be that enforceable in our time due to its reception by the world, or postponed to some unknown future. Has Islam itself been received by all the people of the world today? The religious character of human rights would not require a violent interpretation of Islam and its imposition on Muslims and non-Muslims alike.

۲-۴ Interpretation ۴

The Ash'arites do not believe in the objectivity of good and evil. Contrary to them, the Adlieh (Mu'tazilis and Shiites) regard good and evil to be objective. Thus, whatever is good in reality, God has ordered to be done. The validity of human rights is intrinsic, and things that are good in their reality, can also be found through intra-religious arguments. The point is that the validity of such rights is intrinsic and not because they are religious.

Review and Critique

The good and evil argument is basically accepted; doubting it would place us close to the Ash'arites. However, one cannot deny the need to religious reasoning and discussions by merely invoking this argument or the necessary relation between the rule of reason and the rule of religion. The objectivity of good and evil is only valid with reference to their existence, not their actual discovery and verification (Javadi ۵۴). Therefore, in the discovery and verification of good and evil, it would not be wrong for reason to seek help from religion and identify rules (in respect of human rights as well as in other respects) that approve findings of reason.

۲-۵ Interpretation ۵

Being human is prior to man's choice of a specific religion. Therefore, the rights arising from his humanity take precedence over his religious rights (,if proven).

Review and Critique

The fact that man avails of rights and privileges by virtue of his humanity before he accepts a specific religion cannot be doubted. However, this proposition would not imply that human rights (as defined in humanist discussions) contradict divine rights of God, and are prior to them. Thus the possibility remains that human being, in his/her quest for rights, accepts a specific religion and thereby, refers both to intra-religious and meta-religious arguments.

This applies if we consider human being to be independent; but if his/her existence is identical with relation rather than independence, the above argumentation might be eliminated.

γ-γ Interpretation γ

By invoking the theory of social contract and natural rights, John Locke characterizes human rights as non-religious. Natural rights shall mean the rights belonging to human beings by virtue of the law of nature, such as the right to life, the right to freedom, the right to property, and as Locke and his followers believe, the right of participation in government. Although the theory of natural rights dates back to before Christ, and thereafter to Cicero, it was John Locke who applied this theory to justify the success of the 17th century revolution in England. He justified the right to property from a moral point of view because he regarded it as the outcome of the owner's labor, and classified it among the natural rights (Abosaid ٢٢-٢٠). In his opinion, inasmuch as the basic law of nature is preservation of mankind, any human legislation contradicting that law, would be out of relevance and invalid (Mansoori ٢٤٠-٤١). Human being possesses the right to property in the state of nature; however, in order to protect this right, he surrenders to social contract.

The natural rights incorporated in the Universal Declaration of Human Rights include: the right to liberty, the right to equality, the right of property, as well as certain freedoms (Abosaid ٢١-٢). No source, even a divine religion, may deprive men of such rights. In Thomas Paine's terms, all human beings are born free, and with equal natural rights, and the rights belonging to the nature of human being cannot be violated by man or by others.

Jamshid Momtaz poses a criterion for identification of natural rights: if a rule of law exists independent of the will of government, and thus cannot be abolished or modified, even through constitutional legislation, because it is deeply rooted in human morality and in the common sense of every reasonable human being, this rule of law can be characterized as a natural law (Momtaz in Sharifi ٩).

Review and Critique

The generality of the origin of rights is not subject to question, while religion can be resorted to as a source of their verification. The point is that there has been continuous controversy among the proponents of natural rights in the course of history over the instances and the extent of such rights. For example, the rights to liberty and equality do not appear to be readily compromised (Abosaid ٢٣). These are the areas where religion can adopt a more detailed function. True, if it is assumed that certain instances of natural rights have already been discovered while they are opposed by religious arguments, then the natural rights would take precedence.

