

The Theory of Permissibility and Political Rights

Mahmud Shafii¹

Received: 2021/10/07 * Revised: 2022/11/18 * Accepted: 2021/12/15 * Published Online:
2022/05/07

Research Article



Abstract

The present article consists of three sections. The first section considers some dimensions of the discussion on ‘rights’ in the framework of religious thought with the centrality of jurisprudence, and distinguishes four types of rights, defining each of them. This section aims at specifying the central point of the subject of this study. In the framework of jurisprudence, rights – as opposed to obligations – contain benefits for a Muslim, and they have been mentioned inside *Shari‘a* in a variety of direct or indirect forms through legal or non-legal languages. Sometimes, such rights have not been mentioned in *Shari‘a*. The latter type constitutes of rights that we may cause them to be confirmed by *Shari‘a* through some certain mechanisms. In the second section of this study, the nature of the theory of *Ibāḥa* (literally, ‘permissibility’) and important

1. Associate Professor, Faculty of Political Sciences, Mofid University, Qom, Iran.
shafiee.mahmood@gmail.com

* Shafii, M. (2022). The Theory of Permissibility and Political Rights. *Journal of Islamic Political Studies*, 4(8), pp. 41-62. DOI: 10.22081/jips.2021.56784.1010

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arguments in this regard have been considered. Our purpose in entering this section was clarifying the mechanisms of confirmation of right of the fourth type. The last section of the article is dedicated to the political results of the theory of *ibāḥa* from the viewpoint of political rights. In this section, we have discussed in detail that by accepting the theory of *ibāḥa*, the way is paved for harmonizing the religious world with other worldly realms.

Keywords

ibāḥa, right, obligation, political rights.

Introduction

In a general classification, all commandments in the sacred religious law are of two types: either they state some ‘obligation’, which specifies a duty for individuals, or they state a ‘right’ specifying something for the benefit of individuals who possess that right. *Taklīf* (literally ‘obligation’) is derived from the words *kulfat* meaning pain and suffering. It refers to the fact that the obliged (*mukallaf*) person (the person who is qualified for religious obligation) naturally suffers from some troubles, physically and mentally, in performing those obligations. On the contrary, ‘right’ in the domain of legal-jurisprudential discussions implies some benefit for its owner. By getting a ‘right’, the person gets some benefits. Anyway, ‘right’ and ‘obligation’ are, in the social dimension, related to the individuals’ relationships with one another; and political rights – as opposed to political obligations – refer to a series of political enjoyments in favor of the rightful persons, i.e. people. In this regard, the institution of ‘state’ has the duty to fulfill those rights in favor of people by taking the best wise measures proper for any time.

Formally, we may distinguish four types of rights – whether religious, political, or non-political – as follows: those rights specified for individuals ‘directly’ by the owner of *Shari‘a*, i.e. Almighty God; and those rights credited ‘indirectly’ by the sacred religious law (*Shar‘*). The former type (those rights specified directly by God for His servants) are of two types: those rights specified for individual under the title of ‘rights’ and those specified under the title of ‘obligation’. For instance, in the verse on ‘inheritance law’ in the Quran, regarding the double share of the sons compared to the daughters, two-third share of the daughters whose number is more than two, the half-of-legacy share of a single daughter, one-sixth share of the parents from a child who has some children, one-third share of a mother from a childless child, and finally, one-sixth share of a mother

from a child who has some brothers, all are instances of rights specified by God in favor of individuals under the title of 'right'.¹ There are instances wherein specifying a right directly by God is not under the title of 'right'; rather, it is under the title of 'obligation'. For instance, in the verse on eating and drinking,² ostensibly Allah has ordered us to eat and drink in the form of 'obligations', but indeed, the servants' 'right' to eat and drink from divine blessings is recognized, and there is no obligation imposed on people regarding the necessity of eating and drinking.

