

THE FIRST GENERATION OF MUSLIM INTELLECTUALS AND THE 'RIGHTS OF MAN'

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Generally speaking, men are influenced by books which clarify their own thought, which express their own notions well, or which suggest to them ideas which their minds are already predisposed to accept.

*Carl Becker*¹

I. INTRODUCTION

Long before the birth of the contemporary human-rights discourse, the 'rights of man' found an interesting fate in the nineteenth century. On the one hand, natural rights doctrine was propagated through the French Revolution 1789, which despite its controversial aftermath, continued to inspire the 'global intellectuals'² in many parts of the world. At the theoretical level on the other hand, as the process of secularization of natural law was completed by the late eighteenth century, the philosophical foundations of Lockean rights doctrine were put into serious doubt by all sides of the philosophical spectrum, from Bentham to Marx. Bentham wrote a harsh critique on the French Declaration of the Rights of Man and the Citizen 1789 and described the underlying principle of equality claimed in the Declaration to be a *natural* right as "absurd and miserable nonsense!" The critique of natural rights was not confined to utilitarian or legal positivist theories which flourished in the nineteenth century but it also came from Karl Marx, whose early works *On the Jewish Question* similarly contains a comprehensive critique of the French Declaration and its underlying individualism.

Muslim intellectuals of the nineteenth century were mostly political activists, rather than theorists, to whom the idea of the 'rights of man' had particular appeal. They, however, employed, and often skewed,

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¹ Carl Becker, *The Declaration of Independence: A Study in the History of Political Ideas* (Vintage Books, 1942) 28.

² Charles Kurzman, *Democracy denied, 1905-1915: Intellectuals and the Fate of Democracy* (Harvard University Press, 2008) 5.

the abstract notions of the 'rights and liberty' language in ways that fostered, rather than undermined, their advocacy for constitutionalism given the specific political, social and cultural context in which they operated.

It is, thus, crucial to appreciate the contextual differences that existed between the nineteenth century Islamic world and the Western world on the eve of the Glorious Revolution 1688 or eighteenth century France before the dawn of the French Revolution in which the absolutist sovereign had been weakened by the force of a new and emerging social order. There is also a lack of a European-style Reformation that needs to be considered as a significant factor in explaining the dominant role that religion played in the public sphere of the Islamic world. The Ottoman sultan had considered itself the legitimate successor to the Abbasid caliphs since the conquest of Baghdad by 'Suleiman the Magnificent' in mid-sixteenth century. Similarly in Persia (Iran), the Safavid shahs gained theocratic legitimacy by claiming to be the descendants of Imam Ali, the first Shia Imam and Prophet's cousin.

Despite these characteristic differences between the West and the Islamic East, the impact of the French Revolution was profound in both Sunni and Shia-ruled territories of the nineteenth century Islamic world, respectively the Ottoman Empire and Persia (Iran). Just like Fichte and Hegel, Muslim intellectuals were impressed by the French Revolution and, later, with Napoleon's sophisticated character. It is of note that Muslims particularly in the Ottoman Empire, thanks to the formation of a Franco-Ottoman alliance since 1536, did not carry any significant hostility towards the French as they did vis-à-vis other European powers, particularly the tsarist Russia against whom they had fought constant battles. Napoleon's 1798 invasion of Ottoman Egypt, which was under the brutal rule of the Mamluks (the local aristocracy), hardly changed that friendly attitude towards France. Hence General Bonaparte's manifesto, which was cunningly flavoured with rights language, appealed to Muslim masses:

Peoples of Egypt, you will be told that I have come to destroy your religion. [This is an obvious lie]; do not believe it! Tell the slanderers that *I have come to you to restore your rights from the hands of the oppressors* and I, more than the Mamluk, serve God...and revere his Prophet Muhammad and glorious Quran... Tell your nation that the French are also faithful Muslims... Furthermore, the French have at all times

declared themselves to be the most sincere friends of the Ottoman sultan and the enemy of his enemies.³

Later in the century, Ottoman and Persian intelligentsia invented an Islamic-flavoured rights language, which had distinct characteristics across the Sunni and Shia-ruled territories. This paper explores such distinct formulation of the rights talk across the Islamic world in an attempt to redress the generalisations made in the existing scant literature in Turko-Persian comparative research.⁴ In order to contextualise the theoretical debate, the paper begins with a snapshot of the status of the rights debate (and its critique) in that period marked by the faltering foundation of the rights doctrine as a coherent philosophical system on the one hand and the utility of the rights language as a political vehicle for transition to a new social order on the other.

It is also important to avoid a trap of viewing the treatment of the rights discourse by Muslim intellectuals in the nineteenth century through the lens of the twentieth century human rights debate, as this is often done in the literature.⁵ Thus, it is crucial to put a few things in perspective: At the height of colonialism, the phrase 'rights of man' literally excluded women; the slave trade was still being phased out and religious minorities, especially the Jewish people, were only beginning to gain equal rights and equal citizenships in Europe. It is in

³ *Déclaration du général Bonaparte au peuple égyptien 1798* in Arthur Goldschmidt Jr., *A Concise History of The Middle East* (Westview Press, 7th ed, 2002) 161, 161–2.

⁴ See Fariba Zarinebaf, 'From Istanbul to Tabriz: Modernity and Constitutionalism in the Ottoman Empire and Iran' (2008) 28(1) *Comparative Studies of South Asia, Africa and the Middle East*, 154 in particular at 163 in equating the roots of Islamic talk in the writings of the Young Ottomans such as Kemal on the one hand and Iranian intellectuals such as Mostashar al-Dowle and Malkam Khan on the other. This stands in opposition to what the paper demonstrates to be the distinct formulations existing across the Islamic world. For more on comparative studies of the Islamic world in the nineteenth century see, Thierry Zarcone and Fariba Zarinebaf Shahr (eds), *Les Iraniens d'Istanbul* (Peeters, 1993); Nader Sohrabi, *Constitutionalism, Revolution, and State: The Young Turk Revolution of 1908 and the Iranian Constitutional Revolution of 1906 with Comparisons to the Russian Revolution of 1905* (PhD thesis, University of Chicago, 1996); Nader Sohrabi, 'Historicizing Revolutions: Constitutional Revolutions in the Ottoman Empire, Iran, and Russia, 1905–1908' (1995) 100(6) *American Journal of Sociology* 1383; Nader Sohrabi, 'Global Waves, Local Actors: What the Young Turks Knew about Other Revolutions and Why It Mattered,' (2002) 44(1) *Comparative Studies in Society and History* 45.

⁵ See Pelin Helvacı, 'A Critical Approach: Political Thoughts of Young Ottomans' (2010) 16(3) *European Journal of Social Sciences*, criticizing Namik Kemal for being against women's rights; Berdal Aral, 'The Idea of Human Rights as Perceived in the Ottoman Empire' (2004) 26(2) *Human Rights Quarterly* 454. Aral, despite his claim to the contrary, uses the twentieth century discourse of human rights to evaluate the nineteenth century debates in the Ottoman Empire.

this context that David Urquhart, the influential secretary of the British embassy in Istanbul in the 1830s and the prominent figure known for his stance against Westernization reform, criticised *Islahat Farmani*⁶ that was imposed by the European powers on the Ottomans:

If the Porte consulted the Dissenting Gentlemen in England before it agreed on that firman they would have explained that no foreigner was allowed to possess land in England, that England, like Turkey, punished blasphemy, that Roman Catholics were still ineligible for certain offices, and that till about forty years ago disabilities also affected Protestant Dissenters, that still later it had been impossible for Dissenters and Roman Catholics to contract marriage, except by submitting the forms of the established clergy; and that considerations of religious belief still determined the admissibility of evidence in British Courts of Law.⁷

Examining the critical rights debate put forward by the Young Ottomans (1865 – 1876), Section II highlights the historical context in which this first generation of mostly liberal-minded Muslim intellectuals operated, which is marked by a deep Westernisation reform process known as Tanzimat. These reforms, which started to progress in a reasonable pace in 1839, were later increasingly taken hostage by European powers in 1856 and lasted until 1876 – the beginning of the Hamidian era. Section III proceeds to explore the ambivalence of Iranian intelligentsia towards the Westernisation of Ottoman Tanzimat. First, it demonstrates deep envy for such reforms followed later by a change of strategy, with the dawn of Pan-Islamism of the Hamidian era in the post-Tanzimat Turkey. Guided by Afghani, this new strategy led Iranian intellectuals to use the language of rights and constitutionalisation in Islamic terms to lure the influential Iranian ulema into a coalition against the Shah. Section IV provides two cases in point to demonstrate the extent to which the Iranian intellectuals felt compelled to pay lip service to Islam and the ulema in their *eclectic* adoption of the ‘natural rights’ language.⁸

II. THE NINETEENTH CENTURY CRITIQUE OF THE ‘RIGHTS OF MAN’

There are various opposing theories about the philosophical influences of the eighteenth century revolutionary thought. The extent to which,

⁶ See Section II.

⁷ David Urquhart, ‘Parliamentary Paper on the conditions of the Christians in Turkey’, *Diplomatic Review*, 4 September 1867, 139-140.

⁸ I have mostly used original Farsi writings of Iranian intellectuals while the views and writings of the Young Ottomans are solely based on the English literature and/or English translations of the literature.

for instance, the 'general will' theory of Jean-Jacques Rousseau in *Du Contrat Social* (1762) was embodied in the US Declaration of Independence (1776) and even the French Declaration on the Rights of Man and the Citizen (1789) has been contested.⁹ What is certain, however, is that the 'natural rights' theory of Locke's *Second Treatise of Government* (1689) won the heart and soul of American revolutionaries. Whatever the influences, the political manifestos of both revolutions contain similar rhetoric of natural rights and freedom. Part of the reason behind that lies in the well-known history of the close friendship and shared enthusiasm of Marquis de Lafayette, a young nobleman who had participated in the American War of Independence, and Thomas Jefferson, the American Minister in Paris at the time.¹⁰

Yet, while the revolutionaries across the Atlantic were making the 'rights of man' central to their cause, the 'natural rights' doctrine could hardly survive the process of secularisation. The philosophical foundation of this doctrine was being theoretically undermined by a disconnection from its medieval Christian roots. Of course, this was less of a problem earlier, when Locke was formulating the rights treaties in the immediate aftermath of the 1688 revolution to provide a philosophical justification for its 'gloriousness'. As Sir Frederick Pollock wrote, the Stuart partisans had taken their stand 'on a supposed indefeasible right of kings, derived from a supposed divine institution of monarchy...The Whigs needed an antidote, and Locke found one in his modified version of the original compact.'¹¹ In the late eighteenth century, however, when the idea of human 'reason' replaced the idea of a divine order, the meager deism that remained proved inadequate to form a sound basis for 'natural' rights¹² - and hence the nineteenth century critique.