As Dworkin points out, sometimes the intrinsic and natural values would contribute to further ambiguity rather than clarification of human rights (Perry ٢-٥). The criterion set by Jamshid Momtaz would not totally eliminate the ambiguity. Natural or intrinsic rights have been invested in man by God, according to the divine discretion, and are therefore dependent on His will. The rights of human being correspond with his natural duty to attain human virtues. Therefore, along with every natural right, there exists a natural duty restricting that right (Nasr ٤٩).

γ-V Interpretation V

Metaphysical human rights (maintained by Mesbah, Javadi Amoli, and Ja'fari) do not qualify for actual implementation. If the question were how, within our traditional metaphysical system of philosophy, one may envisage rights for human being, this would only be an effort to resolve a metaphysical problem.

The drafters of the Universal Declaration of Human Rights sought a way to prevent violence and oppression with sanctioned application to every human being. Today, many philosophers as well as many people of the world cannot think metaphysically, be it right or wrong (Mojtahed Shabestari ۲۰۰۰, ۲۲۸-۲۵۲).

Review and Critique

Two different issues have to be distinguished: the relation between human rights and religion, and presentation of human rights acceptable to all. The first issue is of theoretical nature and based on the organization of the present paper can be answered in three different ways: the contradiction between human rights and religion, their compatibility while the meta-religious arguments take precedence, and their compatibility while the intra-religious arguments take precedence.

The second problem refers to practice and implementation. Its concern is to introduce human rights that are equally enforceable in practice for both Muslims, and non-Muslims, as well as believers and disbelievers in metaphysics. Mojtahed Shabestari deals with the first issue while the present paper addresses the first problem only.

۲-۱ Interpretation ۱

If we step inside religion from outside, we can obviously witness the lack of rules and propositions regarding human rights. This fact is proved by two considerations: first, the religious jurisprudence (*fiqh*) cannot establish a system; it is only able to answer general questions (Mojtahed Shabestari ۱۹۹۷, ۵۲-۶۲). Religious jurisprudence is a backfront worldly science, dedicated to apparent facts, with mean morality, consumer, minimal, affected by the social structure, duty-centrist, and based on secret expediency (Soroush ۱۹۹۷). Second, those rules relating to the scope of transactions and politics, are time-bound and space-bound, limited by their specific circumstances. "The prophets struggled neither for improvement of people's level of welfare, nor for upgrading their knowledge... Historians and religious scholars have alleged that ۹۹ percent of the legal rules of Islam are mere confirmation of the already existing rules. That is why we claim that inequalities are incidental to Islam and are the product of the circumstances prevailing at the time of the Prophet's mission and in no way reflect the absolute and transcendental values of human being. Thus, they can be exposed to circumstantial reasoning of each era and be replaced by other customs, practices, and values, while still satisfying the objectives of God's law (Soroush in Bastenegar ۲۵۲-۲۵۲).

In the opinion of Mojtahed Shabestari, instead of direct reference to the Qur'an and the practice of the Prophet, it is initially necessary to make a distinction between the objectives of religion based on their intrinsicness and incidentality (Mojtahed Shabestari ۲۰۰۰, ۲۶۶-۲۷۱). He explains the historical nature of texts not only by hermeneutics, but also through the philosophy of language. Language consists of signs and symbols, which, contrary to myths, are experimental, temporal and spacial concepts. Since language has a temporal as well as spacial form, texts become historical and thereby, the concepts have their dates of birth and expiry (Mojtahed Shabestari ۲۰۰۲).

Review and Critique

With respect to the role of the elements of time and space in understanding of religion, Soroush and Mojtahed Shabestari by applying a general argument believe the whole social ordinances of Islam belongs to the time of their being laid down. This way of treating the ordinances of religion may lead to seclusion of religion not only in respect of the rules on Social ordinances, but also in relation with its rules relating to worship. The eternity of Islam would require that the continuous validity of Islamic rules (whether related to worship or transactions) must be assumed, unless a collection of evidence demonstrate that a certain rule (such as the one on heresy) or a group of them (such as those relating to blood money), were specific to the Arab community of their time (Haghighat ۱۹۹۵, ۱۱۱-۱۲۲). All we said about the Islamic jurisprudence further establishes the necessity of its improvement and contributing to its efficiency, rather than dispensing with it as inefficient.