In contrast to these two types of direct rights, there are "indirect" religious rights. In indirect rights, what is directly specified by the legislator is an 'obligation', but some rights can be implicitly inferred for individuals. In the verse on 'trust',³ God commands us to return trusts to their owners and to judge with fairness when judging between people. From this command, a right for the owner of the trust is implicitly inferable. The right of the owner of the trust is demanded from the person to whom the trust is entrusted to protect his trust and to return it safe and sound. Similarly, since the referees are requested to judge fairly, then those who have not received a fair judgment can

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1. Allah enjoins you concerning your children: for the male shall be the like of the share of two females, and if there be [two or] more than two females, then for them shall be two-thirds of what he leaves; but if she be alone, then for her shall be a half; and for each of his parents a sixth of what he leaves, if he has children; but if he has no children, and his parents are his [sole] heirs, then it shall be a third for his mother; but if he has brothers, then a sixth for his mother, after [paying off] any bequest he may have made or any debt [he may have incurred]. Your parents and your children—you do not know which of them is likelier to be beneficial for you. This is an ordinance from Allah. Indeed, Allah is all-knowing, all-wise. (The Quran, Nisā': 11).
 2. O, Children of Adam! Put on your adornment on every occasion of prayer, and eat and drink, but do not waste; indeed, He does not like the wasteful. (The Quran, A'rāf: 31).
 3. Indeed, Allah commands you to deliver the trusts to their [rightful] owners, and to judge with fairness when you judge between people. Excellent indeed is what Allah advises you. Indeed, Allah is all-hearing, all-seeing. (The Quran, Nisā: 58).

demand it from the referees, and such a demand is their ‘right’, which is implicitly inferable from that verse.

The fourth type of religious right, which is of great importance in this study, is the right that is inferred not from the first-hand religious texts (i.e. the Quran and traditions); rather, it is inferred from the lack of a religious obligation in the Quran and traditions. Describing this type of right as ‘religious’, while it is not found in first-hand religious texts, just means the confirmation of those extra-religious rights from the viewpoint of religious law. The method of confirming this type of rights by reliance on religious doctrines will be investigated here. Thus, the rights proposed in the framework of religious discussions are either religious or in the form of analytical and theoretical, which will be discussed in detail, and we may consider them confirmed by religious law (*Shar‘*). As an example of this type of political right, we may say – considering the desirability of consultation in Islam – if people make the Islamic ruler committed to decide according to people’s social demands in those cases where there is no religious decree, it is definitely necessary for the ruler – in view of a series of verses and traditions pertaining to necessity of being faithful to contracts – to fulfill that commitment in favor of people. Indeed, such a commitment puts a duty on the Islamic ruler’s shoulder and creates a right for people. The collection of political rights of the fourth type in the sphere of religious discussions are the product of proving the principle of *ibāḥa*, which will be discussed in this study in detail.

From what we said up to now, we may claim that there is an inextricable correlation between the right and the duty or obligation. Correlation of right and obligation can be explained in two ways. The first is that the rightful person or the owner of the right will implicitly have an obligation as well. That is, the rightful person will enjoy a right and simultaneously will bear some sort of obligation. For example, when God grants a right to people to give comments in

political affairs, they implicitly find a duty to obey the legal commands of the rulers in return for fulfilling that right. However, another form of explaining the correlation between right and obligation is that not the owner of a right but others will take over an obligation in relation to the right concerned. Today, in the literature related to the discussions on human rights, the correlation of right and obligation has been explained in the second form. This is while ‘right’ in the religious literature, especially in jurisprudence, is understandable sometimes with the first type and sometimes with the second type. In the present study, despite the fact that it is closer to jurisprudential approach, this second meaning has been stressed on. Thus, everywhere a right is proved for the natural person and legal person, some other person or persons – natural or legal – takes over a duty by force. Anyway, in the present study, by posing various titles, after detailed analysis and explanation of jurisprudential and theological doctrine of ‘*ibāḥa* principle’, we will investigate the results of accepting this rule for proving widespread political rights for people.

