

**Transcending the Human Rights Debate:
Iranian Intellectuals' Contemporary Discourses and the New Hermeneutics of the
Sharia**

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Abstract

The Iranian discourse on human rights is not well known for a wide range of reasons: there are few translations from Persian; the Iranian human rights' model is often perceived as a threat to universality and Iran has a generally negative image on the international scene. The reality is that the post-Islamic Iranian human rights discourse is rich, varied and intellectually stimulating, the paradoxical outcome of a regime that limits freedom of expression and freedom of thought. Iranian intellectuals have to find strategies to avoid the censorship that threatens anyone who defies Iran's official human rights model. These intellectuals have formulated incredibly compelling theories that can be assimilated to a third voice transcending the permanent opposition between the principle of universality and cultural relativism. This theory is being advocated across the Muslim world and throughout Muslim communities. Iranian intellectuals have shaped their own approach to this third path, thereby creating an Iranian human rights' specificity within the Muslim world.

Keywords: Iran, human rights, intellectuals, civil society, Sharia

Introduction

The topic of human rights has been under intense scrutiny in Iran. The challenges of the complex Iranian political system (*velayat-e faqih*)¹ are clearly at the core of the intellectual thought and discourse. Indeed, the context of the Islamic Republic must be taken into account. Universal human rights have not avoided scrutiny, and crucial questions, such as the enforcement of secular human rights in a religious system, are being examined. Human rights have been at the core of various attempts at conceptualization and intellectuals from different backgrounds have attempted to theorize the concept of human rights and have analyzed its interactions with universal human rights standards. The originality of the Iranian approach lies in the fact that, despite it not being a democracy, there is a pluralism of ideas. This pluralism has allowed for the coexistence of theories and intellectuals advocating different approaches. These diverse theories can be seen in the works of Dr Abdolkarim Soroush, a reformist who believes human reason should be given priority when understanding Islamic law and its approach to human rights; Mohammad Khatami, president of Iran from 1997 to 2004, who worked on bridging the gaps between Iranian law and universal standards through the Dialogue among Civilizations; the Nobel Prize winner Shirin Ebadi, who has relentlessly worked to maintain open channels of communication between Iran and the international community; Professor Reza Davari Ardakani, president of the Academy of Sciences of Iran, who has engaged in a series of public debates with Dr Soroush, and who rejects democracy and universal human rights as being based on the separation of Islam and politics; and Javad Tabatabaei, a university professor with strong academic ties abroad

who advocates for a separation between religious and political affairs. All these approaches are original and depart from what is usually described as the Muslim approach to human rights: there is an Iranian particularism when it comes to human rights.¹ The common denominator in all intellectual circles is the attempt to understand the interaction between Islamic human rights and universal human rights and to solve issues arising from it.

This principle of universality of human rights, established by the 1948 Universal Declaration of Human Rights (UDHR) to which Iran is a party, has been challenged, from the early years of the Islamic Revolution, by Iranian Shia Islamic interpretations. As a result, successive Iranian governments have appointed their own human rights advisers to establish policy and strategy. For example, in a 1978 speech, Ayatollah Khomeini refused to recognize the universal character of the UDHR and consistently denounced it as being an instrument of oppression of the Iranian people (Khomeini 1981). This tradition of formulating a state policy on human rights has changed with the arrival of President Mahmoud Ahmadinejad, who has shown no particular interest in having a formal human rights policy.

Another interesting aspect of Iranian intellectuals' approach to human rights is the pragmatism of their thoughts and theories. Iranian intellectuals have come to play a crucial role in supporting the attempts of civil society to find a new path for the enforcement of human rights in Iran. For instance, civil society has given life to the intellectual discourse that encourages a thorough reform of the law to integrate human

¹ One can find excerpts of the viewpoints of Iranian scholars of universal human rights translated into English in Salimi (2008: iv).

rights; it has encouraged mid-level actors like *mojtaheds*,² judges, lawyers, parliamentarians or officials to change the law, often with success, as demonstrated below. As a result, reform occurs from the bottom up. The originality of Iranian intellectual work resides not only in the novelty of their approach to the concept of human rights, but also in their impact on “human agency” (An Na’im 2004), which in turn becomes an agent of change in Iran.