۲- The Intra-religious Character of Human Rights

Here I analyze the idea of those who believe that the issue of human rights is, "primarily" settled within religion however, this idea does not bar reference to meta-religious evidence. Thus, it would be likely that in the discussion on human rights, the necessity of reference to religion is demonstrated by invoking meta-religious evidence.

This group of thinkers includes a vast range of ideas from the maximalists (who opine that religion contains a relevant ordinance in every detailed subject), to those who maintain that many of social affairs do not have necessary and mandatory religious orders, and it is human being alone, who shall fill a specific social arena with required rules and ordinances, however, with the aid of religion's general teachings.

۲-۱ Interpretation ۱

The right to lay down human rights belongs solely to God, because human rights cannot be defined exclusively through custom and contract. Man suffers from limitations which disqualify him for determination of human rights. He is in want of both a comprehensive knowledge of the world and his own existence, as well as freedom from the fetters of nature. On the contrary, God is the absolute being, and the rights of every limited being, should be defined and allocated by the absolute being (Javadi ۸۹-۱۱۲). Based on this proposition, human beings lack the capacity to determine their own rights, let alone to invoke meta-religious evidence against intra-religious arguments in this respect.

Review and Critique

This meta-religious argumentation intends to demonstrate the necessity of reference to the inside of religion on the subject of human rights (as well as other subjects). The strength of this argument lies in the fact that it seeks to open a way for reference to religion in such matters. However, it should be noted that:

First, this argument does not deny that religion may contain only a few general propositions on the issue, while leaving the rest to human reason. In such a case, the validity of this right for human reason is derived from the approval by God. The statement, "human rights cannot be determined only through contract" (Ibid ۸۹) implies that human rights can be partially defined by contract.

Second, if one has to accept all intra-religious evidence and arguments without reference to rational judgement, then we would behave like Ash'arites. One who believes in the intrinsic good and evil, but when it comes to proof, he limits himself to merely textual and jurisprudential evidence, disregarding the role of reason in this respect, he may be likened to the Ash'arites. Independent rational deduction, though basically valid, are of little function in our jurisprudence. "One of our shortcomings in the field of jurisprudential knowledge is that our jurisprudence is more informed of intra-religious contents than the meta-religious information" (Soroush in Bastenegar ۳۵۰). As Modarresi Tabatabaei has written, "Some recent Shiite scholars believe that reason is a potential source for Shiite jurisprudence, meaning that although reason can independently discover the jurisprudential ordinance and lead us towards religious obligations, such an event is actually unprecedented" (Modarresi ۱۲).

A similar argument has been made by Seyyed Mohammed Bagher Sadr, "Although we believe that following reason is permitted, no ordinance or law could be found out which rests solely on the foundation of reason" (Al-Sadr ۱۰).

۲-۲ Interpretation ۲

Issues such as human rights must be left for definition by heavenly sources, because human beings are constantly affected by their particular environment, instincts, knowledge, and interests. They are thus incapable of reaching consensus on the content of human rights. Avecina has raised this argument to prove the necessity of prophethood for human beings. If the human legislator is a single person, the question arises who he is and what characteristics he has. If there are multiple legislators, the problem of their being affected by respective circumstances and non-achievement of consensus is raised (Javadi ۱۰۰-۱۰۲).