Despite similar intellectual bases, the US and the French revolutions each had distinct characters and sparked different reactions among other nations. Mostly due to its radical nature and chaotic aftermath, the French, rather than the American, Revolution became the centre of intellectual attacks in the nineteenth century. In England, Edmond

⁹ See, eg, Joan MacDonald, *Rousseau and the French Revolution, 1769-1791* (Athlone Press, 1965). See also Daniel Mornet, *Les origines intellectuelles de la Révolution française, 1715-1787* (A. Colin, 1933).

¹⁰ See Louis Gottschalk and Margaret Maddox, *Lafayette in the French Revolution: Through the October Days* (University of Chicago Press, 1969).

¹¹ See Sir Frederick Pollock, *An Introduction to the History of the Science of Politics* (Beacon Press, 1960) 28.

¹² Jeremy Waldron (ed), *Nonsense upon stilts: Bentham, Burke, and Marx on the Rights of Man* (Methuen, 1987) 14.

Burke (the father of conservatism) and Jeremy Bentham (the father of utilitarianism) were among prominent critics of the French Revolution. While Burke supported the American Revolution as a Member of the House of Commons, he strongly opposed its French counterpart. In *Reflections of the Revolution in France* he not only formulated his refutation of the French radical break with the 'tradition order', but also attacked the 'pretended rights of these theorists' as extreme; he wrote, 'as they are metaphysically true, they are morally and politically false'.¹³ He stated that the 'rights of men in governments are their advantages; and these are often in balances between differences of good; in compromises sometimes between good and evil, and sometime between evil and evil.'¹⁴ Burke's most extreme predictions were confirmed as the Terror of the 1790s unfolded, just as Burke had suggested in his letter to a gentleman in Paris ('you may have subverted Monarchy, but not recovered freedom').¹⁵

Bentham was among the early enthusiasts that became disillusioned with the French Revolution in the wake of its violent aftermath. He forged a direct attack on the 'rights of man' in his *Anarchical Fallacies*.¹⁶ The text served as an examination of the Declaration of Rights (the 'Declaration') issued during the French Revolution, in which he provides an article-by-article examination of the Declaration Bentham examines, for instance, Article I of the Declaration ('Men (all man) are born free and remain free, and equal in respect of rights...'), asking:

All men are born free? All men remain free? No, not a single man: not a single man that ever was, or is, or will be. All the men, on the contrary are born in subjection, and the most absolute subjection - the subjection of a helpless child to the parents on whom he depends every moment for his existence.¹⁷

He then asks even if one sets aside the child's dependence on his parents:

All men born free? Absurd and miserable nonsense! When the great complaint - complaint made perhaps by the very same people at the same time, is - that some many men are born slaves!¹⁸

¹³ Edmund Burke and JCD Clark, *Reflections on the Revolution in France* (Stanford University Press, 2001) 221.

¹⁴ Ibid.

¹⁵ See Waldron, above n 12, 95.

¹⁶ Jeremy Bentham 'Anarchical Fallacies', in John Bowring (ed) *The Works of Jeremy Bentham Vol. 2* (Edinburgh, 1843) 498.

¹⁷ Ibid.

¹⁸ Ibid.

Under Article II of the Declaration¹⁹ Bentham opines that:

[A] reason for wishing that a certain right were established, is not that right – want is not supply – hunger is not bread. That which has no existence cannot be destroyed – that which cannot be destroyed cannot require anything to preserve it from destruction. *Natural rights* is simple nonsense: natural and imprescriptible rights, rhetorical nonsense – nonsense upon stilts. But this rhetorical nonsense ends in the old strain of mischievous nonsense: for immediately a list of these presented natural rights is given, and those are so expressed as to present to view legal rights. And of these rights, whatever they are, there is not, it seems, any one of which any government *can*, upon any occasion whatever, abrogate the smallest particle.²⁰

Bentham's critique of natural rights fits in well with his principle of utility. For Bentham, in line with the rationalism of the enlightenment philosophy, pleasure and pain, instead of a divine or natural order, are the only intrinsic values that a society should uphold. By maximising average utility, Bentham balances the interests of the individuals with the greater interests of the society. From this standpoint, Bentham rejects the absolutism in the rights language of the Declaration in which the necessary constraints or qualifications are missing. He asserts:

[D]ictates of reason and utility are the results of circumstances which requires genius to discover, strength of mind to weigh, and patience to investigate: the language of natural rights require[s] nothing but a hard front, a hard heart and an unblushing countenance. It is from beginning to end so much flat assertion: it neither has anything to do with reason nor will endure the mention of it. It lays down a fundamental and inviolable principle whatever is in dispute.²¹

Bentham is, however, not ignorant of the political usefulness of the language of rights for the people on behalf of whom rights are claimed.²² Rather, he warns that such a language would be detrimental to the society which 'is held together only by sacrifices that men can be

¹⁹ Article II of the Declaration: 'The end in view of every political association is the preservation of the natural and imprescriptible 'rights of man'. These rights are liberty, property, security, and resistance to oppression'.

²⁰ Bentham, above n 16, 498.

²¹ Ibid 74.

²² Waldron likens Bentham to 20th century logical positivists who appreciate the use of the language despite claiming that it might be devoid of meaning. See Waldron, above n 12, 36.

induced to make of the gratifications they demand'.²³ According to Bentham, 'to obtain these sacrifices is the great difficulty, the great task of government'. Then he asks:

[W]hat has been the object, the perpetual and palpable object, of this declaration of pretended rights? To add as much force as possible to these passions, already but too strong,—to burst the cords that hold them in,—to say to the selfish passions, there—everywhere—is your prey!—to the angry passions, there—everywhere—is your enemy. Such is the morality of this celebrated manifesto.²⁴

Despite his position as a firm legal positivist, Bentham does not deny the moral evaluations of the law. To him it was sensible to argue what the law *ought* to be.²⁵ Yet, by noting that 'hunger is not bread', he warned about confusing 'ought', which is a question of morality, with 'is', which is the question of law.²⁶ Hence Bentham is deeply troubled by the Declaration's use of the terms 'can' and 'cannot' in various articles (e.g. 'social distinctions *cannot* be founded, but upon common utility' (Article I); 'Whatever is not forbidden by the law *cannot* be hindered' (Article V); 'Property being an inviolable and sacred right, no-one *can* be deprived of it...' (Article XVII)).

In contrast with its impact in Britain, the French Revolution became a defining event for German romanticism. Two of the most prominent figures of German idealism, Johann Gottlieb Fichte and Georg Wilhelm Friedrich Hegel, were deeply impressed by the revolution.²⁷ Yet, even Hegel was skeptical about the 'rights of man' as an expression of true human freedom and regarded them as empty, abstract and fanatical, reducing 'the union of individuals in the state to a contract and therefore to something based on their arbitrary wills, their opinion, and their capriciously given express consent.'²⁸ The most critical account of the French Revolution among the nineteenth century German philosophers is offered by Karl Marx. In *Towards a Critique of Hegel's Philosophy of Right: An Introduction*, Marx agreed with Hegel's identification of the 'individual in isolation' which would inevitably result 'in the maximum frightfulness and terror' as the central problem

²³ Bentham, above n 12, 497.

²⁴ Ibid.

²⁵ Waldron, above n 12, 37.

²⁶ Ibid 53.

²⁷ See Hegel's *Philosophy of Right* (1821) and Fichte's *Beiträge zur Berichtigung der Urteile des Publikums über die Französische Revolution* (*Contributions to the Correction of the Public's Judgment concerning the French Revolution*) (1793).

²⁸ Georg Wilhelm Friedrich Hegel and Stephen Houlgate, *Outlines of the Philosophy of Right* (Oxford University Press, 2008) 230.

in a rights-based state.²⁹ Yet, instead of greater participation in the 'ethical life as a remedy' suggested by Hegel, Marx proposes greater involvement with the messy business of material life.³⁰ Therefore, not surprisingly, while Marx famously theorised the idea of a revolutionary overthrow of the existing order by the proletariat, he could only see the French Revolution as a 'failure' for the masses, 'whose real conditions for emancipation were substantially different from the conditions within which the bourgeoisie could emancipate itself and society.'³¹ Marx's earlier work *On the Jewish Question* contains a rather comprehensive critique of the 'rights of man'. There, he analyses various articles of the French Declaration on the Rights of Man and the Citizen to highlight the fact that 'the so-called "rights of man", ... as different from the rights of citizen, are nothing but the rights of the member of civil society, i.e. egoistic man, man separated from other men and the community.'³² Marx characterizes private property rights (Article 16) as 'a practical application of the "rights of man" to freedom ... as the right of selfishness'. The thrust of Marx's critique is encapsulated in the following passage:

Man was therefore not freed from religion; he received freedom of religion. He was not free from property, but he received freedom of property. He was not freed from the egoism of trade; he received freedom of trade.³³

Overall the above selective account of the nineteenth century critique of rights should demonstrate that all the critics, though coming from opposite poles, share similar concerns over the 'abstraction' of the rights of the 'individual' at the expense of the 'community'. The crucial differences among them remain in their distinctive conception of 'community' which lies, as Waldron suggests, in 'the altruism of Bentham's principle of utility, the intergenerational wisdom of Burke's traditions, and the co-operative fulfillment of Marxian species-being.'³⁴ Yet, it was exactly this 'abstraction' of the 'rights of man' that found appeal in the Islamic world.