This paper presents Iranian intellectual discourses pertaining to human rights and offers an alternative to the usual clichés regarding human rights and politics in the Islamic Republic of Iran. I present the Iranian approaches to universal human rights and explain why and how some Iranian intellectuals have been able to transcend the tensions surrounding the concept of human rights. The first part of the article analyzes how intellectuals close to successive Iranian governments have defined ‘human rights’; this helps us to understand how new interpretations elaborated by some Iranian intellectuals defy the official discourse. This part of the paper also explains the originality of the Iranian approach to universal human rights and illustrates its specificity, subverting the consensus taken for granted, that there is a homogenous approach to the concept in the Muslim world. The paper then describes the alternative approach of some Iranian intellectuals who have opted to transcend the usual divide between universality and cultural relativism (the new hermeneutics of the Sharia). Finally, I explain the way intellectuals’ discourses are used in Iranian civil society to encourage legal reforms.

² A *mojtahed* is a learned cleric who is well-versed in Islam and Islamic law and therefore able to interpret sacred law.

Human Rights in the Islamic Republic of Iran

Iran faces many challenges, one of which is the enforcement of universal human rights. In this respect, there are a number of key issues: the first is the way that a law based on religion can accommodate secular universal human rights; the second pertains to the enforcement of human rights in a non-democratic context; and the third concerns finding solutions to the issue of the universality of human rights. The backdrop against which these crucial questions must be answered is religious and non-democratic. Iran has developed its own human rights model, offering a religious reading of the documents laying down universal human rights. According to this approach, human rights should be interpreted by referring to Shia Islam, as interpreted by agents (mostly conservative) of the Islamic Republic of Iran. This official discourse is a by-product of the 1979 Islamic revolution. This Iranian human rights model has been widely advertised. In 1984, the Iranian ambassador to the United Nations declared that if there was a conflict of laws, Islamic law would supersede international law because conventions, declarations and resolutions or decisions of international organizations are contrary to Islam and have no validity in the Islamic Republic of Iran.³

The Iranian specificity is different from an Islamic relativist approach: Iran is a Shia Muslim country and an Islamic republic ruled by the principle of *velayat-e faqih*. Although the challenges are similar to those that other Muslim countries face regarding

³ Said Rajaie Khorasani, the Iranian ambassador to the United Nations, gave an Address to the United Nations General Assembly in 1984: 'Address to the United Nations General Assembly, Thirty-ninth Session, Third Committee, 65th meeting', (Address at the United Nations, New York, 7 December 1984, A/C.3/39/SR.65).

the reconciliation between Islam and universal human rights, they are not the same. Indeed, Shia law openly accepts new interpretations of Islamic law, while Sunni scholars debate whether or not new interpretations of Islamic law are acceptable. Thus, in Iran, human rights are interpreted in the light of Shia Islam; this means there is a relative flexibility in the way the sources of Islamic law (the Qur'an, the Sunna, *ijma'* and *'aql*)⁴ are interpreted; interpretations of Islamic legal sources are conducted according to post-revolutionary Iranian standards, in accordance with the concept of *velayat-e faqih*.⁵ However, policy makers, politicians or intellectuals are not unanimous in support of this state approach to the concept of human rights. There are alternative intellectual discourses: while some reject the existence of universal human rights, adhering to Islam instead, others, such as reformists, want to take up the human rights' challenge to have fundamental universal standards respected and enforced. The intellectual tension gives Iran a unique profile when it comes to human rights, and a unique stance in the ongoing clash between universal human rights and cultural relativism.

Until the election of Mahmoud Ahmadinejad, the role of intellectuals was key in shaping a human rights policy or a human rights discourse. Iranian intellectuals of the pre-revolutionary and the revolutionary periods worked toward the elaboration of the

⁴ In Shii Islam, there are four sources of law: the Qur'an; the Sunna, which is a compilation of the Prophet's sayings and deeds; *ijma'*, which is the consensus of learned clerics—the *mojtahedin*—who practice *ijtihad* (the process of interpretation) on legal issues; and *'aql*, which is the reasonable argument a learned cleric, or *mojtahed*, uses when interpreting a legal issue on his own.

⁵ Post revolutionary Iran refers mainly to the period after Ayatollah Khomeini.

Iranian exceptionalism regarding human rights. A member of the first circle of intellectuals, the group that set up the republic, Grand Ayatollah Javadi Amoli, a prominent conservative scholar from Qum and a Twelver Shia Marja',⁶ is an example of an Iranian intellectual who worked on the elaboration of the state version of human rights. He believes that there is a difference between the Western and Islamic approaches to human rights: in Islam, rights are granted by Allah, who is the source of all laws, rights and duties, while the UDHR is secular and written by fallible human beings. This tension between God-given rights and secular rights cannot be solved and there is, therefore, no common source from which to establish universal rights. In order to create universality and realize an international solidarity, human beings would have to 'break the chains of nature' that create human beings differently (Amoli 1998: 91). Another intellectual who contributed to the thought of the early Islamic Republic was Ayatollah Jafari, a philosophy professor who said that to grasp the universal image of the human being, one must understand that societies are in a perpetual state of evolution and development. These changes crystallize various moral, political and legal values. Consequently, because of all these changes and differences, universality as such does not exist; only diversities can form a unity (Jafari 1999: vi–xiii).