Human beings are profit-seeking beings and we need special evidence to prevent them from violation of others' rights. Neither utilitarians nor believers in human duties may present a

comprehensive answer to the above question. On the other hand, we cannot reach certainty on such theoretical issues like human rights and political philosophy. It is for this reason that philosophers have been in constant, controversy during the whole history- a controversy that has even mounted through time. The final source of rights and obligations cannot be human reason and positive laws. In this way, the necessity of reference to divine orders on the issues such as the values, purpose of life and the world, as well as method of living would be proved (Malekian ٧٦-٧٧). As Michael Perry has noted, non-religious and secular interpretations of human rights lack clarity, though it would not mean that all religious readings of human rights are crystal clear (Perry ٥-٧). In his opinion, a secular reading of human rights is impossible (Ibid ١١). According to his viewpoint, the concept of human dignity is basically approved by all religions and philosophies, but it is only religion which can answer the question why we should love others and respect their rights. It is the holy Bible that defines our realtions with our brothers, sisters, and neighbors in detail (Ibid ١٦-١٩ and Matthew ٢٥, ٢١-٤٦). Someone like Camus may claim that he loves other people without any religious sense (Ibid ٢٦). But the question is: on what basis? Are human morality and emotions, precise and unchangeable through time?

In a critique of Kant, Richard Rorty opines that we should replace divine concepts with our culture. Maichael Perry who believes in the religious foundations of human rights criticizes Rorty in this respect (Ibid ٢٧-٢٩).

Dworkin is of the opinion that sanctitiy may be regarded as a non-religious matter. In response, Michael Perry writes that it is the sanctity of life in the real world and not in the minds of people which matters. Thus, if the Bosnian Muslim tells the Serb, "life is sacred for me and you shall not invade my life", the Serb may respond, "it is sacred for you, but not for me!" (Ibid ٢٥-٢٦)

Review and Critique

The above reasons may prove intra-religious arguments, but in addition to the same criticisms raised against the first interpretation being applicable here, it is necessary to note that in the modern era, the society cannot be managed only on the basis of obligations. The modern man seeks to discover the purposes and interests lying behind the orders. Even a divine law must prove its effectivity both in terms of theory and practice.

٢-٢ Interpretation ٢

We may extend the discussion to the issue of sanctions. Today, the human rights debate is considered as a political instrument. Many of those who claim to defend international peace and security as well as human rights, do not adhere to their slogans in practice. Human rights codified by human beings would suffer from lack of effective sanctions because they are constantly affected by different tastes and interests. But if all human beings believe in God and the prophets, and accept God as the final arbitrator, more sanction would be guaranteed. A similar argument was raised in respect of the Interpretstion V by the defenders of human rights based on meta-religious arguments.

Review and Critique

Reference to religion with respect to the issue of human rights seems to be justified. However, this fact does not necessarily import that religion has sufficiently addressed the issue of human rights. Besides, the issue of sanctions remains as a problem even among the Muslims. "There are unfounded allegations regarding the Islamin Declaration on Human Rights approved by the Committee of Ministers of the Organization of the Islamic Conference in ١٩٩٠ in Cairo. The Declaration makes mention of the prohibition of torture while in the signatory states, torture is a normal practice!" (Nikfar ٥٩).

٢-٤ Interpretation ٤

The corollary of Islam's eternity and comprehensiveness is that it has addressed such important issues as human rights. This argument is based on reason, while it is also reinforced by textual evidence. Imam Sadegh(P.B.U.H) says, "God has enlightened every question in th Quran and I swear by God that he has not neglected a single need of His

servants" (Al-Koleini ٥٩). "God has neither permitted nor prohibited an act unless he has defined its boundaries like the limits of a house... even though it is a minor issue such as the punishment for a scratch or suchlike" (Ibid).

Review and Critique

In addition to the above-mentioned point I should refer to the fact that the comprehensiveness of Islam and the Qur'an does not mean that all knowledge, science, and industry can be found in Islam. The Qur'an has not left any matter unattended so far as it concerns the guidance of human being. However, one should not expect to find every physical and chemical formula, or the methods of gardening and cooking in Islamic teachings (Bazargan).

٢-٥ Interpretation ٥

Human rights must necessarily originate in a divine source because if they are laid down by the legislature of rulers and dictators, they can be reversed in the same manner they have been enacted, while human rights, by definition, are the rights belonging to human being in every circumstances which cannot be deprived from him in any way (WAMY ٥٠).