²⁹ Waldron, above n 12, 122.

³⁰ Ibid.

³¹ Karl Marx, 'The Holy Family' in David McLellan (ed) *Karl Marx: Selected Writings* (Oxford University Press, 1977) 140, 140-1.

³² Karl Marx, 'On the Jewish Question' in David McLellan (ed) *Karl Marx: Selected Writings* (Oxford University Press, 1977) 140, 140-1.

³³ Ibid.

³⁴ Waldron, above n 12, 44.

III. THE YOUNG OTTOMANS' CRITICISM OF 'EQUAL RIGHTS' UNDER TANZIMAT

The numerous military defeats of the Ottomans in the eighteenth century, particularly by the rising Tsarist Russia, made it clear to the Ottoman sultans that their declining Empire was in desperate need of fundamental reform. In the same year of the French Revolution, the most important Ottoman reformer of the eighteenth century came into power: Salim III (1789-1807), whose 'New Order' (*'Nezame-Cedid'*) aimed at the Europeanization of the Ottoman military. And yet, by 1829 and upon the unsuccessful Russian war of 1828, it became clear to his successor Mahmud II that for any reform to be effective, not only did the influential Janissary corps, who had been the main impediment to modernisation of the military, have to be washed away from the face of the Ottoman society, but there was also a need for radical transformation of the governmental apparatus. In particular, the higher ranking ulema, who had been traditionally holding high governmental positions with no education suitable for a modern bureaucracy, were to be gradually replaced by a rising class of government bureaucrats – the so-called 'men of the pen'.³⁵ Mahmud II's reforms set the stage for the beginning of an era of secularization in the Ottoman Empire known as Tanzimat which was implemented by his successor Sultan Abdülmejid I and his Grand Vasier Reshid Pasha (1800-1858).

The era of Tanzimat – meaning 'regulation' in Turkish – ushers in a series of top-down Westernisation reform policies marked by *Hatt-ı Hümayun of Gülhane* (Gulhane Rescript) of 1839. The Tanzimat era officially ends with the dawn of the Hamidian era, marked by the establishment of the short-lived Ottoman constitution of 1876 by Sultan Abdülhamid II but most notoriously known for a change of direction towards anti-Western Pan-Islamism. Over a few decades of Tanzimat however, there were progressive steps in the direction of Ottoman secularization: 1840 (penal code), 1847 (modern secular tribunals, 1850 (a secular commercial code), 1856 (Ottoman Bank), 1845-1868 (secularization of education), 1856 (equal rights and even positive discrimination in favour of Ottoman Christian subjects), 1861 (a secular code of commercial procedure), 1864 (a new law regarding provincial administration), 1867 (foreigners' right to own land), 1868 (a new *Lycée* [a French public secondary school] was established where teaching was to be in French).³⁶

³⁵ Serif Mardin, *Genesis of Young Ottoman Thought: a Study in the Modernization of Turkish Political Ideas* (Syracuse University Press, 2000) 133 -155.

³⁶ Ibid 163.

As one of the most significant Westernisation reforms ever accomplished in the Islamic world, Tanzimat not only sparked reactions of the first generation of Muslim intellectuals known as Young Ottomans (1865 – 1876) in Turkey but it also continued to feed the debates on modernism and secularism in the twentieth century. At the time, these reforms were enthusiastically embraced by the likes of Auguste Comte, the father of positivism, who commanded the Ottoman Empire for such a remodelling of the society in which Islam was not necessarily seen an impediment to reform.³⁷ Despite Reshid Pasha's views as its principle architect to the contrary, the Gulhane Rescript and its embedded promise to respect the "life, honour and property" of all Ottoman subjects, including the non-Muslims, was initially seen by some Europeans as a statement of individual liberties.³⁸ The architect of the Rescript believed however that the dearth of modern education in Turkey stood in the way of Ottoman liberal constitutionalism. Years after the Rescript, the situation of inequality of non-Muslim subjects persisted: their testimony was not fully accepted in courts, they were not appointed to the offices of the state in proportion to their numbers, and they did not profit from the educational facilities established under the Rescript.³⁹

The direction of the Tanzimat fundamentally changed in favour of Ottoman Christian subjects in the aftermath of the Crimean War (1853 – 1856) in which an alliance of the French, British and Ottoman Empires and the Kingdom of Sardinia managed to defeat the Russian Empire. In the course of peace negotiations, the European powers imposed the most radical policies on their 'victorious ally' in favour of their Christian protectorates. The *Hatt-ı Hümayun* of 1856, known as *Islahat Firmani*, was forced into the Paris Treaty via Article IX, which stated:

His Imperial Majesty the Sultan, having, in constant solicitude for the welfare of his subjects, issued a firman, which, ameliorating their conditions without distinction of religion or of race, records his generous intentions towards the Christian population of his Empire, and wishing to give further proof of his sentiments in this respect...it is clearly understood, that it cannot in any case give to the said powers the right to interfere, either collectively or separately, in the

³⁷ Auguste Comte, *A son Excéllent Rechid Pacha, ancien grand visir [sic] de l'Empire Ottoman Systém de Politique Positive ou Traité de Sociologie Instituant law Relegion de l'Hummanité* (Paris, Carillan-Goeury et Dalmont, 1853), III, xlvi-xlix.

³⁸ Mardin, above n 35, 157.

³⁹ *Ibid* 15.

relations of His Majesty the Sultan with his subjects, nor in the internal administration of his Empire.⁴⁰

It was obvious from the start that the latter part of the provision above (the principle of non-interference) was merely a pledge on paper. Right before the conclusion of the Treaty which caused Muslims to bemoan the loss of their 'sacred national rights' that their 'ancestors gained with their blood'⁴¹, Reshid Pasha issued a serious warning to the Sultan. He predicted that *Islahat Firmani* would cause disturbances between the two races and would eventually pave the way to the dissolution of the Ottoman Empire.⁴² The firman would risk the integrity of the Empire and its annexation to the Treaty would give way to foreign intervention and cause the dismemberment of the Empire. Rashid Pasha foresaw that the new reforms promised in the firman cannot be fulfilled in the short term 'without frustrating Muslims and overly indulging non-Muslims'. He wisely recommended that these policies 'should be carried out gradually and without the shadow of European manipulation.' However, Reshid Pasha's own protégés, i.e. Fuad Pasha and Ali Pasha who had taken over the Ottoman administration, seemed to be so impatient to please the Europeans that they 'hastened to grant new rights that go beyond even the demands of non-Muslims.'⁴³

With the rise of nationalism in the Balkans and other Christian-populated Ottoman territories in the 1860s, Fuad Pasha and Ali Pasha did increasingly more in the way of placating European powers. A prominent example in point was the Lebanese crisis of 1860 in which French troops, in disregard of the Paris Treaty's principle of non-interference, were sent to Lebanon. In response to the mishandling of the sectarian violence between Muslims and Druses, Fuad Pasha executed the Turkish commanding general and his two aides and appointed a Christian government for Lebanon at the recommendation of the European powers. These and other similar events were causing disgruntlement among Muslim Turks at a time when a number of reforms were being hastily implemented to redress the long standing problem of Christian equal rights in the Ottoman Empire.

⁴⁰ For the text of the treaty see *General Treaty between Great Britain, Austria, France, Prussia, Russia, Sardinia and Turkey, for the reestablishment of Peace*, signed at Paris, March 30, 1856 BFSP 1855-56 XLVI, 8-22.

⁴¹ Ahmad Cevdet Pasha, *Tezâkir 1-12* (Cavit Baysan, Ankara Turk Tarih Kurumu Basimevi (eds), 1953), 68 Mardin (trans), above n 35, 18.

⁴² Nazan Çiçek *The Young Ottomans: Turkish Critics of the Eastern Question in the Late Nineteenth Century* (Tauris Academic Studies, 2010) 113.

⁴³ *Ibid.*

A quota system, for instance, was put in place to address the problem of past discrimination against non-Muslims in government employment. The controversial question of admitting non-Muslims into the army also remained unresolved despite the stipulations of the 1856 firman that all Ottoman subjects had the duty to serve. The unfairness of the system of *bedel-i askeriye*, whereby Muslim youth were conscripted to army (unless they paid huge sums of money) while non-Muslims paid a minimal exemption tax, became the subject of criticism by the Young Ottomans such as Ziya Bey.⁴⁴ Moreover, a series of privileges such as capitulation rights⁴⁵ followed by tax exemptions were granted to European citizens in the Ottoman Empire. This was later followed in 1867 by granting foreigners the significant right to own land. Many Ottoman Christian tradesmen took advantage of these privileges by virtue of obtaining European passports which were granted to non-Muslims in great numbers. On top of that was a reduction of import tariffs for European products which was not reciprocated by Europeans. Muslim business and manufacturing were on the brink of bankruptcy. This bizarre situation is well described by a British traveller to Turkey who recollects the views of a 'Frenchman residing in Istanbul'⁴⁶:

Force them (the Turks) to give effect to the clauses in the Hatt-i Humayoon which permits foreigners to buy land, force them to allow foreign companies to make the roads which they will not make themselves. Turkey, once opened to European enterprise, industry and capital, will be a new America, with a better climate and a better soil. Anglo-Saxons and Germans will soon drive these savages off the face of the country. They hold it only by frightening, plundering and oppressing the civilized races. Even the Greeks and the slaves, armed with equality of rights would drive them out.

Urquhart's words, which came in the introduction to this paper, about the equality of rights with respect to religious minorities in Europe at the time, especially his alluding to the discrimination against Roman Catholics in the English judicial system and the prohibition of land ownership by foreigners in England, will put these issues in perspective. Therefore, it was not so much the granting of equal rights

⁴⁴ Ibid 124.

⁴⁵ In the history of international law, capitulation is referred to any treaty whereby one state permitted another to exercise extraterritorial jurisdiction over its own nationals within the former state's boundaries. See Online Britannica Academic Edition <<http://www.britannica.com/EBchecked/topic/94037/capitulation>>.