Nowadays, a second circle of intellectuals close to the Republic is influencing the discourse on human rights. Its thinkers believe the origin of human rights is to be found not in natural law, but in divine law. For example, Mohammad Khatami states that man is

⁶ A *Marja'* is a religious reference, as well as a title granted to a grand ayatollah who has the authority to make legal decisions. The *Marja'* is the highest authority on religious law after the Imams.

a creature of God.⁷ Professor Seyyed Hossein Nasr, who still has an important impact on Iranian intellectuals, despite the fact that he has chosen to live abroad, explains that because a human being is a divine creature, all rights and duties come from God (Nasr 1980: 96). Abu al-Hassan Bani Sadr, the first president of the Islamic Republic (now living in exile), explains that for this trend of scholars ‘the nature of man comes from God which means that the nature of man reflects these virtues of God, such as mercy and compassion’ (Bani Sadr 1989: 11). All these intellectuals from different periods have contributed to the creation of the Iranian human rights specificity by explaining what Islamic human rights are and by justifying the existence of Islamic human rights.

Other Approaches of Iranian Intellectuals to Human Rights

This official version, designed by prominent intellectuals, is not the sole approach to the concept of human rights. There is a large range of trends that, together, form the Iranian specificity. Iranian intellectuals—jurists, sociologists, politicians and many others, religious or not—have participated in and still play a role in the elaboration of several different human rights theories. This is what makes Iran an interesting case for the analysis of the reconciliation between universal human rights and domestic legal values. All these discourses are public, despite the regime’s attempts to control the pluralism of ideas.

⁷ President Mohamed, Khatami, ‘Speech on the Dialogue among Civilisations’ Address at the 53rd Session of the General Assembly of the United Nations, New York, 21 September 1998, available at http://www.parstimes.com/history/khatami_speech_un.html

It is essential to know the various intellectual trends in the field of human rights in order to understand Iran's human rights identity, which ranges from hard-line interpretations to secularism. The following categorization refers to various human rights' discourses and is not a political analysis: it is a rough attempt to clarify the positions of Iranian human rights thinkers.⁸ All these trends—there are several political, intellectual social trends and it is overly simplistic to reduce Iran to an eternal bipolar competition between reformists and conservatives—play a role in the human rights struggle, and each has its own human rights intellectuals, lawyers and ideologues opposing one another in public discourse, a novelty inherited from the Khatami administration.

The Ultra Conservatives

This movement rejects the very existence of universal human rights standards by demonstrating that human rights already exist in Islam. This trend has a negative definition of human rights: rights are what remain when a Muslim has respected his obligations toward God and has respected the limits established by the Sharia. Concepts like equality, universality and dignity are all found in Islam. For instance, all human beings were created equal by God and accidents such as skin color, race or sex do not affect the spirit and the dignity of human beings. Consequently, Iranians should not look any further than Shia Islam for indications about what human rights are. Besides, universal values are the result

⁸ This classification has been created for the sake of clarity and to demonstrate that the usual division between reformists and conservatives is not applicable to Iran since there are multiple trends. The author welcomes comments, suggestions and criticism.

of the evolution of history in the western world; the UDHR is a compilation of these values and does not represent Iranian values. Some of the ultra conservative trend's most famous representatives are Ayatollah Morteza Mottahari, an Iranian cleric engaged in politics and teaching; he had perhaps the most important ideological influence on the Islamic republic, and Grand Ayatollah Javadi Amoli.

The Principalists

According to the Conservative movement, there is an Islamic conception of human rights: human rights exist in Islamic law and therefore in Iranian law, as the latter finds its inspiration in Islamic law. Intellectuals advocating this system are not looking for a complete rupture with universal human rights documents. Instead they set up an alternative system of values that meet the religious needs of Iranian society. For example, Ayatollah Mohammad Taqi Jafari, a professor well-versed in western philosophy, explains that there is little doubt that all the articles of the UDHR have similar roots in Islam (Jafari 1999:2). He established a comparative grid of human rights to demonstrate the similarities and concluded that there was no reason to seek western values when there are Islamic values that answer the needs and expectations of Islamic societies. In addition, Islamic human rights are not fallible, since they are granted by God, while universal human rights are, because they are made by men, who are fallible creatures (Jafari 1999: 3). Principalists refer, therefore, to Islamic human rights, evolving in parallel to universal standards. The universal standards are not rejected *per se*.