Review and Critique

It is not alleged that the rights are granted by human legislators or the rulers. The question is whether human rights can be discovered with the aid of either intra-religious or meta-religious evidence. This interpretation has mixed up the fact with the proof.

٢-٦ Interpretation ٦

The contemporary era has witnessed multiplicity of rationality. It is said that reason can exist in different types. Post-modernism directed its attack, in the first place, against rationality downgrading reason from its sacred position, and replacing it with multifarious reasons. They said that values are identified by reason and thus there is no single code of morality. There may exist more than one system of human rights (Soroush in Bastenegar ٣٣٧). Therefore, if the Chinese and the Third World can have their respective human rights, we may also organize a specific human rights system through reference to our religious culture.

Review and Critique

This interpretation can only be invoked by those who accept its basis, i.e. relativism and pluralism. However, most believers of the world do not approve of such relativity and thus, cannot resort to post-modern assumptions in rejecting the universality of human rights and establishing specific human rights systems. As noted by Michael Perry, if none of man's moral rights are absolute, fortunately some of his legal rights are so. No one has alleged that all human rights are absolute (Perry ١٠٦).

٢-٧ Interpretation ٧

as the last interpretation in this section, one may directly refer to intra-religious evidence in this respect. Direct reference to the Qur'an as well as the practice of the Prophet indicates that numerous rights have been defined for the human being independent of time and space. A woman was condemned to divine punishment for having bound and starved a cat (Al-Hurr al-Ameli ٦). The letter by Imam Ali to Malik-Ashtar contains implications that are timeless (Nahjul Balaghat, Letter ٥٣). We are even responsible against the earth and the cattle (Ibid, Sermon ١٦٦). How can then religion not specify our obligations toward fellow human beings? Criticizing Soroush, Peyman writes: "incorrect definition of religion has caused some persons to regard human rights and such values as knowledge, freedom and justice to be meta-religious, while they are in fact, part of the very religion. These persons either limit religion to divine revelation or generalize a specific character of religion. The Qur'an provides for the right to life (٥:٣٢), the right to freedom (١٧:٣٦), the right to equality (٤١:١٠), denial of birth and race privileges (٤٩:١٣), and for justice (٥:٥). What are these provisions, if they are not religion? Yes, they can be admitted as meta-jurisprudence, but not as meta-religious.

Review and Critique

This seems to be a secure ground for examining the relation between intra-religious and meta-religious arguments. Therefore, the first step is to collect the Qur'anic verses and religious texts relating to human rights. Then one should examine to what extent they have been dependent on their specific time and circumstance. As already noted, the fundamental principle in this respect, is the everlasting character of religious ordinances and their independence from time and space. In the next step, one should observe whether the remaining rules are a complete system of human rights or a limited set of propositions on the issue.

Conclusion

From among the different interpretations of the above-mentioned three approaches, one may deduce certain propositions in line with the stated hypothesis of this paper:

۱) From theoretical point of view, having a system of Islamic human rights would be possible in the sense that a system of human rights can be established which at least resorts to Islamic presumptions. While applying the intra-religious propositions on human rights, this system must not contradict with the mandatory requirements of religion (Haghighat ۲۰۰۱).

۲) There is no general argument preventing us from reference to intra-religious evidence. The reasoning made by the first and the second above-mentioned groups does not seem sufficient in this respect. The unnecessary feature of the religion's view on the issue does not mean that it is devoid of rules on human rights. The search of the jurisprudentialist within the intra-religious texts is due to the rational possibility of finding a relevant rule, whether it is actually found or not (Larijani ۱۹۹۷, ۸۸).

۳) Religion contains propositions on human rights. Soroush states that human rights are not "purely" religious concepts (Soroush in Bastenegar ۳۳۶). Thus, they are somehow related to religious jurisprudence. Reference to religion would demonstrate that certain propositions of religion have a bearing on human rights.