1. The nature of *ibāḥa*

In the Shiite religious literature, *ibāḥa* has different meanings: in the science of ‘principles of jurisprudence’, under the discussion of ‘practical principles’, it has been argued that in time of ‘doubt on obligation’, we avoid proving the obligation by enforcing the ‘principle of exemption’ to avoid ‘obligation’ and – consequently – infer that in these cases, believers have no religious obligation. Lack of religious obligation will lead to *ibāḥa*, that is being free from obligation in the sphere of religious affairs; that is, in the sphere of religious issues, instead of proving the necessary decree, we infer an unnecessary decree (Na’ini, 1496 AH, vo. 3, pp. 328-329).

The second type of *ibāḥa* has been considered in the science of jurisprudence. While dividing the laws of religion, the jurists have

said that the orders and decrees of religious sacred law are either obligatory or positive. Then they have divided obligatory laws into five groups: two of them are essential and three of them are non-essential. The two essential ones are ‘illicit’ and ‘obligatory’ laws, and the three non-essentials include ‘abominable’, ‘recommended’ and ‘permissible’. The three last ones are common in not having binding decrees or orders. Thus, these three types are called *mubāḥ* in its general sense. On the contrary, the third type that refers to permissible in contrast to abominable and recommended is also called *mubāḥ* in its particular sense.” (Sadr, 1408 AH, vol. 1, pp. 67-69; Sadra, 1408 AH, vol. 2, pp. 15-16; Hakim, 1418 AH, pp. 55-68). Nevertheless, *mubāḥ* in the general and particular senses contains a collection of special laws that have been stated inside the first-hand religious texts, the Quran and the authentic traditions in detail; and one cannot judge about their validity or invalidity except by explicit statements of religious law. It is noteworthy that in the present study, none of the meanings of *ibāḥa* are discussed, and the present brief explanation was for separating the subject of the present article – which is a theological discussion – from the subjects inside the jurisprudence and principles of jurisprudence. Therefore, the discussion of *ibāḥa* in the present article is a discussion outside the jurisprudence and principles of jurisprudence or even outside religion, because the present study is seeking to prove *ibāḥa* as a condition before entering religious law, which has been considered by theologians due to its discussion on God’s action and some of jurists have also discussed it in their jurisprudential books with the same theological logic.

Ibāḥa in the religious literature has a third meaning proposed in science of theology. *Ibāḥa* in this sense is indeed a theological theory that the Shiite theologians have proposed in contrast to the theory of *ḥaẓr* (prohibition) proposed by some Mutazila theologians. In science of theology, *ibāḥa* is not a religious decree dealt with in religious texts

(the Quran and traditions). Although jurists have resorted to a series of verses and traditions to prove that theory, the main basis of it is the rational-theological arguments. In its theological sense, *ibāḥa* is a rational judgment on the following fundamental question: “Has God made human beings free from obligations in the Preserved Tablet (containing all what He has legislated for human life as duties or rights), or He has willed there that human beings be dutiful, and that lack of obligation needs detailed religious statements?” Those who believe in *ibāḥa* claim that God has predestined man to be free from obligation in the sphere of legislation, and He has willed that as men were created free, specify their destiny out of complete freedom and in the self-sufficient and self-commanded form, making the human history and human society by relying on genetic facilities including their rational, sensory-empirical, emotional and other capabilities. On the basis of this sense of *ibāḥa*, any type of previously stated obligation is removed from human beings, and the existence of religious law (religious commands inserted in the Quran and authentic traditions) as a collection of previously mentioned obligations explicitly stated in the sacred texts (i.e. the Quran and the traditions transmitted from the Infallibles) is an exception for this great rule of *ibāḥa* (freedom from obligation).¹ What comes in the next lines is a series of arguments stated for this claim (*ibāḥa* in its third sense), speaking of it as an accepted theory throughout the history of the Shiite theology and jurisprudence.