The Reformist Trend

Reformists seek a coordination between the two norms: Islamized Iranian law and international human rights law, but with the predominance of Iranian law. That is, the domestic specificity should take precedence over universality as long as Iranian and Shia identities are not threatened by universal human rights. It is mainly post-Islamic intellectuals⁹ who work within this movement; they believe human rights are only a moment in history, but it is a phase that cannot be ignored and the Islamic Republic must play the game for its own interests. However, Iranian law cannot absorb all universal human rights principles, as this might endanger local values and threaten the Islamic Republic of Iran. Consequently, the concept of universality is manipulated with care: international human rights standards can be integrated, but only to the extent necessary to ensure that the identity of the Islamic Republic is protected. This movement is quite large, as it includes all those who believe in a Muslim form of governance. Former President Khatami is a good representative of this movement. He opened his presidency by demonstrating a will to reform Iran while respecting the Islamic constitutional framework. His theory about the ‘Dialogue among Civilizations’ aimed at integrating universal human rights values into Iranian law, without harming Islam and Islamic identity values.¹⁰ This movement is the least uniform, as it encompasses many intellectual discourses.

Secularists

¹⁰ Khatami, *supra* note 7

For secularists, religion and politics should be separated: human rights belong to the secular sphere and Islam cannot play a role. This argument is based on the idea that human rights are natural, not divine. This trend is made up of those who believe that fundamental rights can only be enforced in a secular and democratic context. However, all secular intellectuals do not agree on the definition of secularism: some see secularism as a clear rupture between Islam and the state; others regard the process of secularization as a limitation of religion to the private sphere without causing an expulsion of religion from the public sphere.¹¹ For most secularists, the universality of human rights is more than a principle: it is a necessity. The internationality of human rights overrides the locality of Iranian law. The only crisis specific to human rights likely to be acceptable comes from scientific or practical parameters and not from cultural or religious parameters (Salimi 2003: iv). Aramesh Doustdar is a representative of this trend: as a philosopher, he advocates a strict separation between the state and Islam. Javad Tabatabaei believes that the societal religious roots prevent Iranian thought from moving forward which is why he strongly believes in secularism as the solution to the current issue of enforcement of human rights in Iran.

The various trends discussed above demonstrate that there is no unique approach to human rights, and no single discourse that responds to modern challenges. The common denominator of the first two movements is a reliance on Islamic human rights, as interpreted before and after the 1979 revolution. In contrast, the two other trends reference universal standards as the main values. The reformist discourse, in its plurality, is the most

¹¹ Babak Bahrami, 'Secularism and Iran,' *Persian Journal*, 6 July 2004,

http://www.iranian.ws/cgi-bin/iran_news/exec/view.cgi/2/2845

interesting, as it strives for reconciliation between universal human rights standards and Iranian law. This trend is also the most complex to understand, as it is composed of several sub-trends, approaches and discourses. These intellectuals play an important role in the new interpretation of Islam and Islamic law, as they search to reconcile democracy, rule of law, civil society, and universal human rights with Iranian post-revolutionary Islamic values. For this reason, I focus on their thoughts, discourses and actions.

The Reconciliation of Universal Human Rights and Iranian Law: the New Hermeneutics of Sharia

A number of Iranian intellectuals have elaborated complex systems of thought. For instance, Dr Abdolkarim Soroush, a philosopher who currently lives in the United States, Mohsen Kadivar, a liberal activist who was imprisoned for his thoughts, and Mohammad Shabestari, a respected cleric and theologian, have all elaborated systems of thought that challenge the Iranian specificity without threatening its existence. Their approaches are associated with the theory of the new hermeneutics of the Sharia: they suggest that new meaning should be given to Islamic legal sources, so that new interpretations of Islamic law could be made in accordance with universal human rights.

Dr Abdolkarim Soroush has a unique approach, in the sense that he tries to reconcile revelation and reason, religious duties and human rights. He believes that no compromise on the principle of the universality of human rights is acceptable:

We must approach and manage human rights [. . .] To divide people between believers and non-believers, people who follow the true faith and those who follow false laws, and to grant them political, individual and social rights according to this

division is a backward idea. All citizens are equal [. . .] While stressing diversity and pluralism, post-modernism went too far and rejected universality, which is not wise. When the issue of human rights is approached, we need universality. In other words, we must recognize basic, universal rights for everyone. Without it the concept of human rights becomes synonymous with violations of human rights. (Sadri 2000:17)

According to Soroush, upholding a legal particularity regarding human rights can only be done at the expense of Iranians' human rights and Iranian law..¹² His main argument is that all religions contain humanistic prescriptions; but religions are also human and therefore related to temporal factors. For this reason, no religious interpretation of Islamic legal sources is final, sacred or absolute. Moreover, those men who interpret religious texts are fallible and influenced by temporal factors. Soroush sees this as a proof that interpretation should be flexible and should encompass modern reality; this is why he insists on a multiplicity of readings and interpreters of religion (Soroush 1994), thereby giving birth to a pluralism of religious interpretations (Matin-Asghari 1997: 104). It is because of this multiplicity of interpretations that a new hermeneutics of Islam is possible (Soroush 1991): new interpretations of Islam can be elaborated and these can integrate universal human rights.