۴) Inasmuch as human reason is restricted by such considerations as profit-seeking, we need religion and the divine revelation in certain areas such as determination of the examples of human rights, the relation between freedom, equality and justice, as well as the values, way of living, the purpose of the world and the quality of life (Malekian ۷۶-۷۷).

۵) Meanwhile, the necessity of reference to religion would not mean that whatever question raised by the human sciences and human rights can be answered by religion. Religion is directed to guidance of human being, while it may incidentally address other issues as well. The scope of such addressing can be identified through reference to the inside of religion.

۶) In referring to religion, the basic assumption is the continuity and the everlasting validity of the religious rules, although certain exceptions- however numerous- may be identified as time or space-bound (Haghighat ۱۹۹۰).

۷) If we ignore meta-religious evidence, although we have already accepted the rational good and evil, we may be assimilated to the Ash'arites, because we would have to exclusively follow the text in the capacity of discovery. Rational principles have been extremely depleted in Shiite jurisprudence, and their revival appears to be an imperative. Certain examples of human rights are intelligible only through intuition or human reason.

۸) Even if human rights cannot be organized through mere contract or human reasoning (Javadi ۸۹), one cannot totally ignore them. As noted by Carlos Nino, intuition may also lead to determination of human rights (Nariman in Sharifi ۸۸). Contract, custom, and human mind, especially when religion itself directs us to their application, are among the sources of human rights.

Mojtahed-Shabestari writes: "Why isn't it possible that God, while Himself enacting the laws, grant such right to human being which is a moral right distinct from the intrinsic freedom of

choice between good and evil? What contradiction would result?" (Mojtahed Shabestari ۲۰۰۰, ۲۰۰). In response to such negative questions, one may say that there would be result no contradiction, especially when the religion itself refers us to those sources. However, it should be born in mind that reference to custom, contract, and the reasonable practice after reference to the religion is distinct from direct denial of intra-religious evidence in the first instance.

In general, one may reject the statement that meta-religious evidence can dispense with reference to divine texts, and that reference to intra-religious evidence would necessarily mean the comprehensiveness of religion on the issue. With respect to the question of human rights, the intra-religious and the meta-religious evidence and arguments would stand in a linear relation; because there is no prohibition against reference to divine texts on such issues, the intra-religious evidence would indicate to what extent religion has addressed the issue. This relation has been examined in other areas (like political philosophy and political jurisprudence) in other writings (See: Haghghat ۲۰۰۱). The same can be done with respect to human rights by means of the above criteria and in further details.