1. This form of issue is in a way that is not restricted to the era before the advent of *sharī'a* (revelation of the Quran and issuing the hadiths). This is because it is not a temporal issue that makes a difference before and after the *sharī'a*; rather, it is the related to the image of two situation of the man that puts himself once inside the circle of *sharī'a* and once outside of it. This point is acquired from the way scholars propose the issue (Shiekh Tusi, 1417 AH, vol. 1, p. 108). Reza Islami has stressed on this point (Islami, 1385 SH, p. 126).

2. Proposing the views:

2-1. Sheik Saduq's view

In his *Al-I'tiqādāt*, Sheikh Saduq has asserted that “our belief in this regard - *ḥazr* (prohibition) and *ibāḥa* (permissibility) – is that everything is licit and an instance of permission unless it is prohibited” (Sheikh Saduq, 1371 SH, p. 141). In this regard, Sheikh Mofid believes that all things are divided into two types from the perspective of reason (without considering anything else, even *Shari'a*): those that are rationally vile and thus forbidden; and those about which it is not known – for any reason – whether they are prohibited or permissible. These affairs are the very normal ones that can, in some cases, along with expediency and sometimes along with corruptions. It is quite clear that proposing this subject means that the image of human situation outside the circle of religious law is accepted by the Shiite scholars and, accordingly, entering the circle of religious law and its relationship with its previous condition has been discussed. However, after entrance of *Shari'a*, the rule is that we say, “anything for whose prohibition there is no text is unconditional (i.e. it is permissible until a prohibition is found for it), because religious laws have registered the limits and has specified what was forbidden; thus, the rest are not prohibited. That is, ‘when the Legislator specified the prohibited things for us and distinguished them, the rest must be licit and permitted’” (Sheikh Saduq, 1371 SH, p. 141).

2-2. Second Martyr's view

The Second Martyr (*Shahīd Thānī*) (911-965 AH), one of the prominent Shiite scholars in the tenth century, has entered the discussion on *ibāḥa* in the latter sense and the related arguments in his book entitled *Tamhīd al-Qawā'id* in the section pertaining to the 14th rule. While dividing the human's behaviors, before the prophet's calling to prophethood, into urgent (such as breathing and the like)

and volitional (such as using natural blessings including fruits and other edible things), he asserts that regarding the first type (urgent behaviors), there is no need to discuss, because no prohibition can be imagined for them. but for the volitional behaviors, he believes that there are three views about them.

The first view states that all human's volitional behaviors are 'permissible'. The expositor of the book *al-Dharī'a* has attributed this view to Sayyid Murteza. Some have said that such actions are prohibited (*maḥẓūr*). The expositor of the book has attributed this view to the Mu'tazila of Baghdad. The third view is that we know neither *ibāḥa* nor *ḥaẓr* regarding the human's volitional actions. Although, indeed, the decree for these behaviors is in one of the two forms: freedom from obligation and having a prohibitive obligation, or there is no decree for them. The Second Martyr continues his discussion as follows: "the argument of the first view is that God has created His servants with a series of what they will enjoy. Thus, if it is illicit for them to use those blessings, creating them will be nonsense. Another reason is that when it is proved, for instance, that there is a corruption and harm in using various types of fruits according to their wish and taste, and – on the other hand – there are some benefits in using them freely, it will be good to do that." Those who believe in prohibition have argued that such a behavior is taking possession of God's property without His permission and thus it is evil and prohibited. However, it has been argued that permission has been realized rationally, because this enjoyment does not harm the owner; and thus, such behaviors are like someone who makes use of the shadow of someone's wall without his verbal permission. Then, the Martyr has investigated the most important benefit of this discussion: If there came an event at a time (like the present time when a broad and deep alteration in human life has occurred and endless events are happening in various spheres on a daily basis) and there is no fatwa in

that time, some believe that this event is placed under the same discussion (the situation of human behavior in the conditions before entrance of *Shari'a* and the prophet's calling to prophethood) from the viewpoint of having a necessary obligation or being void of obligation. Of course, some have said, in this regard, there is no need to return to the discussion on the situation before the prophethood in such newly-emerged situations; rather, we believe in lack of decree, in these cases, and say that the man has no obligation in those cases. Among the other consequences of this discussion is the right understanding of the Prophet's actions. Sometimes, it was possible that the Prophet would appoint someone to some task. If we believe in "prohibition and forbiddance", this means commitment to religious permission. But if we believe in the principle of *ibāḥa*, the permission for this behavior will be based on the 'principled exemption' and the principle of initial *ibāḥa* (permissibility) (Shahid Thani, 1416 AH, pp. 66-68),¹ not a religiously licit decree.