Mohsen Kadivar, a cleric threatened with expulsion by a clerical court because of his liberal ideas, also works on the reconciliation between Islam and human rights (Kadivar 1998). He openly criticizes the system of *velayat-e faqih* and the position of the Guide of

¹² Interview with Dr Soroush, 'Speaking of Rights', *Iran-e Farda*. 1996. Transcript in The Guardian : <http://www.iranian.com/July96/Opinion/Soroush/Soroush.html>

the Islamic Republic, who is the first authority, before the President. He believes there are two possible ways of interpreting Islam: the traditional and the modern. The traditional interpretation of Islam is totally incompatible with human rights and democracy.¹³ This incompatibility not only relates to interpretations of Sharia, but also to the Sharia itself, because the traditional interpretation of the Qur'an is static, while human rights are in constant evolution. He adopts a modern vision of Islam: Islamic human rights must be adapted to modern daily life, even if the rights are described in the Qur'an. A new historical approach of the Qur'an is therefore necessary in order for it to accord with universal human rights.¹⁴ He explains that such a modern approach is only possible if Islamic law is rewritten and religion and politics are separated.

The third intellectual to play a role in the reconciliation between Islam and human rights is Mohammad Shabestari. Like the two previous authors, he is a post-Islamic intellectual who has played an important role in the Islamic Republic; and he, like the two other intellectuals, lost faith in this system. As a result, he adopts a more critical approach to Islam and to the notion of *velayat-e faqih*. Shabestari constructs a critical approach to religion and seeks a balance between human reasoning and religion (Shabestari 1996). He believes that Iran should align with international standards of human rights while

¹³ Interview with Mohsen Kadivar, 'Adapting to Contemporary Islam: Interview with Mohsen Kadivar,' *Aftab*, 2003.

¹⁴ Mohsen Kadivar, 'The Principles of Compatibility of Islam and Modernity' (Address at the International Symposium "Islam, Society, Modernity", Interdisciplinary Center for the Study of Religion and Laicity, Université Libre de Bruxelles, Belgium, 7-8 October 2004).

preserving its Islamic originality, and to do so, another approach of Islamic legal sources is needed; this approach should focus on the role of human reasoning during the interpretation of Islamic legal sources (Amir-Arjomand 2002: 719). Thus Shabestari believes that a *mojtahed* today must know religious texts, but must also be aware of modern realities. He must have studied modern scientific issues, such as abortion, to be able to decide on these issues. Traditional Islamic law is no longer enough to respond to people's needs (Shabestari 1997). By stating this, he questions the existence of Islamic human rights and the immutability of Sharia.¹⁵

These three Iranian intellectuals have a dynamic approach to the principle of universality of human rights and insist upon the need for a new reading and understanding of Islamic law by changing interpretations of legal sources. Their theories are used widely in Iran to promote legislative changes, look at the current historical context, or apply human reason rather than letting conservatives control the interpretation process. When conservatives interpret sources, they tend to be more restricted; they do not take into account historical changes, or limit the role of human reason, arguing that human beings are guided by their emotions and are fallible, and this leads them to stray from Allah.

A New Path for the Enforcement of Human Rights in Iran

The contribution of these post-Islamist intellectuals to the debate on human rights in Iran relates primarily to the principle of universality, but also links strategies to enforce religious rights and universal human rights. By providing new and dynamic interpretations

¹⁵ Interview with Mojtaba Mohamed Shabestari, *Iran Javan*, April 1998.