⁴⁶ Senior, *A Journey Kept in Turkey and Greece*, 44, cited in Çiçek, above n 42, chapter 3 note 100.

to Christians but granting them 'more equal rights'⁴⁷ (or the appearance of it in the perception of Ottoman public) that disenfranchised Muslim populations of the Empire. 'Gearing of Turkish reform to the wishes of the Christian populations of the empire', as Mardin describes, resulted in a lopsided system in which Muslim populations had no share.⁴⁸

Rather than being a cure for the 'Sick Man of Europe'⁴⁹, the Tanzimat reforms and its main message of religious equality piled up resentment among the Muslim Ottomans. It is in such a hostile nationalist context that the Young Ottomans emerged. The (multi-narrative) stories of the Young Ottomans' forming of 'Patriotic Alliance' in exile and their eventual success in establishing the short-lived Ottoman Constitution of 1876 has been thoroughly investigated in the literature.⁵⁰ As protégés of Reshid Pasha and part of the rising class of bureaucrats born out of the Tanzimat, former civil servants such as Ziya Pasa (1825-80) and Namik Kemal (1840-88) rebelled against the alienating impact of the Tanzimat. Their central claim was that, instead of lopsided reforms, the Porte should have redesigned the whole administrative system through the introduction of a representative system (*usul-ii meshvoeret*).⁵¹

These excluded members of the elite became the first Muslim intellectuals who attempted to develop a theory for centralised modern institutions based on, what Karpat describes as, an 'Islamic political tradition and Ottoman principles of government'.⁵² What is key for the purpose of this paper is that, in the pro-Western Tanzimat environment, the 'liberal' rights talk would prove highly unpopular within Muslim nations. Hence, the Young Ottomans made use of a nationalist version the rights language in order to foster their constitutionalist political cause. Being cognizant of the symbolic

⁴⁷ Çiçek, above n 42, 169.

⁴⁸ Mardin, above n 35, 18.

⁴⁹ The Ottoman Empire was described as 'the sick man of Europe' in the mid-nineteenth century due to its declining power and internal problems.

⁵⁰ Kemal H. Karpat, 'The Transformation of the Ottoman State, 1789 - 1908' (1972) 3(3) *International Journal of Middle East Studies* 243. For a more elaborate study see Serif Mardin, *Genesis of Young Ottoman Thought: a Study in the Modernization of Turkish Political Ideas* (Syracuse University Press, 2000); Niyazi Berkes, *The Development of Secularism* (McGill University Press, 1964); Ernest Ramsaur, *The Young Turks: Prelude to the Revolution 1908* (Princeton University Press, 1957); Jacob Landau, *Pan-Turkism: From Irredentism to Cooperation* (Hurst and Company, 1995); Carter V. Findley 'The Advent of Ideology in the Islamic Middle East' (1982) 56 *Studia Islamica* 147-180; Ahmad Feroz 'The Young Turk Revolution' (1968) 3(3) *Journal of Contemporary History* 19.

⁵¹ Namik Kemal, *Hurriyet*, No. 4, 29 July 1868, Çiçek (trans), above n 42, 116.

⁵² Karpat, above n 44, 266.

quality of *Islahat Firmani*, they tried to exploit the population's distaste of Tanzimat to the full.⁵³ The criticism of the principle of equality between Muslims and non-Muslims were to become a distinctive aspect of Young Ottoman opposition.⁵⁴

The most liberal mode of the rights language was used by Prince Mustafa Fazil, the Egyptian supporter and a prominent sponsor of the Young Ottomans in his famous letter to Sultan Abdilaziz published in 1867. In particular, Mustafa Fazil emphasised 'rights to property and security' and advocated a 'check' on the rights of the sovereign (the sultan).⁵⁵ On the other hand, Namik Kemal (1840 -1888), a prominent poet and the most important thinker among the Young Ottomans, moulded the concept of liberty with a nationalist notion of 'fatherland' (Vatan), in which the 'Muslim' identity was central. Hilmi Ziya Ulken, an authority on Turkish intellectual history, maintains that 'Namik Kemal in his articles on the Turkish economy highlighted the notions of Ottoman-Muslim enterprises such as *Muslim Bank*, *Muslim Corporations*, and protecting and supporting the *Muslim* merchants.'⁵⁶ This is due to Kemal's critique of the absurdity of pro-Western economic policies in the Ottoman Empire:

Today, when an Englishman buys immovable estate in France, he pays tax to the French government for his property, and in the event of a legal dispute he applies to the French courts, if he cultivates agricultural product he employs French workers and also pays tax out of the value of the product to the French government. In short, this measure does not damage the country's economy or weaken the sovereignty, on the contrary, it by all means contributes to the general welfare... Whereas in our Empire there is no such a thing as national economy, foreign products have already flooded our markets, native Ottoman merchants have become unable to compete against foreign merchants, who, thanks to the capitulations, are exempted from a series of taxes and duties... today there is no work for Muslims other

⁵³ Çiçek, above n 42, 115.

⁵⁴ Ibid.

⁵⁵ See translation by M. Colombe in *Orient*, no. 5 (1958), 29, cited in *Ibid* 262 note 2. ('[f]our centuries ago the Turks "submitted to their leaders on the virtue of a freely accepted principle" and had a "moral virility". But now, there was a feeling that pride and honor were diminishing subject to the injustice, whims, exactions of subordinate officials who depend only nominally on your [sultan's] authority...Your subjects [sultan's] of all faiths are consequently divided into two classes: those who oppress without checks and those who are oppressed without mercy... The cause of all these lay in the political system's lack of freedom and of a constitution that would guarantee the people "their sacred religion, fortune, and property, as well as the security of home'.')

⁵⁶ Cited in *Ibid* at 266.

than trading wood and coal for domestic heating or becoming a state employee and living a parasitical life.⁵⁷

Similarly, Ziya Bey takes note of a class of Turkish-Ottoman traders known as *Hayriye Tüccari*, who existed at the beginning of the century and were out-competed by European corporations, eventually vanishing by the 1860s. In reaction to the *Firmani's* equal rights, both Kemal and Ziya attempted to promote the view that all those rights already exist in the Islamic law of Sharia. The basis of their critique was that the Tanzimat statesmen were so eager to portray themselves as liberal revolutionaries in the eyes of Europe that they deliberately showed Islam in a bad light as a despotic and intolerant religion.⁵⁸ Kemal and Ziya each argued separately that talking of equal political rights under the circumstances was meaningless until there was a system of political representation established under Tanzimat. According to Ziya 'any reference to the political rights of the Ottoman subjects was absurd while no one was allowed to establish or join in a political party or elect their representatives and have a check upon the government.'⁵⁹ Kemal had also constructed an Islamic principle of *usul-ii Meshveret* (the principle of consultation) as the right to political participation. Starting with a premise that freedom was a divine right, his 'system of *meshvere*' involved two types of rights: personal rights which could only be upheld through an impartial and competent court system; and political rights which depended upon the separation of powers and the establishment of representative government.⁶⁰

In an essay on the 'Question of Equality' (*Mesele-yi Müsavat*), Ziya constructs a model later followed by Kemal in which two types of equality are formulated: 'equality in rights' and 'equality in honours'.⁶¹ The 'equality in rights' is a negative principle of non-discrimination according to which all subjects regardless of race or religion must hold equal civil rights including equality before the courts of law. The 'equality in honours' (all citizens should be equal in wealth, status and prestige) is a positive principle of non-discrimination which implies, *inter alia*, that all ethnic and religious groups have to be represented in governmental bodies in proportion to their numbers. Ziya and Kemal advocated the former and were opposed to the latter because it would, according to them, only exacerbate tension among minority groups.

⁵⁷ Namik Kemal, *Hurriyet*, 16 November 1868, Çiçek (trans), above n 42, 149.

⁵⁸ Çiçek, above n 42, 117.

⁵⁹ *Ibid* 118.

⁶⁰ Mardin, above n 35, 308.

⁶¹ Çiçek, above n 42, 118-9.

It is of note that there are differences between Ziya's views (coming from a political insider to the Ottoman government apparatus) and Kemal's who was a more robust theorist.⁶² The latter often expressed much more nuanced views on the question of equality. What is key in reading these prominent young Ottomans is that they approached Sharia as a social vehicle, or in the words of Mümtaz'er Türköne 'as a means of opposition'⁶³ in furthering their constitutionalism project.⁶⁴ Moreover if one is convinced that they had the interest of the Ottoman community as a whole at heart rather than the one of their own ethnical and religious affiliations, it could be argued the Young Ottomans' critique of the rights language has some commonalities with the contemporary critique of Lockean natural rights doctrine as described in the previous section.

IV. IRANIAN INTELLECTUALS, THE OTTOMAN TANZIMAT AND PAN-ISLAMISM

In response to the growing power of the West, as it was noted in the previous section, the nineteenth century became an era of constant attempts for reorganization across the Islamic world. In parallel to Ottoman reforms, the Iranian Shahs of the Qajar Dynasty conducted a series of military reforms in the hope of, in the main, countering the Russians' growing military power. Early in the century, sultan Selim III's *Nizam-i Cedid* (New Order) inspired the Crown Prince Abbas Mirza (1789 - 1833) to become the first Iranian ruler to send missions to Europe to acquire military techniques and modern sciences. Later, Amir Kabir (1807 - 1852), the historically acclaimed chief minister of the Qajars, was impressed by the Ottoman Tanzimat while he devised his short-lived, but the most influential, reforms ever implemented in the Qajar era.

Istanbul was not only a significant trade gate to Europe especially before the opening of the Suez Canal in 1859 that gradually diverted

⁶² See Christiane Czygan, *Reflections on Justice: A Young Ottoman View of the Taninmât* Middle Eastern Studies, 46:6, 943-956 (Routledge, 2010).

⁶³ Ibid 949, citing Mümtaz'er Türköne.