2-3. Kashef al-Gheta's view

Kashef al-Gheta was among the prominent Shiite scholars in the 13th century AH and believed that many traditions denote the 'principle of permissibility' (*iṣālat al-ibāḥa*) and the freedom of all events of life from the four duties (forbiddance, obligation, preference, and abomination) in places where there is no manipulation in human's right or there is no harm inflicted upon someone. It is even possible to argue that these traditions denote the initial religious permission. In

1. Regarding the Prophet's action, Shahid Thani has also asserted that there are two views on the case when the Prophet doubts whether a behavior is ritual or a normal one. The first view is that we may believe such behaviors are normal since the initial principle is 'no legislation'. The second view is that the behavior is ritual, since the Prophet has been called to prophethood for stating religious affairs (Shahid Thani, 1416 AH, p. 236).

that case, we may believe, with a higher degree of certitude, that anywhere that a duty of the four religious duties is not proved with the help from religious doctrines, freedom from religious obligation is proved as the religious law explicitly states. In Kashef al-Gheta's view, such a belief (that various events of life are void of religious necessary orders) have such an ample traditional support that it is evident like Sun in the midday, and Sheikh Saduq considers it among the Imamiya's beliefs (Kashef al-Gheta, 1422 AH, vol. 1, pp. 197-198).¹

Kashef al-Gheta has stated four reasons and justifications for his claim. The first is that enough contemplation on the owners of houses and owners of slaves proves when they spread a tablecloth for their guests and slaves and grant them mats and clothes and specify manners and etiquettes for them and then issue commands for using some of them and forbid using some others, being silent in regard with the rest – let alone being explicit about the permissibility of the rest – there will be no doubt about permissibility of the rest. Another argument is that the Muslims' way of life, and even that of all followers of other religions, was that they would not refer to their prophet and – after them – the religious scholars to get permission for various forms of their sitting and getting up, wearing, drinking, eating, making use of animals in proper ways and daily verbal communications. The third reason is that such a thing (making people ask questions from religious experts in all affairs of their life) is much difficult. In addition, this belief (freedom from obligation as a basic rule of religion) is evident for anyone who is insightful and contemplative (Kashef al-Gheta, 1422 AH, vol. 1, p. 198).

1. Among the well-known Shiite theologians, Sayyid Murteza (died in 436) was opposing to the principle of prohibition (*iṣālat al-ḥazar*) and has argued for *iṣālat al-ibāḥa* (Sharif Murteza, 1405 AH, vol. 2, pp. 549, 811, 821, 833; Sharif Murteza, 1405 AH, p. 101). Similarly, some have considered – due to lack of evidence – that *iṣālat al-ibāḥa* denotes lack of obligation. Some others have also resorted to the persistence of principled exemption (Islami, 1385 SH, p. 121).

2-4. Sistani's view

Regarding transactions (as opposed to worships), Ayatollah Sistani maintains that the general rule – based on most of the evidence for lawfulness and rightness – is permissibility (as long as it is not in conflict with the Quran and Sunnah). Accordingly, he has permitted all economic activities and new contracts in banks and new mercantile affairs without returning them to the methods of transaction in the past (Husseini Sistani, 1414 AH, p. 63 and Husseini Yazdi Firouzabadi, 1400 AH, vol. 1, p. 430).