of Islamic law, these thinkers contribute to bridging the so-called gap that exists between Islam and universal human rights. This intellectual revivalism criticizes the current regime's static approach to Islamic law, and, at the same time, proposes governance alternatives that include the concepts of religious pluralism, popular sovereignty, tolerance, human rights, political pluralism and democracy (Jahanbakhsh 2003). Consequently, there is a radical change of discourse and a new dynamic analysis of Islam, resulting in a discourse favorable to democracy and to the universality of human rights. The work of the three intellectuals described above is, however, only the beginning. Sources of support for these theories are somewhat unexpected: Ayatollah Youssef Sanei, a Marja' and an influential theologian with wide power, encourages, for example, sexual education in order to prevent transmission of the HIV virus.¹⁶ Additionally, Ayatollah Sanei is opposed to the existence of the Council of Guardians, the institution that assesses each law to guarantee that it respects proper Islamic standards and allows candidates to run for elections; according to him, this is an attack on human rights. He bases all his decisions and comments on a balance between *fiqh* (Islamic jurisprudence) and universal human rights.¹⁷ In a very bold move, considering his position as a Marja' within the Republic, a clerical body recently attempted to curb his influence by declaring his religious edicts to be non-binding. Support for the new hermeneutics of the Sharia also came from Ayatollah Mohaghegh Damad, a reformist cleric who calls for equality between Islam and human rights: this clearly implies a reform of Iranian law so as to ensure, for example, equality

¹⁶ 'Senior Iranian Cleric Urges Sex Education'. *Payvand News*. 25 January 2003.

Accessed 23 November 2010, <http://www.payvand.com/news/03/jan/1128.html>.

¹⁷ Sami Moubayed, 'Too early for a Tehran Spring,' *Asia Times*, 20 April 2005.

between men and women. He considers the reform of methods of interpretation of Islamic law to be a priority.¹⁸ Ayatollah Mohamed Musavi Bojnourdi also discusses contemporary conservative approaches to Islamic law. He argues that Islam provides very few guidelines when it comes to law and that it is necessary to seek alternative sources of law elsewhere, in particular abroad. Ayatollah Bojnourdi consequently takes a favorable view of international law on human rights. He is also a strong women rights' activist and offers alternative readings of the Qur'an in the tradition of the new hermeneutics of the Sharia to encourage women to be judges.

Another intellectual committed to the respect of human rights is Hojjat-ol Mohsen eslam Saidzadeh, a mid-ranking cleric known for his position in favor of women's rights who practices a new hermeneutics of the *fiqh* (Islamic jurisprudence) rather than reforming the existing legislation directly: all reforms should be channeled through *fiqh* (Saidzadeh 1998). He believes that human rights are superior to religion and Islamic jurisprudence should adapt to and protect human rights rather than the opposite:

Fundamental rights do not fall within the realm of *fiqh* [Islamic jurisprudence] [. . .] because they are essential (*zati*) and are not subject to debate or explanation. It does not matter if a jurist declares a *fatwa*, that he agrees or not, humanity has a right to life. Human beings have an essential dignity. (Saidzadeh 2002: 236)

¹⁸ Interview of the author with Ayatollah Mohaghegh Damad, Head of the Department of Islamic Studies, Academy of Sciences/ Professor of Law and Philosophy, Shahid Beheshti University, Tehran, 19 May 2005.

Hashem Aghajari is a university professor sentenced to death for apostasy but now serving a prison term; he also works for the enforcement of universal human rights in Iran. His speech ‘Of the Monkey to the Man, a Call for Islamic Protestantism’, in which he tackles traditional Islam, caused an uproar.¹⁹ He accused clerics of preventing the development of modernity in Iran, in particular by refusing the integration of universal human rights in Islamic jurisprudence. He believes that without respect for the fundamental principles of human rights, such as equality and dignity, Islam is not really respected:

Today, the leaders of the Islamic Republic of Iran do not respect human rights although this principle appears in our Constitution [. . .] human rights became vital in certain foreign countries [. . .] why is there no respect for human beings [he says, mentioning the absence of freedom of expression and the murder of Iranian intellectuals].²⁰

According to Aghajari, universality of human rights is not a choice but a requirement which is enforced *de facto* and *de jure* because of man’s nature and the nature of fundamental rights. Fundamental rights do not exclude religion and Islamic law; the latter

¹⁹ Hashem Aghajari, ‘Of the Monkey to the Man, a Call for Islamic Protestantism’ ,
Address at the University of Hamedan, 2002,

<http://www.iranian.com/Opinion/2002/December/Aghajari/>

²⁰ Id.

have a limited role in reinforcing fundamental rights and should, therefore, yield to the requirement of universality.

Clearly, there is a real dynamism and pluralism in Iran. Some intellectuals, like Abdolkarim Soroush, Mohsen Kadivar and Mohammad Shabestari have an important influence over society, as I demonstrate in the next part of the paper, which is why the ways civil society uses the theory of the new hermeneutics of the Sharia is put in perspective.

The Role of Intellectuals' Discourses in the Struggle for Human Rights

Iranian civil society seeks to give concrete meaning to the new hermeneutics of the Sharia: while authors suggest ways to reform interpretations of Islamic law, civil society uses the idea to encourage mid-level actors like lawyers, judges, parliamentarians or *mojtaheds* to change the law in order to integrate universal human rights. This process of implementing human rights is original since the reform is taking place from the bottom up.