⁶⁴ Ziya and Kemal's view was not shared by the likes of Sauvi who represented a minority view of the Young Ottomans. Sauvi, who unlike the other two came from humble origins, associated himself with the ulema and viewed Islam as such as a goal to emancipate the Muslim nations. Thus Sauvi's idea of democracy did not go beyond an Islamic system of consultation, and 'he was shocked to find that in Europe butchers were given the vote'. While Ziya and Kemal remained civil servants at heart, Sauvi became a radical political activist who theorised the notion of Islamic civil disobedience which cost him his life in the Çırağan incident in 1878. See Çiçek, above n 42, 156-7. On Sauvi also see Mardin, above n 35, 360-384.

trade to the Persian Gulf, but also an intellectual hub of the Islamic world over the nineteenth century. Many Iranian intelligentsia were based in Istanbul and actively published political pamphlets. Newspapers such as *Akhtar* (News) (1876) or books such as Talebov's '*Ketabe-e Ahmad*' (The Book of Ahmad) (1905) are the examples in point. In the traditional society of Iran however, reformers faced more daunting challenges in pursuing Westernisation projects than the centralised Ottoman government. This was due to the fact that the ulema's role was more entrenched in the Iranian public sphere than that of their Sunni peers in Turkey. There was also a lack of a strong political will for implementing fundamental reform, such as the one existing in the Ottoman Empire, in the Qajar Iran. Whatever the reasons, none of the Westernisation reforms similar to the Ottoman Tanzimat ever took root in Iran.

The contextual differences between Iran and the Ottoman Empire inform the comparative debate on the rights and liberty discourse across the Islamic world. At the time when the Young Ottomans were actively advocating for a constitutional government in opposition to Tanzimat, the Iranian intelligentsia such as Mirza Malkam Khan desperately advocated for a 'rule of law' minus a constitution. Maklam upon a meeting with Reshid Pasha (the original architect of Tanzimat) in 1859 wrote extensively advocating for a duplication of Tanzimat reforms in Iran.

Mirza Malkam Khan Nazem al-Dowleh (1833 - 1908) was born into a Christian-Armenian family in Esfahan. His father Mirza Ya'qub Khan (1815 - 1881) had actively advocated for equality of religions inspired by the Tanzimat reforms⁶⁵:

Iranians should be thankful that in Europe and the Ottoman Empire people are not aware of how religious minorities are treated in Iran, otherwise they would not consider Iranians worthy of 'rights and equality'.⁶⁶ ... Who is the unjust person who has commanded that the blood-money of a non-Muslim is equal to the price of an Egyptian donkey? Who is that "learned and just" person who has [made the ruling] that a convert to Islam has priority over his/her non-Muslim relatives in inheritance?

⁶⁵ Ya'qub Khan has written one of the earliest Persian texts demanding for a constitutional government. See Cyrus Masroori, 'Mirza Ya'qub Khan's Call for Representative Government, Toleration and Islamic Reform in Nineteenth-Century Iran' (2001) 37(1) *Middle Eastern Studies* 89.

⁶⁶ Mirza Ya'qub Khan, *Tarh-e Arizeh-i Ast keh beh Khakpayeh Mobarak Mahramaneh Bayad Arz Shawad*, Bibliotheque Nationale, (Paris 1874), no. 1996, Masroori (trans) *ibid*.

Mirza Ya'qub Khan's son, Mirza Malkam Khan played a highly influential role in Iran's pre-constitutional history.⁶⁷ He was sent to Paris to study engineering where he developed an interest in political philosophy, especially in Saint Simon's idea of social engineering and Auguste Comte's *Religion of Humanity*. Upon his return to Tehran, he designed a joint campaign (along with a secret association based on the Freemasonry model called the Oblivion House [*Faramoush-Khaneh*]) through which he tried to persuade the king, Naser al-Din Shah, to initiate Tanzimat-type reforms. The Shah eventually became suspicious of Malkam's activities and exiled him to Baghdad and later to Istanbul. In three of his early writings in the period between 1860 and 1862, (*the Book of Tanzimat [Daftar-e-Tanzimat], the Assembly of Tanzimat [Majlis-e-Tanzimat]; and the Book of Law [Daftar-e-Qanun]*)⁶⁸ Malkam openly described his project as 'the adoption of Western civilization absent any Iranian intervention' by which he intended 'a total submission to European civilization'⁶⁹ in all aspects of life including political and economic in a one-size-fits-all fashion. In this period, Mirza Malkam Khan asserted that 'European sciences are flooding the nations around the world and the more we give way to them, the better we can benefit from them.'⁷⁰

Through mediation with Shah's ambassador to Istanbul, the young Malkam was granted permission to return to Iran from Istanbul. After a period of ups and downs in the start to his political career, and as a result of his acquaintance with Iran's chancellor of the time, Malkam was eventually promoted to the post of ambassador in London (around 1873). He was also awarded the royal title of Prince due to his accomplishments in the Iranian mission. This stage of Malkam's life, at

⁶⁷ See Fereydoon Adamiyat, *Ideologiyeh Nehzate Mashrootiyat, (The Ideology of Constitutional Movement)* (Roshangaran, 1971); for more on Mirza Malkam Khan see Fereydoon Adamiyat, *Andishehayeh Mirza Aqa Khan Kermani (The Thoughts of Mirza Agha Khan Kermani)* (Payam, 1978); Hasan Ghazi-Moradi, Nazariyeh Pardaze Nosaziye Siyayi dar Sadre Mashrooteh, *The Theoretician of Political Modernization in Early Era of the Constitutional Revolution* (Akhtaran, 2008); Hamid Algar, *Mirza Malkam Khan; A study in the History of Iranian Modernism* (University of California Press, 1973); Homa Nategh, *Ma va Mirza Malkam Khanhaye Ma (On us and our 'Mirza Malkam Khan's)* (Agah, 1975); Mashallah Ajoudani, *Mashrouteyeh Irani va pishzaminehay nazariyeh-ye Velayate Faqih (Iranian Constitutional Monarchy and the backgrounds for the Theory of the Guardianship of Islamic Jurists)* (Fasle Ketab, 1997); Abdol-hari Haeri, *Tashayeh' va Mashroutiyat Dar Iran (Shi'ism and Constitutional Monarchy in Iran)* (Amir Kabir, 1981).

⁶⁸ In the *Book of Law*, Malkam tried to reconcile the principles of French penal law with the Iranian monarchic regime; see Hojatollah Asil, *Resalehay Mirza Malkam Khan Nazem al-Dowleh (The Essays of Mirza Malkam Khan Nazem al-Dowle)* (Nei, 2002).

⁶⁹ Adamiyat, above n 66, 114.

⁷⁰ Malkam, *The Essay on the Bureaucracy [resaleye dastgahe divan]*, quoted in Asil above n 68.

which he is part of the political elite, coincided with advocacy for top-town reform in the fashion of Ottoman Tanzimat.

A new stage of Maklam's political life begins when he and Naser al-Din Shah fall out over a business dispute which led to Malkam's being discharged from all his official posts and humiliation as a result. This was about 1890, by which time Malkam started to rebel against the Shah and brought his political ideas, including a demand for a constitutional monarchy, into action. He established the newspaper *Qanun* (the Law) which was based in London. *Qanun* was published between 1890 (coinciding with Afghani-driven Tobacco movement) and 1898 (eight years before the establishment of a constitution in Iran). *Qanun* no doubt had a significant role in Iran's awakening and quest for a constitutional government and the rule of law. After the assassination of Naser ad-Din Shah by a servant of Afghani and the coronation of his successor Mozafar ad-Din Shah, Malkam was offered a post as ambassador to Rome. He held that position for ten years before he passed away later in 1908 at the age of seventy-six in Switzerland. He had asked for his body (in disregard of Sharia) to be cremated.

Malkam's departure from advocacy for a reform in the fashion of Tanzimat occurred at a time when the pro-Western policies of the Tanzimat and the Young Ottoman's constitutionalism had both faded from the Ottoman politics. Instead Sultan Abdülhamid II had championed Pan-Islamism and brutally crushed Christian revolts in order to save his deteriorating Empire from dissolution. It is striking that in such an anti-Christian environment of the Ottoman Empire in the 1890s, Malkam did not view his Armenian origins as an impediment to joining forces with Afghani and his Pan-Islamist circle of friends in Istanbul. During this time, he advocated for an Islamic dressing of liberal positivist thought. At the same time, Malkam's most influential political writings appear in the *Qanun*, his ground breaking newspaper:

'Our claim is not to adopt Parisian, Russian or Indian laws. The principles of all the good laws are everywhere the same, the best of which are laid out in God's Sharia.'⁷¹

⁷¹ *Qanun*, issue 1, (1890) quoted in Homa Nategh, *Roostnameye Qanune Mirza Malkam Khan* (Amir Kabir, 1976). For an account on *Qanun* and the role of other intellectuals such as Afghani in it see Shiva Balaghi 'Constitutionalism and Islamic Law in Nineteenth-Century Iran: Mirza Malkam Khan and *Qanun* in Human Rights With Modesty, The Problem of Universalism' in Andras Sajo (ed) (Martinus Nijhoff Publishers, 2004).

The Pan-Islamist project of the late nineteenth century mastered by Sayyid Jamal-ad-Din Afghani (1838 – 1897)⁷², had found practical appeal among a number of Iranian intellectuals. Pan-Islamism represented ideas that were partly in line with a strand of Young Ottoman's idea of Islamic unity against the European encroachment (marked by Sauvi). Pan-Islamists were firmly supported by the Ottoman sultan Abdul Hamid II. The project, however, was doomed in Iran from the beginning, due to historic ideological rivalry between the Sunni Ottoman and Shia Iran that was bound to frustrate any meaningful unity in the Islamic world. What made it particularly unappealing to the Iranian audience was that the Islamic unity was propagated under the auspices of the Ottoman 'Supreme Caliphate of Islam' – a self-proclaimed leadership of the Islamic world that had even found its way to the suspended 1876 Ottoman constitution.⁷³

Despite the eventual failure of Pan-Islamism, the significance of Afghani's project remained in his political expediency and his legacy of emphasizing the social function of Islam and particularly the ulema who exerted enormous influence, not only on the masses but also on the nascent Iranian merchants. Afghani encouraged his reform-minded Iranian peers to form alliance with these centres of gravity in the Iranian society.⁷⁴

Mostly upon Afghani's influence, a group of Iranian intellectuals started to adopt Islamic language in their approach to liberal constitutionalism. Yet, this was mainly done on the part of these intellectuals as a matter of political expediency to lure the influential ulema into a coalition against the Shah rather than a genuine belief or an affirmation of their 'Islamic self'. This is an important difference between nineteenth-century Iranian intellectuals and their Turkish peers to whom Islamic identity had always been a unifying theme from

⁷² On Afghani see Kudsî-Zadeh, *Sayyid Jamal al-Din al-Afghani* (Tehran, 1970). In his book, Professor Kudsî-Zadeh presents about 700 pieces of literature, documents, etc. relating to the life of Afghani. See also Nikki R. Keddie, Hamid Algar and Jamal al-din al-Afghani, *An Islamic Response to Imperialism: Political and Religious Writings of Sayyid Jamâl ad-Din "al-Afghânî: including a Translation of the "Reputation of the Materialists" from the Original Persian* (California U.P., 1968).