2-5. Naraqi's view

Despite antiquity of Naraqi's view, due to the importance of his discussion in this regard and more details in arguing for his claim, I have brought Naraqi's materials at the end of this article to complete previous discussions. Mulla Ahmad Naraqi, the author of *'Awāyid al-Ayyām*, was among the jurists that have delineated an independent sphere out of the circle of religious laws, presenting arguments for it. Naraqi, who has offered more arguments for his claim with more explicitness compared to other jurists, has claimed that "the legally qualified person's freedom sometimes originates from the command of the Legislator for permissibility of something, and this permissibility is itself among the religious laws; and sometimes, the person's freedom is due to lack of religious law; and such permissibility is not among the religious laws, but is demanded by the reason's justification. And this *ibāḥa* is one of the two meanings of rational *ibāḥa*" (Naraqi, 1375 SH, p. 368). In the first arguments for lack of obligation where there is no known religious law, he says, "if a person's behavior in an era before calling to prophethood when there was no decrees or obligations and the time of obligation is specified to the first stage of calling to prophethood, such a person is quite free. Thus, it is evident that there is no definite transmitted reason for proving obligation and its permanency in cases where there is no clear

obligation from religious law” (Naraqī, 1375 SH, p. 169).

“There is no rational reason for proving obligation in all places. What is wrong with God’s specifying an obligation for some cases and not specifying anything for others?!” as the two following hadiths denote: “Be silent in cases where God is silent” and “God is silent in some cases”. “As a result, God may rationally make one of His servants or all of them obliged to do somethings, but He may be silent in other cases and the result will be that God’s servants have no obligation in those affairs.” (Naraqī, 1375 SH, p. 369).

“The basic point is that every action issued from every person in relation to every owner of a decree or an order is divided into two types: there is either no order for the owner of the command, or there is a decree for him in that action. The latter type is itself divided into five types of religious decrees. The first type is equal to the decree of *ibāḥa* (which is one of the five decrees) in not deserving for reward or punishment, because just as not deserving reward or punishment is the state of the *mubāḥ* (permissible) action, it is the state of the action with no decree as well” (Naraqī, 1375 SH, p. 370).

“The five decrees are those stated by God (obligation, permissibility, etc.), but where there is just God’s consent and there is no anger from Him, there is – indeed – neither a decree nor an obligation there” (Naraqī, 1375 SH, p. 371).

Naraqī continues his argument to state that there are many actions in the universe done by humans and non-humans about which there is undoubtedly a lack of decree. For instance, God is dominant over all actions done by animals, children and insane persons. He is dominant over all actions, motions and states of the one who has not heard anything about the religious law as well as all what human beings have done before God called the prophet into prophethood, and all states of inanimate things. And finally, these actions either please God or not. Nevertheless, none of the members of this collection is legally

qualified and are not liable to any decrees issued by God. In that case, there is no prohibition for other legally qualified persons to be without any obligation in some of their tasks (Naraqī, 1375 SH, pp. 371-372). It means that it is not the case that none of the actions is out of the circle of religious law, and that the mere consent or non-consent – as long as God has not credited a decree officially – is not sufficient for existence of a decree in such cases. The meaning of being legally qualified is that we are legally qualified in some cases and have specified decrees; but there is no rational reason for the claim that being so means that we have a decree for everything (Naraqī, 1375 SH, p. 371).

2-6. The last justifications and arguments.

In addition to previously mentioned arguments quoted from old and new Shiite scholars, we may argue – in favor of *ibāḥa* – that the permissibility of human's works is consistent with the principle of his free will as a divine gift; but If there is a pre-ordained rule for all human affairs and a person is always confined to previous religious duties with no opportunity for independent choice, the free and rational use of freewill will not be practical for improving and exalting the life in the spiritual and material dimensions, while humans' life experience has shown in its historical-social form that the minimum material perfection of his social life has been predestined with free application of human's freewill without being committed to a series of previous restricting rules. If we accept this historical-social experience as a reality, how can we imagine that God who has created the nature, human and *Shari'a* has nullified this experience on the basis of His legislative will!?