Civil society uses media, movies, photographs or paintings as a means of expression. Demonstrations and sit-ins are frequent events. There are several of non-governmental organizations acting at various levels of Iranian society. Research in human rights has also progressed and universities now offer human rights programs. All these actors use human rights to act and react to and against government policy. To be successful in enforcing international human rights, lawyers, academics, journalists, students and women try to give life to theories that they have read in publications or newspapers. These media convey the ideas of clerics, authors, intellectuals, academics, professors, activists and jurists regarding human rights and thereby feed the need of civil society for

theories to rely on in the call for change. The new hermeneutics of the Sharia is only one example among many of the various discourses and approaches elaborated by intellectuals and used by civil society.

Since the Khatami era, the model of the new hermeneutics is the theory most often referred to because it reconciles the Iranian Islamic identity with the struggle for human rights; it is also the theory best adapted to the current political framework of the Islamic Republic. Ultimately, it is the most compelling model because of its obvious positive results. An illustration of the success of civil society to bring about changes of interpretation in the law is the reform of the law of child custody. Article 1169 of the civil code gives the custody of girls over the age of seven and boys over the age of two to their father, based on interpretations of Islamic legal sources. In addition, a mother loses custody of her children if she remarries. As most women have to remarry for economic reasons and as a result of social pressure, most divorced women ultimately lose custody of their children. In 1998, the then conservative Majles had to amend the law after an eight-year-old girl was placed with her father, who remarried. Both the father and his spouse were violent and hit the child. Although the child's mother complained, the authorities paid no attention to her, as she had lost custody; the child died. Many people were troubled by the story and turned to the new hermeneutics of the Sharia to suggest legal changes to Article 1169. Intellectuals, journalists and civil society pressured the government until female MPs proposed an amendment so that custody of children would not be automatically given to the father, rather the facts of each case would be examined. This does not mean that women have won custody of children, but that children's interests are taken into account by courts. Following a 2003 legal amendment, Iranian

women can retain custody of their sons until the age of seven; this is also a major change resulting from women's mobilization and struggle. This is an illustration of how civil society fought for changes in the law, relying on the idea of the practice of a new hermeneutics of the Sharia.

Intellectuals do not only design theories; they also take part in the human rights struggle. On 19 May 2003, 196 clerics, intellectuals, women and journalists issued an open letter.²¹ The letter is 'advice' given by prominent members of civil society to the government about how to address the external threat of an attack by the United States, since at the time Iran had been categorized as a member of the axis of evil. The letter suggests that the only way to prevent an attack appeared to be to enforce universal human rights and to do so, the intellectuals listed measures that should be taken. The letter called for the enforcement of human rights as a way to avoid war with the world and as a way to democratize the regime, and referenced Islamic human rights, rather than secular universal human rights. This public letter shows clearly how mid-level actors, galvanized by civil society's expectations and claims, can become spokespersons and advocate the necessity of changing the system, and in particular the law. Besides being activists, Iranian intellectuals also work on ways to reconcile universal human rights and Iranian law, as the ultimate aim of reformists is to have these two sets of law enforced concomitantly.

²¹ Iranian political activists statement regarding ways to assist national resistance against foreign threats, 19 May 2003. Accessed 22 November 2010, www.kadivar.com.

An Example: Islamic Feminism and the Enforcement of New Human Rights

Interpretations

Most experts on Iran agree that women's rights constitutes a major field for reform. This might be a reason why women are the most dynamic agent of change. The Islamic feminism movement is the best illustration of a challenge to the legal situation of women in Iran;²² activists who are close to this movement advance new legal interpretations of Islamic law and rely on Ayatollah Bojnourdi or Mohsen Saidzadeh's discourses. Advocates in favor of improving women's rights in Iran have initiated major debates, such as the ratification of the Convention on the Elimination of all forms of Discriminations against Women, or the possibility for a woman to be *mojtahed*—a cleric who can interpret Islamic legal sources. Azam Taleghani, an Iranian politician and the daughter of the late Ayatollah Mahmoud Taleghani (a major ideologist of the Islamic Revolution) who served time in prison during the Pahlavi regime, is among these intellectuals who are also activists: her creed is that a woman must know Islamic law in order to change interpretations and transform the Sharia to make it conform more to universal rights, and in particular to women's rights.²³ She advocates for women to act as *mojtaheds* and judges.

Intellectuals' discourses of women's rights are therefore a source of inspiration for activists who push forward a clear agenda in this field. Islamic feminists have based their

²² Islamic feminism advocates gender equality and women's rights within the framework of Islam.