⁷³ Art. 3 provided 'The Ottoman sovereignty, which includes the person of the Sovereign the Supreme Caliphate of Islam, belongs to the eldest Prince of the House of Osman, in accordance with the rules established ab antiquo.' See the translation of The Ottoman Constitution (23 December 1876) <<http://www.anayasa.gen.tr/1876constitution.htm>> .

⁷⁴ This put him in paradoxical shoes acting as a Luther of Islam (as he attempted in different occasions to rationalise Islam to the dismay of the existing religious institutions) on the one hand and seeking to unite the Muslim world around the existing religious institutions on the other. For more on this see Margaret Kohn 'Afghani on Empire, Islam, and Civilization', (2009) 37(3) *Political Theory* at 398.

liberal-minded Young Ottomans such as Kemal and Ziya to the Sauvi as an Islamist. This could be partly due to the fact that Ottomans took pride in the Islamic heritage of their Empire in the Middle Ages while Iranians never managed to restore a fraction of the legacy of the Ancient Persian Empire since the Arab conquest. It could also be more readily explained by the lack of a centralised Westernisation reforms such as Tanzimat on the consciousness of Iranians to force them into creating an alternative indigenous theory of government based on their Islamic identity. Either way, this disingenuity towards Islamic beliefs is noticeable not only in the case of Malkam but also Mostashar al-Dowleh who, as will be seen in the next section, wrote the first treatise on Islamic human rights. In a frank speech for an English audience, Malkam states:

The main reason for clothing Western ideas in Islamic terms, and stating that Western institutions had originally been borrowed from Islam, was that only in an Islamic form were new ideas likely to reach the Muslim masses. Most Muslims had long believed that Western Christians were enemies out to undermine Islam, enemies from whom nothing doctrinal should be borrowed.⁷⁵

Even Afghani, as the father of pan-Islamism, has at times adopted a very critical approach towards Islam. Emphasising social and philosophical aspects of the religion, he largely viewed Islam, in a similar fashion to Ziya and Kemal, as a means of opposition. Yet, Afghani's response to Ernest Renan's criticism of Islam was much milder and apologetic than the one of Kemal's.⁷⁶ Afghani openly comes across as a liberal philosopher in his letter to Renan demeaning the role of religion in general as an obstacle to progress:

If it is true that the Muslim religion is an obstacle to the development of sciences, can one affirm that this obstacle will not disappear someday? How does the Muslim religion differ on this point from other religions? All religions are intolerant, each one in its way. The Christian religion, I mean the society that follows the inspirations and its teachings and is formed in its image, has emerged from the first period to which I have just alluded; thenceforth free and independent, it seems to advance rapidly on the road of progress and science, whereas Muslim society has not yet freed itself from the tutelage of religion. Realizing, however, that the Christian preceded the Muslim

⁷⁵ See Nikki R. Keddie and Yann Richard, *Roots of Revolution, An Interpretation of History of Modern Iran* (Yale University Press 1981) at 43, quoting Malkam Khan, 'Persian Civilization' (1891) *Contemporary Review*, LIX, 238, 238-244.

⁷⁶ Kemal's response is much more defensive and passionate. See Mardin, above n 35, 324

religion in the world by many centuries, I cannot keep but hoping that Muhammadan society will succeed someday in breaking its bonds and marching resolutely in the path of civilization after the manner of Western Society, for which the Christian faith despite its rigors and intolerance, was not at all an invincible obstacle.⁷⁷

Not surprisingly therefore, not all the Iranian intelligentsia followed Afghani's path of expediency to unite with the influential ulema. Intellectuals such as Akhund Zadeh and Kermani, for instance resorted to the pre-Islamic legacy of the Ancient Persian Empire. Mirza Aqa Khan Kermani (1853-1896), ironically a close acquaintance of Afghani, is regarded as the first scholar "to ground 'Iranian' thought in modern Western philosophical tenets."⁷⁸ Akhound Zadeh was also among the less pragmatic minds that lived a non-political life in the caucuses and openly criticised Islam as an obstacle to liberty.⁷⁹ Similar to Kermani,⁸⁰ Akhound Zadeh was of the belief that Islam is incompatible with human rights and dignity and that Iranians should free themselves of what he considered the misery that Arabs brought to them:

[C]omplete freedom has two elements: moral freedom and bodily freedom. The guardians of Islam have taken our moral freedom away, making us ... subject to their own will in moral issues.... The nations of the East, because of the advent of the Arabs' religion and their domination over Asia, have lost [their] complete freedom at once, and are deprived of the joy of equality and the blessing of human rights.⁸¹

One of Akhound Zadeh's flagship reform proposals was to move away from Arabic alphabets into Farsi. While one cannot doubt the significance of Akhound Zadeh's inflammatory writings, especially his anonymously circulated collections of fictitious epistles⁸² or the revolutionary effects of the series of Persian letters written by Kermani,⁸³ these ideas could hardly be said to have penetrated Iranian modern legal thought which seems to be still in search for a synthesis between an Islamic-Iranian identity and modernism.

⁷⁷ Keddie et al above n 72, 187.

⁷⁸ See F Vahdat, *God and Juggernaut, Iran's Intellectual Encounter with Modernity* (Syracuse University Press, 2002) at 36.

⁷⁹ See Fereydoon Adamiyat, *Andisheye Fathali Akhundzadeh (The Thoughts of Fathali Akhund Zadeh)*, (Kharazmi, 1970).

⁸⁰ See Fereydoon Adamiyat, *Andishehay Miraza Aqa Khan Kermani (The Thoughts of Mirza Agha Khan Kermani)* (Payam, 1992).

⁸¹ See Cyrus Masroori 'European Thought in Nineteenth-Century Iran: David Hume and Others' (2000) 61(4) *Journal of the History of Ideas* 657, 657-674.

⁸² *Kamal ad-dowleh va Jamal ad-Doleh* in Adamiyat above n 79.

⁸³ Keddie et al above n 75, 69.

It comes as no surprise that while these two figures are celebrated by contemporary champions of secularism in Iran, the likes of Malkam whose influence was far more present in the political sphere of the Iranian constitutional era, are harshly critiqued for ushering in the ulema into the Iranian political scene and hence paving the way for a theocratic-constitutional system in the post-1979 Iran.⁸⁴ From a point of view of political activism, however, this strategy has proved to be effective a number of times before 1979 ever since the successful ‘Tobacco movement’ of 1890-1891. As a significant precursor of the constitutional revolution of 1906, the Tobacco movement masterminded in part by Afghani succeeded in mobilizing the ulema’s support behind the merchant class in 1890-91 resulting in the annulment of the Shah’s concession to Talbot’s (a British citizen) monopoly of production, sales and marketing of tobacco in Iran.⁸⁵ It was upon the success of the Tobacco movement that the necessity of paying lip service of some sort (theoretical or rhetorical) to Islam and the reform-oriented ulema became an integral part of many Iranian intellectual’s writings and political activism.

V. ISLAMIZING THE ‘RIGHTS OF MAN’ IN IRAN

Similar to Mirza Malkam Khan, an old acquaintance of his father’s, Mirza Yousef Khan Mostashar al-Dowleh Tabrizi (‘Yousef Khan’) (1822- 1896) was an ardent supporter for reforms in the fashion of Ottoman Tanzimat⁸⁶. Yousef Khan stands among the very first Muslim intellectuals (and perhaps the first Iranian) who adopted the rights language, in his book, *Yek Kalameh (The Book of One Word)*, written in 1870.⁸⁷ Mirza Malkam Khan largely followed Yousef Khan’s style in his treaties on the reconciliation of Islam and modernity.⁸⁸ Despite opposing views presented in the Persian literature,⁸⁹ Yousef Khan’s

⁸⁴ See Mashallah Ajoodani *Mashrooteye Irani (Iranian constitutionalism)* (Akhtaran, 2003).

⁸⁵ For a brief account of the Tobacco movement and the role of Afghani see Keddie et al above n 74 at 67. For the role of merchants in the Tobacco movements see Janet Afary *The Iranian Constitutional Revolution 1906-1911*, (Columbia University Press 1996) 29.

⁸⁶ Yousef Khan was *Chargé d’Affaires* of the Iranian Embassy in Saint Petersburg when he got acquainted with Ya’qub Khan. See Cyrus Masroori, above n, 65.

⁸⁷ Yousef Khan Mostashar al-Dowdeh *Resaleye Yek Kalameh The Book of One Word* Mohammad Sadeq Feiz (ed) (Terhan, 2003). Yousef Khan has another book on the merits of a railroad which he considered should be the constructed as a key to Iran’s development. See Adamiyat, above n 67, 182.

⁸⁸ Mirza Malkam Khan, *Serat al-Mostaqim (The Straight Path)* cited in Asil, above n, 68.

⁸⁹ Adamiyat, above n 66, 182. Adamiyat is among the historians who praises Yousef Khan for his progressive thoughts but ignores his attempt to reconcile modern philosophies of government with Islamic notions. While praising Yousef Khan’s understanding of Western constitutionalism Haeri forcefully dismisses Yousef Khan’s reconciliatory attempts as superficial and insignificant. See Abdolhadi Haeri *Tarikhe*

book seems to have had a significant influence on the constitutional revolution of 1906. Somewhat similar to the Mustafa Fazil's letter to Sultan Abdilaziz (1867), Yousef Khan's book became the manifesto of the constitutional revolutionaries. Yousef Khan in his book advocated for a codification of Sharia (Part I) while at the same time searching for an Islamist reading of the French Declaration of 'rights of man' and Citizen (Part II of his book).