Another argument is that all *uṣūlī* jurists have argued in the discussion on 'practical principles' have acknowledged that whenever there emerges a doubt in the principle of [religious] obligation, the rule is that by implementing the principle of exemption, we must

negate such a probable obligation. This jurisprudential doctrine is rational when we assume the limitation of religious decrees; otherwise, this doctrine will become unstable, because by assuming the existence of previous religious decree for anything, the reason demands – in the time of doubt – that we act with prudence. This is because wherever there is a restricted doubt, the reason issues a decree for prudence, and this is what all jurists have acknowledged in regard with restricted doubt. Thus, from the fact that all Shiite *uṣūlī* jurists issue a decree for exemption in time of doubt in obligation, we may find out that they have accepted the restriction of previous religious law consciously or subconsciously, and that this acceptance – undoubtedly – necessitates acknowledgement of the principle of *ibāḥa*.

3. People's political rights

Acknowledging the principle of *ibāḥa* and assuming the previous essential religious laws as limited precede some important results and consequences regarding the political rights. The human political experiences in the sphere of social life contain – historically – great achievements based on which the man has succeeded to rely on his free will to achieve the perfectness of the society from various political aspects just like non-political dimensions. In this process, the man has succeeded to free himself from various types of internal and external dominances running on his life during long terms of history and to substitute better experiences for lower experiences. Undoubtedly, in this process, the human beings have established and institutionalized rules for perpetuating self-found or self-made achievements. Observing those rules secures their freedom from various political, social, economic and cultural dimensions. If a Muslim wants to make those human experiences the foundation of his political and social life, accepting the principle of *ibāḥa* plays a basic role there and without accepting it, a believer cannot easily make use of those human

experiences in practice; rather, he must acknowledge that in all areas, what God has declared as previous values regarding political obligations will be used as the foundation of his political life and, thus, human experiences must be put aside, because those experiences have not been based religious permission and are regarded illegitimate. By acknowledging the principle of *ibāḥa*, all human's political experiences have been considered as newly-emerged issues and are automatically accepted as far as they are violating a previous religious law. On the basis of pre-religious *ibāḥa*, Muslims can improve their life in various political dimensions in a permanent dialogue with everyone including non-Muslims. With this assumption, many verses and traditions have encouraged Muslims to accept such experiences, not in the form of superiority and devotion, but in the form of guidance and confirmation. With the acceptance of the principle of *ibāḥa*, we may acquire a series of imperative political rules in line with improvement of political life from various dimensions, including people's political rights; and in another process, we attribute such imperatives to *Sharʿ*. In this case, the religious affair will not be *a priori* affair preceding the man's will; rather, it will be *a posteriori* affair following the historical free man's will. These *a posteriori* religious affairs can be considered as secondary guarantee for people's political life. We can compare it to the chapter on oblation in the Shiite jurisprudence wherein believers create religious imperatives with their decisions. Similarly, in the discussions on rational independent things, considering the correlation of intellect and *Sharʿ*, the rational imperatives are turned into religious imperatives automatically. From this perspective, some verses and traditions have stated some imperatives in a general form that can cover conventional commitments. Thus, this type of religious imperatives is followed, in practice, by human-empirical imperatives. We may claim that in such cases, instead of religious laws, "non-

religious laws confirmed by *Sharʿ* are created. By reliance on the rule of *ibāḥa*, all political rights in the systems based on democracy may be recognized as long as they do not violate a definite religious law; and the Islamic state may be forced to implement those rights in favor of the Islamic society. No doubt, in the light of this rule, all types of political and civil organizations including political societies and parties; various forms of people's supervision on the state such as the right to expression, the right to protest, the right to criticism; the right to hold various form of gatherings; the right to have private visual, audio and written media, whether real or virtual; limiting the authority of the government and recognizing the private sphere; the formulation and establishment of the institution of law as the institution determining the most responsibility for the government and the most rights for the people; and many common political rights in new political systems can also be recognized in a religious society and its government. With this rule, all historical experiences creating political rights for citizens of the new society and the best and most desirable of those experiences are automatically confirmed by *Sharʿ* as well.