²³ Amirpur, Katajun, 'Islamic Feminism in the Islamic Republic of Iran', *Orient* 40 (1999).

political demands on Iranian intellectuals' findings and advocacy for equality. Ayatollah Youssef Sanei considers women and men to be equal: he supports, in particular, an equal *diyeh*²⁴ for men and women. Ayatollah Sanei's discourse on equality has met with some success: in the past, even though women paid the same money for insurance, they received a lower *diyeh* than men if they were hurt, maimed or killed in a car accident. Since a legal reform in 2009, insurance companies must pay equal compensation for the death of women and men.²⁵ It is clear that it is not Ayatollah Sanei's discourse alone that propelled these changes: such a legal reform is the outcome of several intellectuals' work and the mobilization of civil society.

Another example, also in the field of women's rights, is the role of women in presidential elections: Iranian women have long been denied the right to become president. Several thinkers, both male and female, opposed this prohibition: Ayatollah Sanei claims that women can take part in presidential elections.²⁶ Mohsen Saidzadeh has written several essays on theology in which he explains why women and men are equal. His understanding of the Qur'an is oriented toward women's rights, and he openly

²⁴ The *diyeh*, or blood money, is a form of compensation paid in the event of death or injury.

²⁵ Tohidi, Nayereh. Women's Rights in The Middle East and North Africa, *Gozaar*, 2 September 2009.

²⁶ Geneive Abdo, 'Iran's Female Students Protest at Segregation: Medical School sit-ins Reflect Growing Demands for Sexual Equality', *Zan*, 28 January 2000, <http://www.zan.org/news25.html>

challenges his colleagues who deprive women of their rights.²⁷ Such discourses, combined with actions, led the Islamic republic to take another step forward in respecting women's rights by allowing them to be candidates in the presidential elections of 2009. It remains to be seen whether this was a temporary decision or a political ploy. These are some of the changes that have taken place solely in the field of women's rights: these legal reforms are the outcomes of the systems built by various intellectuals and, for the most part, relying on the new hermeneutics of the Sharia.

Despite these successes, there are still major tensions and failures: in June 2008, Mahmoud Ahmadinejad declared that men who took many wives would go to paradise faster. He was introduced in August 2008 to that effect. The bill modified a 1967 law that compels a husband to seek the approval of the first wife before marrying a second wife. With the new bill, men could take additional wives without seeking the consent of the first wife. Women's anger and mobilization led to the delay of the vote. The conservative Majles was supposed to vote on the government's proposal called the 'Family Support Bill' at the beginning of September 2008 but instead the bill was sent to legal committee for reviews because, in the words of Hamid Reza Hajibaba'i, a member of the Majles presidium, it needed 'more expert'.²⁸ The delay and the review were perceived by women as their first victory in a long war yet to come. In addition, Iranian intellectuals are currently under pressure: most are arrested and tried or imprisoned; others have chosen to

²⁷ Mohsen Saidzadeh, 'Zanan Chera Nabarabar', *Zanan* 37 (1997), pp. 36-38.

²⁸ Reuters, Women Activists See Victory On Polygamy Bill , RFERL, 02 September 2008 http://www.rferl.org/content/Iran_Polygamy_Bill/1195703.html

leave the country. The context of Iran following the 2009 elections makes it indeed very difficult for intellectuals to promote their discourses.

Conclusion

The theories elaborated by Iranian intellectuals who work toward the integration of the principle of universality have been effective to date. The work carried out by these intellectuals under the leadership, in particular, of Abdolkarim Soroush, Mohsen Kadivar and Mohammad Shabestari, promises greater possibilities of reconciliation between universal human rights and Iranian law. These theories propose to set up a balance between Islam and universality by integrating universal human rights, thanks to a new hermeneutics of the Sharia and a reform of the process of *ijtihad*.

However, it remains to be seen how intellectuals will adapt to the new circumstances after the 2009 presidential elections, and whether or not they will be able to carry on propagating their ideas for reform, responding to various modern challenges and elaborating on the Iranian human rights particularism. The work of other intellectual circles needs to be investigated, as they might carry the seeds for future solutions to the issue of the enforcement of universal human rights in Iran. The secularist movement is, in that regard, of interest. The work of secularist intellectuals has an important role in a system that is, in fact, secular: the head of the state in Iran is not the head religious authority. There is, on the one hand, the president of the Republic who manages daily affairs and, on the other hand, the Guide, the *Rahbar*, who deals with religious affairs. Could this *de facto* secularization be a future model to develop another form of governance that would give space to universal secular human rights?

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