Yousef Khan's doctrinal effort in constructing a rights language in Islamic terms was not due to his devotion to the Islamic faith and neither, unlike in the case of the Young Ottomans, was it a nationalist reaction to Westernization reforms since such fundamental reforms never took place in Iran. Rather, it was due to the same pragmatism that motivated Afghani to pay lip service to ulema, in the hope that they would join forces in any such reforms. This is clear in Yousef Khan's letter to his Islamophobic friend Akhound Zadeh, dated 17 November 1868 in which he utters words in excitement about how he just finished a book titled 'the spirit of Islam':

[I] have founded all the means of modernity and civilization in Quran and Hadith [*Prophet Muhammad's statements or practices*] ... so that nobody could claim that those are against Sharia, or that Islam is an obstacle to modernity and civilization.⁹⁰

The title was apparently borrowed from Montesquieu's *The Spirit of the Law* and later changed to the *Book of the One Word*⁹¹. At the time of that particular writing, Yousef Khan was the *Chargé d'Affaires* of the Iranian Embassy in Paris. There is little doubt in Yousef Khan's affiliation with freemasonry lodges in France. It is evidenced that in November 1869, before publication of his book, Yousef Khan received a Rose Croix Medal from the Masonry Lodge of *Clemente Amitie*.⁹²

Yousef Khan opens the book by recalling his spiritual dream to explain his motives for taking up such a project to the Muslim audience and

Jombeshha va Takapoochaye Feramangary dar Keshvarhaye Eslami (The History of Masonry Movements in the Islamic Countries) (Mashad, 1989). For a highly favorable account of Yousef Khan's reconciliatory efforts see Javad Tabatabaei *Nazariye-e-Hokumat-e-Qanun-dar Iran (The theory of Rule of Law in Iran)* (Tehran, 2008).

⁹⁰ Ibid.

⁹¹ Yousef Khan above n 86.

⁹² The Lodge of *Clemente Amitie* was associated with the Grand Orient de France (GODF) founded in 1728. See Esmail, Raeen, *Faramoushkhaneh and Framasonry dar Iran (The House of Oblivion and the Freemasonry in Iran)* (Amir Kabir, 1968).

thereby characterises his book as a religious mission.⁹³ In his dream a holy man's voice echoes in the Islamic world criticizing people of Islamic faith for lingering in the state of denial vis-à-vis the European progress.⁹⁴ The holy man blames the leaders of Islam for underdevelopment of the Islamic nations. Reminding Islamic leaders of the Judgment Day and their religious duties, he invites them to unite and start moving forward along the way of progress. As he woke, in a state of shock, by his own account, Yousef Khan consulted a friend, whom he believed to be well informed about Islam and its history. This friend, who may have been a mason master or colleague, explained to Yousef Khan the origin of Iran's problem: 'What you see is the telegraph, giant ships and the locomotive; but these are only effects and not causes.'⁹⁵ Yousef Khan's friend advised him that he had to shift his focus away from industrial and material developments to the underlying principles that bring them about. The secret behind Europe's progress, according to Yousef Khan's friend, is only 'one word' – it is the 'statute books' that contain all the rules and preconditions for wellbeing in the material world.⁹⁶

In the first section of his book, Yousef Khan elaborates on the differences between the French codes and Sharia law and makes recommendations that are largely inspired by the Tanzimat. In the second section, that constitutes its largest portion, he focuses his comparative analysis on the French Declaration of the 'rights of man' and of the Citizen. In this part, Yousef Khan shifts his focus from the French codes to what he considers to be 'the spirit of the codes' laid out in the 1789 Declaration of the 'rights of man' and of the Citizen. He notes, 'it would not be much fruitful if we delve into the details of the codes, since [the codes like] all secular laws are subject to change and are to be adapted to the circumstances and time.'⁹⁷ Yousef Khan refers to Article 1 of the French Constitution⁹⁸ in which the principles of the Declaration are referred to as French public rights. He goes on to demonstrate that this spirit of the French laws is in complete harmony with principles of Islam. In doing so, however, he adopted an eclectic

⁹³ *The Book of Tanzimat* by Malkam Khan, which was written before *the Book of One Word*, also begins by recalling a dream.

⁹⁴ Yousef Khan, above n 86, 38.

⁹⁵ *Ibid.*

⁹⁶ What seems odd to the contemporary reader is how Yousef Khan is impressed with predominantly English technology and yet he did not wonder that there were no codified rights of the French nature in the common law system of Great Britain at the time.

⁹⁷ Yousef Khan, above n 86.

⁹⁸ Yousef Khan finished his book before adoption of the Constitutional Laws of 1875 of the French Third Republic, February 24 and 25, and July 16, 1875.

approach towards the Declaration's principles. In his reconstruction of the seventeen Articles of the Declaration into a new set of nineteen principles,⁹⁹ Yousef Khan provided an almost identical translation of those principles that are less controversial (e.g. right to security or property rights) while he completely eliminated those principles that seem to be at odds with Islamic Shia jurisprudence (e.g. Article 1 on equal rights, Article 4 on liberty, and Article 10 on freedom of religion).

At the same time, Yousef Khan tempered the meaning of some of the Declaration principles or completely distorted their meaning, in order to make them plausible to the Iranian audience in particular the Shah and the ulema. For instance, Yousef Khan diverted attention from Article 1 (equal rights) to Article 6 (equality before the law), to provide a picture more consistent with Islamic law. In doing so, he avoided altogether the challenges of inequality of religions in Iran that had become central in the Young Ottomans' criticism of Tanzimat. Rather, he emphasized the fact that in Islam, all individuals, regardless of their religion (or at least Quranic Abrahamic religions) or gender, had *equal access* to Sharia courts. Moreover, he highlighted the areas of Islamic law, such as contract and property law, in which religious status is not generally deemed a basis for discrimination. Another challenge that Yousef Khan faced in his comparative exercise was regarding the enlightenment principles underlying Article 3 (popular sovereignty) and Article 6 (law as a reflection of general will) among others. Here are a few points on Yousef Khan's construction of a positivist top-down meritocracy and his promulgation of a narrow interpretation of civil and political rights:

First, as opposed to what Locke had been able to do, Yousef Khan, not having the luxury of living in the post-glorious-revolutionary context in England, had to avoid directly confronting the 'divine rights' of the monarch. Yet, he made a shrewd argument, somewhat in line with Rousseau¹⁰⁰, that the law would be more acceptable and wilfully

⁹⁹ Yousef Khan also takes the liberty to import a number of principles from sources other than the Declaration (some of which are from the French Penal Code). These principles include judicial tenure, the right to jury trial in criminal courts, the prohibition of torture, the freedom of businesses and industries, construction of public schools for the poor.

¹⁰⁰ See Jean-Jacques Rousseau, *On the Social Contract with Geneva Manuscript and Political Economy* (Judith R Masters trans, St Martin's Press) 48.

(The strongest is never strong enough to be the master forever unless he transforms his force into right and his obedience into duty. This leads to the right of the strongest, a right that is apparently taken ironically and in principle really established. But won't anyone ever explain this word to us? Force is a physical power. I do not see what morality can result from its effects. Yielding to force is an act of necessity, not of will. At

complied with if people participated in the law-making process in some meaningful way. The system that he eventually advocated for, the Iran of 1870, looks more like a platonic merit-based participation in political processes, in support of which he cited a number of Quranic verses and Prophet's practices.

Second, Yousef Khan, in a stark similarity with Kemal's idea of *usul-ii meshveret* (The Principles of Consultation)¹⁰¹, presented the Islamic concept of Shura (i.e. mutual consultation) to justify his idea of a representative parliament. One has to note, however, that Namik Kemal's use of this Quranic principle was alongside the institution of *biat* which Kemal had no contextual difficulty using under the Caliphate theory of the Sunni Ottomans. In the Sunni tradition of Islam, the Islamic community would give an oath of allegiance (*bey'at*) to the new caliph, on condition that he should not deviate from Shariah law.¹⁰² There is no such concept in the Twelve Imami Shia understanding of Islam however, according to which all the Caliphs except for Imam Ali were illegitimate. Therefore, while the Quranic concept of Shura may have a utility for Ottomans in that it reminded the sultan of their religious accountability, Yousef Khan read too much into this concept that, at best, could imply nothing more than an idea of a consultative assembly to advise the monarch on public matters.

Third, Yousef Khan repackaged the doctrine of separation of powers promulgated in Article 16 of the Declaration in the Islamic tradition of the separation of the *Mujtahed* (Islamic jurist) and *Mufti* (Muslim scholar who interpret the sharia). Yet again, not only is this far from the separation of the executive and the judiciary in the Montesquieuean sense, but it is also another unfitting application of a Sunni Ottoman concept. In fact, an idea similar to the separation of judicial and executive activity was found in the Ottoman concept of *Shakh al-Rais*, which had no historical application in Iran. Even worse, the concept of *Mufti of the Umma*, as opposed to *qazi* (Islamic jurist or judge), was a reminder of the Great Imam of the Sunni Islam *Abu Hanifa* who was regarded in his time as the spiritual leader (*Mufti*) of

most, an act of prudence. In what sense could it be a duty? ... Let us agree that might does not make right, and that one is only obligated to obey legitimate powers.')

¹⁰¹ See Section II.

¹⁰² Berdal Aral, 'The Idea of Human Rights as Perceived in the Ottoman Empire' (2004) 26(2) *Human Rights Quarterly* 452, 454–482, citing Niyazi Berkes, *The Development of Secularism in Turkey* (McGill University Press, 1964).

the Islamic world (*umma*).¹⁰³ It is rather odd that Yousef Khan attempted to relate to the Iranian ulema using the title and function of *Mufti* that was clearly absent in Shia Islam.

Fourth, Yousef Khan proposed an unfounded basis for the modern notions of freedom of the press and freedom of expression in the Islamic doctrine of *Amr-bil-Ma'roof* (enjoining good) and *Nahi-anil-munkar* (restraining from evil) that are rather related to social ethical standards than principles of liberty.