Reference

۱. Persian and Arabic Books and Articles

- Abosaidi, Mahdi, *hoqoq-e-Bashar va sair Takamol An Dar Qarb*, Tehran, Asia, ۱۹۶۶.
- Imam Ali, *Nahjolbalaqeh*, Tran. By Jafar Shahidi, Tehran, Enqelab Eslami, ۱۹۸۹.
- Bazargan, Mahdi, "Akharat va khoda: Hadaf Bethat Anbia", *Kian*, No ۲۸.
- Bastenegar, Mohammad (Ed.), *Hoqoq-e-Bashar As Manzar Andishmandan*, Tehran, Sherkat Sahami Enteshar, ۲۰۰۱.
- Javadi Amoli, Abdollah, *Falsafah Hoqoq-e-Bashar*, Qom, Essra, ۱۹۹۶.
- Al-hor Al-ameli, Mohammad, *Wassael al-shiie*, Tehran, Almaktoaba Al-Islamia, ۱۹۸۸.
- Haghghat, Seyed Sadegh, "Esstenbat va Zaman va Makan" in: *Ejtehad va Zaman va Makan*, vol ۲, Qom, Moasseseh Tanzim va nashr athar Imam Khomeini, ۱۹۹۰.
- _____, "Hoqoq-e-Bashare Islami: Sharalet Emkan va Emtena" in : *Majmoe Maqalat Hamayesh Beinolmelali Hoqoq-e-Bashar va Goftogooy Tamadonha*, Qom, Mofid Univ., ۲۰۰۱.
- _____, *Tozia Qodrat dar Andishe Siasi Shiit*, Tehran, Hastinema, ۲۰۰۲.
- _____, (and Mirmoosavi, Seyed Ali), *Mabani Hoqoq-e- Bashar as Didgah Islam va Digar Makateb*, Tehran, Danesh va Andishe moaser, ۲۰۰۲.
- Soroush, Abdolkarim, *Farbetar as ideology*, Tehran, erat, ۱۹۹۲.
- _____, "Fiqh dar Tarazoo", *Kian*, No ۴۶, ۱۹۹۶.
- _____, *Modara va Modirriat*, Tehran, Serat, ۱۹۹۷.
- Sharifi Tarazkoohi, Hossein, *Hoqoq-e-Bashar dar Partove Tahavolat Beinolmellali*, Tehran, Dadgostar, ۱۹۹۸.
- Al-Sadr, Seyed Mohammad Baqer, *Alfatawe Al-wazeha*, Beirut, Dar al-kotob al-lobnani, ۱۹۹۷.
- Al-koleini, Mohammad, *Al-kafi*, Vol ۱۹, Beirut, Dar-alawza, ۱۹۸۴.
- The Authors, *Hoqoq-e-Bashar az Didgah Islam: Ara Andishmandan Irani*, Tehran, Al-hoda, ۲۰۰۱.
- Larijani, Sadegh, *Marafat Dini*, Tehran, Daftar Tarjomeh va nashre Ketab, ۱۹۹۱.
- _____, "Din va Donya", *Hokoomat Eslami*, No ۶ (winter, ۱۹۹۷).
- Mojtaahed Shabestari, Mohammad, *Hermentics, ketab va Sonnat*, Tehran, Terkenow, ۱۹۹۶.
- _____, *Naqdy bar qerat Resmias din*, Tehran, Tarhenow, ۲۰۰۰.
- _____, "Mabany Phalsaphy Tarikhmandy Nosoos" (lecture presented in Religious Society Center, ۲۲/۲/۲۰۰۳)
- Modarres, Ali Asqar, *Hoqoq nazari*, Tabriz, Noble, ۱۹۹۶.
- Modarresi, Tabatabai, Hossein, *Moqademeh bar fiqh Shiia*, Translated by Asif Fekrat, Mashad, Bonjad Pajhooheshy eslami, ۱۹۸۹.
- Mottahari, Mortaza, *Bist qoftar*, Qom, Sadra, ۱۹۷۹.
- Malekian, Mastafa, *Aray Aklaqi va Siasi Mooaintyre*, Tehran, Moasseseh Tosea, ۲۰۰۰.
- Mansoori Larijani, Esmaeel, *Seir Tahavol Hoqoq bashar*, Tehran Taban, ۱۹۹۰.

- Nasr, Seyed Hossein, *Javan Moslman va Donyay motojadded*, Translated by: Mortaza Asadi, Tehran, Tarhenow, ۱۹۹۶.
- Nasri, Abdollah, *Entezar Bashar az Din*, Tehran, moasseseh Farhangi Danesh, ۲۰۰۰.
- Nikfar, Mohammad Reza, *Khoshonat, Hoqoq-e-Bashar, Jameh Madani*, Tehran, Tarhanow, ۱۹۹۸.

۱- English Books

- Donnelly, Jack, *Universal Human Rights in Theory and Practice*, London, Cornell University Press, ۱۹۸۹,
- Milen, A. G, *Human Rights and Human Diversity*, New York, State University, ۱۹۸۶.
- Perry, Michael J, *The Idea of Human Rights : Four Inquiries*, Oxford University Press, ۱۹۹۸.
- WAMY, *World Assembly of Muslim Youth*, Islamic Concepts Saudi Arabic, Ministry of Information.