Conclusion

A. The modern world as the product of the human's maturity in the course of history and dominance of rationality and awareness over childhood and ignorance is founded on the axis of right-centeredness of social man. In the modern age, the 'religiously responsible man' (*mukallaf*) has given his place to the 'rightful man'. Under such conditions, recreation of the sphere of religion in proportion to the man's new expectations requires some certain foundations among which the principle of *ibāḥa* is one of the most important. By reliance on *ibāḥa*, justifying the rightful man is facilitated. According to the theory of *ibāḥa*, the obligations asserted in religious texts are exceptions on the general principle of

‘freedom from obligation’, specified by God as a universal rule in the initial stage of legislation, i.e. the Protected Tablet or *Lowḥ Mahfūz*. The exceptions are restricted to the religious obligations and inviolable rules given to the prophets in the process of revelation, and they have declared them to the people, as God’s other addressees, in the process of proselytism or propagation of religion. Outside the circle of what have been explicitly stated, in religious law or *Shari‘a*, as obligatory or unlawful, there is the vast circle of permissible things that are proved based on the principle of *ibāḥa*, and all people are free from the initial religious obligation in that endless territory.

- B. In the present political system, democracy as the best political system that recognizes the highest number of political rights for people as citizens establishing the government has been universally accepted. According to democracy, the origin of government is the free will of individual citizens who have constructed a community in line with common interests and maximizing the blessings of material and spiritual life according to social contract. We may consider acceptance of democracy along with all its related things as one of the important results of the theory of *ibāḥa* as long as it does not lead to violation of religious laws accepted by the society. According to that theory, we may formulate and adjust principles, rules and method of administration of the society as people discern without having concern for violating divine will and by relying on the wishes of Muslim people believing in monotheism and piety, establishing the self-constructed frameworks of the proper political system. The essence of democracy is the man’s self-commandment in the political and social life.
- C. In the present modern societies, the limited authoritative states who recognize the individuals’ private sphere and, in the public sphere, play their role along with other actors of the private sphere enjoy

public acceptability. By accepting the principle of *ibāḥa*, people – with their active presence in the scene of making a state – get the opportunity to support the state that recognizes their private sphere and, in the public sphere, is satisfied with universally accepted rules instead of exclusivism. Thus, by relying on the theory of *ibāḥa*, we can establish and continue the most developed political existing systems – wherein three domains of state, private sphere and public sphere have been separated, and are, at the same time, in interaction with one another – in the Islamic societies in harmony with religious worldview.

- D. The “institution of law” in modern system is responsible for specifying the duties and rights of two institutions of ‘society’ and ‘state’. The state and the society adjust their mutual relations in the contemporary regimes according to mutual rights and duties. In those regimes, the institution of law stresses more on the nation’s rights and less on the state’s rights. Besides, it limits the state’s power as the nation discerns. By relying on the principle of *ibāḥa*, the obstacles for establishing the institution of law and – consequently – adjusting the relations of the state and the nation in proportion to the demands of the modern regimes are removed, and the Islamic countries can also establish the institution of law – confirmed by the religious intellectual system – appropriate for religious society and, accordingly, create a strong support for executive guarantee for people’s political rights.
- E. The theory of *ibāḥa* has the capacity to reconcile the Islamic world – without mental religious refusals – with new human experiences. Naturally, many intellectuals of the Islamic world have the wrong idea that new human experiences cannot be recreated in Islamic societies. It seems that by going towards those experiences, Muslims go out of the light of divine will and in the abyss of polytheism, infidelity, atheism, hypocrisy, worldliness and

religious and moral darkness. The rule of *ibāḥa* has the function of removing such refusals and facilitating the mental ground for accepting new experiences by Muslims in the Islamic societies. In the framework of this theory, the Muslim life does never negate modernity as the product of common human experiences. On the contrary, we may claim that negating modernity from the viewpoint of religious thought is a type of alienation risen from the limitation of such a rigid religious thought. By returning to the theory of *ibāḥa* and reviving this abandoned thought in the Shiite religious tradition and heritage, we may answer many of the mental concerns of the new generation about Islam.

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