About two decades after the publication of Yousef Khan's book, Talebov – an Iranian merchant living in the Caucasus – published treatises as a freelance writer, reflecting on both the doctrine of natural rights and its contemporary critique. In a more engaging approach to the Western liberal thought, Abdolrahim Talebov (1832-1910) created a trilogy, *ketabe Ahmad* (the Book Of Ahmad),¹⁰⁴ modeled after Rousseau's *Emile*. In the course of conversations among different fictional characters, Talebov defined freedom as a 'natural right', which shall not be impeded or otherwise diminished. In *The Path of the Blessed*, Talebov made a reference to Ernest Renan, his contemporary French philosopher, stating that humanity is based on a 'natural' system of 'equality, fraternity and liberty.'¹⁰⁵ He put the absolutism of the 'rights of man' as follows:

The words *Huriyat* in Arabic, *Azadi* in Persian, or *Uzdenlek* in Turkish [liberty], constitute a 'natural' freedom; [that is] human beings, by nature, are born free and have autonomy over all their words and deeds. Except for their commander, that is their [own] 'will', there shall be no impediments in their deeds and words. God has not created any force external to man to impede him and no one has the power to manipulate our liberty, let alone give it or take it away from us.¹⁰⁶

This was immediately followed by a counterview to the absolutist approach towards freedom, which demonstrated his consciousness of Bentham's critique of the 'rights of man', even using his child-parent example:

¹⁰³ This is famously mentioned by the Young Turk revolutionary Ziya Gokalp. See Ziya Gokalp, Niyazi Berkes *Turkish Nationalism and Western Civilization* (George Allen and Unwin Ltd, 1959) 200.

¹⁰⁴ Abdolrahim Talebov, *Ketabe Ahmad (The Book of Ahmad)* (Jibi, 1967).

¹⁰⁵ Abdolrahim Talebov, *Masa'el al-Mohsenin (The Path of the Blessed)*, (Jibi, 1968) 140, 140-1.

¹⁰⁶ Abdolrahim Talebov, *Izahat Dar Khosouse Azadi (Reflections on Liberty)* quoted in Iraj Afshar *Azadi va Siyasat (Liberty and Politics)* (Tehran, 1978) 88.

Some scholars do not believe in unconditional freedom in the laws of creation in the first place. They [rather] consider obedience to be a basic element in the laws of existence from the world of particles to ...the law of birth subjecting children to the direction of a nanny, mother, teacher or a coach. After the stage of maturity, people's activities become subject to Sharia and the law of civility and thereafter with the inception of a nation it becomes subject to majority votes.¹⁰⁷

In this vein, rather than trying to 'Islamize' liberal concepts of 'rights of man' and utilitarianism, Talebov highlighted that human rights and liberties are always subject to certain limitations. He noted:

[I]n the same way molecules have absolute freedom (with no restriction and qualification) in a sense, but their freedom is nonetheless limited to the laws of gravity, man's freedom is subject to Sharia and custom.¹⁰⁸

In his division of liberty into the three categories of freedom of self, belief and expression,¹⁰⁹ Talebov noted:

[F]reedom of self implies that no one shall unlawfully imprison anyone or enter his property. Moreover, everyone is free as regards their conduct for which no one shall hold them liable unless such acts result in someone's harm or loss [of property].¹¹⁰

Similarly, Talebov also cited defamation as a legitimate example of a limitation on freedom of expression. The freedom of belief, in Talebov's view, could be restricted only if it led to anarchy or disturbed the peace among the people without clarifying what that might imply.¹¹¹ While Talebov defined 'law' in the tradition of 'natural law' references, he also echoed the positivist views of 'those recent scholars' who opined that rights could only be considered law 'if they are sanctioned by government force', referring to Bentham.¹¹²

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid; he further breaks it down to the notions of freedom of the press and freedom of association.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid 85. The following quote where Talebov cites and expounds the utilitarianism of Jeremy Bentham is most revealing: 'Bentham, an acclaimed philosopher, opines that humanity is by nature controlled by two prevailing powers: pleasure and pain. It is only under these two [qualities] that we could know what should be done, since good and evil or cause and deeds [effect] are undoubtedly determined by these two faculties....After laying out this introduction, the [primary] conclusion we reach is that wherever there is no law, there is no principle of utilities; and where there is no principle of utility, there is

Talebov's respect for Sharia, mentioned as a potential limitation on human rights and liberties, does not seem to originate from a sense of compulsion to please the ulema (as it is in the case of Afghani, Malkam and Yousef Khan), but from his own notion of Islam as a humanistic religion. He was not a proponent of Afghani's Pan-Islamism, which was fashionable at the time among Iranian intelligentsia. Rejecting both the European imperialism and the Iranian government's incompetence to defend its own sovereign rights, Talebov commented:¹¹³

Thereafter [the Quran's promise of] 'everything will return to its origin' will transform the law of the conquest to the law of Islam and humanity. The respectful readership may think of me as a Pan-Islamist or one of those who fantasize in vain about the union of the feeble Islamic nations. That is not the case I swear to Allah. This is just a fate determined by God that shall come true. Europeans can use no tricks to prevent this from happening since eventually one will meet the consequences of one's deeds, unless the nations who call themselves 'civilized' ...suddenly refrain from pursuing colonial ambitions and occupying the land of the weaker nations, reclaim humanity and understand the notion of rights in its true sense.¹¹⁴

Talebov's approach to Islam as a humanistic religion (rather than trying to force liberal ideas into Sharia law as understood by the ulema) seems to be an exception to the rule among his fellow intellectuals, who either had strong anti-Islamic inclinations (Kermani and Akhound Zadeh) or did resort to Islam and Sharia on the surface but only to cloth incompatible liberal ideas to lure the ulema into a coalition against the Shah (Afghani, Malkam, Yousef Khan). Talebov might thus be considered, in my opinion, to be the first genuine 'Islamic-intellectual' in Iran – a strand of thought, which came into the Iranian political scene much later in 1960s and became one of the main intellectual forces that brought about the Islamic Revolution of 1979.

VI. CONCLUSION

From Locke's idea of 'natural rights', which was advocated in direct opposition to 'divine rights' of the sovereign, through to present times,

no civilization; lack of civilization brings fear; and wherever there is fear there is no prosperity. Hence the lack of law equals the lack of prosperity: at 127.

¹¹³ For a detailed discussion on Talebov's view on positivism and international law see Sadeq Bigdeli 'Legal Positivism in the Pre-constitutional Era of Late Nineteenth-Century Iran' (2011) 19(2) *Waikato Law Review* 174.

¹¹⁴ Talebov, above n 104, 90.

'rights talk' has always been utilised as a 'language of claiming'¹¹⁵ to foster a political cause. The nineteenth century critics of rights were never ignorant of the political utility of the rights language for the minorities, on behalf of which the rights were claimed. However, in light of the violent aftermath of the French Revolution, they criticised the individualistic implications of an abstract notion such as the 'rights of man' for the community as a whole. Moreover, the theoretical foundations of the natural law doctrine enshrined in both declarations of the twin revolutions in the US (1776) and France (1789) no longer seemed robust to the philosophers of the new century.¹¹⁶

Early Muslim constitutionalists, similar to Western political activists, appreciated the utility of the liberal 'rights talk', but they were only interested in using it to the extent that it fostered their projects. The fact that they operated in a context fundamentally different from the one in the post-reformation Europe, and their confrontation with the colonial ambitions of European powers (particularly in the case of the Ottoman Empire as the self-proclaimed caliphate of the Islamic world) seems to have had figured highly in their calculations. In such difficult situations, the Persians and the Ottoman intellectuals had similarities as well as important differences in their consciousness and approach.

As advocates of constitutional government, both Ottoman and Persian intellectuals - many of whom being excluded members of the government elite - planted the seeds of constitutionalism which came into fruition in both countries in the first decade of twentieth century. Moreover, both the Young Ottomans and a stand of Iranian intelligentsia (signified by Afghani, Malkam, Yousef Khan) turned to Islam as a social driver and a means of opposition. Yet there are conceptual differences in their approaches to Islam and identity.

Iranian intellectuals used Islamic language in their project as a matter of political expediency to lure the influential ulema into a coalition against the Shah rather than a genuine belief or an affirmation of their 'Islamic self' Islamic *identity* however had always been a unifying theme among the Young Ottomans from Kemal and Ziya to Sauvi.

The Young Ottomans, unlike their Iranian counterparts, had gone through a failed experience of a Westernization reform of the

¹¹⁵ For more on this approach on rights talk see Martha Minow 'Interpreting Rights: An Essay for Robert Cover' (1860) 96 *Yale Law Journal* 1986. For a collection of seminal works on the theories of rights see Jeremy Waldron, *Theories of Rights* (Oxford University Press, 1984).

¹¹⁶ Waldron, above n 12, 14.

Tanzimat, in which the 'rights talk' was utilized by the government in ways that was seen by the Muslim Ottoman public to undermine the integrity of the Empire. In that environment, the Young Ottomans made use of a nationalist version the rights language in order to foster their constitutionalist political cause. Fully exploiting the populations' distaste of Tanzimat and its central theme of religious equality (in a positive and a negative sense), critical rights debate became a central theme in the Young Ottomans' opposition.

The minds of Iranian intellectuals, on the other hand, were more of a blank slate vis-à-vis Westernisation reforms as such reforms were never fully implemented in their country. Living mostly in the Caucasus, Istanbul or occasionally visiting Europe in diplomatic capacities, Iranian intellectuals were greatly frustrated with the political inertia of the Qajars. For most of them if not all, Tanzimat was a subject of envy rather than criticism. In that context, the abstraction of the rights language was simply clothed with Sharia concepts to pay lip service to the ulema as the most significant institution capable of mobilising the Iranian society. It was much later in the second half of the twentieth century and as a reaction to Westernisation reforms of the Pahlavis (1920 - 1979), when a strand of intellectual thought attempted to indigenise philosophies of government based on local (Shia) Islamic discourse.