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Religious Democracy and Principle of National Sovereignty

In the midst of all questions surrounding religious democracy, the establishing of the actual position of national sovereignty is of great significance. The importance of this issue arises from the fact that national sovereignty is the basis of democracy. On the other hand, religious democracy considers itself sincere to national sovereignty (in the absence of 'Velayate Faqih' (Vice - regency of high religious authorities of Shi'a jurisprudents). If both facts are placed together, it is natural to question whether the thoughts of religious democracy can be loyal to actual national sovereignty or not?

The present article, which seeks to provide answers to these questions, is organized in two parts. The first part under the topic 'The Principle of National Sovereignty and the Theory of Democracy in the West and in International Documents' will shed light on the analysis and the meaning

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of national sovereignty and its application and also on the fundamentals and context of the theory of democracy in the west and finally the aspects of national sovereignty, based on the theories of democracy, given the multiple definitions on democracy and different readings and official definition of this theory which has been coded in international documents, notably in the ‘Universal Declaration of Human Rights’ and ‘the International Covenant on Civil and Political Rights’.

In the second part, the same topic will be reviewed from the point of view of founders and supporters of the theory “Religious Democracy” and eventually, comparative studies will be conducted. The second part will focus on defining the position of “Principle of National Sovereignty and Religious Democracy Theory” in the Constitution of Islamic Republic of Iran. The reason for allocating this section is to study the Constitution so that it can and should be known as the most reliable official and documented interpretation from the point of religious democracy and we can thus avoid the differences of opinion and definition of this theory.

This section will start with the history of the theory of Islamic Republic and its analysis which surrounds the internal conflict of this theory and the response to it. After that, Article 56 of the Constitution will be studied since this is the only article under the topic ‘People’s Sovereignty and Its Powers’ which expresses the concept ‘National Sovereignty’. A historical and analytical look at the history of inclusion (compilation) of Article 56 and the related discussion and developments is the basis of the present article and can be a good guide for our researchers of Human Rights. In conclusion section an explanation will be given on how the integration of democratic practices with monotheistic worldview on the basis of several principles of law making led to the drafting of this article.

Chapter I: The principle of national sovereignty and theory of democracy in the west and international documents

1. National Sovereignty; Basis of Democracy

Theory

People's theory on ruling and democracy: no matter what the definition is, this concept is based on national sovereignty. The influence and impact of people's vote which decides the social destiny of people is interpreted and expressed differently. The various scientific points of view describe the nature of sovereignty, but the output of all these discourses indicates that the meaning of sovereignty is the application of superior power, complete and uncontrollable power which has full capability and is not affected by any other powers.² In other words, sovereignty is higher power of authority or possibility of implementation of the people's will higher than others' will. (Ghazi, 1994, P.187; and Katoozian, 1998, PP.186-203)

For example, 'when it is said that the government is ruling, it means that it has a power which has not been taken from any outside sources and there is no other power and enforcement authority. It does not accept any obstacles and does not accept subordination to any other power. All types of competency drive from it, but its competency is from its own existence. (Ibid, Ghazi)

But the main question is: Who has this competency? We will see that important responses are given to this and similar questions later on. At this point we should know that according to the current political culture, especially in the western world, the supreme authority is given to the people. John Milton, an English poet and writer, and John Locke, an English philosopher, have found out that the people of the seventeenth century were the best source for having the ultimate helms of political

² Black's Law dictionary, West Publishing Co. 6thEd. 1992, P.1392

power and the French revolution actually put this principle into action. The US 'Declaration of independence also confirms this principle and says that the governments gain their just power by the consent of their makers, who are none, but the people's real representatives.

The principle of people's sovereignty has been approved by most of the world nations and the constitutions of most countries refer to this principle. In other words, the governments' rule is higher than the demands of certain groups of the people or factions of the nation. In this respect, the current regimes or governments draw their legitimacy and legality of their rule from the constitutions and obtaining the consent of people through their votes. (Ashoori, 1999, P.129)

However, to understand clearly the meaning of this term one should take two points into consideration. Firstly, there is a very fine and important difference between the 'people's sovereignty' and 'national sovereignty'. Supporters of the people's sovereignty feel that the right of government is set and every person has a share in it. The clear example of this belief can be found in the famous saying of Jean-Jacques Rousseau in his book "Social Contract". He wrote, "Let us assume that a government state consists of 10 thousand people. The share of each member of the government is one by ten thousandth of ruling power."

In comparison, the aim of supporters of the theory of national sovereignty is that 'the rule belongs to the masses, called the nation. Nation is a legal entity which makes it distinct from those who constitute it. It is understood that it is an abstraction of the population residing in the territory. The concept of 'nation' equals the 'people' and was created about a century ago and in 1791 it was added to the nations' constitutions. The power is an integral and non-transferrable part of legitimacy, and is related to the certain countries' constitutions. No section of the people or no person can own or allocate it him alone, or to a certain group.

The difference between the right of people's sovereignty and right of national sovereignty can be linked to the difference between general submergence and overall mass in the terms of methodology.

The second point to be considered in order to understand exactly the meaning of national sovereignty is the application of this term in different areas of laws. National sovereignty is generally used in two areas, namely the public international laws and the constitutional laws. That is why it has different meanings, and sometimes leads to making mistakes.

In the International Law Dictionary 'sovereignty' is defined as: "Higher indivisible authority or power for its own condition and applying its rules especially about individuals, properties and events within its boundary." (Bledsoe, 1996, P.82 and also refer, Black, op.cit. PP.1391-1392)

Sovereignty is equal to denying the mandates of the other countries and is the political independence of the government of each country. This term, in the area of basic laws means every individual has a role in decision-making for his/her own social destiny. In this regard, the theory of national sovereignty compared to other views, is that an individual or special class has been given the priority over others and has the right to decide and determine for others. The meaning of national sovereignty is the basis of the present document and later on, the origin and evaluation of its concept will be highlighted.

2. The context and principle of democracy

It is undeniable and unquestionable for any wisdom that a rule or government is necessary for human life. But the acceptance of this fact will not solve any problem and leads to raising a lot of other questions. The questions have kept the curiousness of the critics; minds in different

centuries and given rise to such major sciences as philosophy, politics and law.

The latest and main question after the acceptance of necessity of government is: “Who is the ruler and how should he rule?” Freedom, loving nature of human beings and the desire for more, leads to considering limitations for the ruler and the need for him to following rules and regulations. But at the same time, he questions himself as to whom and why anyone can limit his freedoms by introducing laws and making their execution compulsory in the areas of his freedom and why the choice of the public should be restricted? On the other hand, the questions are: “Why should the legislative or executive will of someone, for example the ruler, be preferred to the will and freedom of individuals? What is the source of this power and origin of this supremacy?” When these questions are asked in the executive areas issues relating to source of law are created and when it comes up in areas of politics or philosophy and followed by discussions related to source of legitimacy.

In response to the question of why and who has the right to rule the world, the simple mind and inherent nature of human beings directs him towards a higher power, which he truly knew that the original creativity and its being comes from that point. That’s why the oldest belief about is that it is from beyond nature, according to which the power of a ruler emanates from the creator of the universe. The will of God to hand over the work of governing and the source of power to an individual or a special class involves the creator. That is the same concept according to the framework of the laws devised by the Creator and is well known as the theocratic³ rule.

³ Theocracy is also interpreted as Yazdan-Salary or the “God-oriented approach” (Ashouri, Ibid, P.329)

But, due to the passage of time and the wrongdoings of the rulers, who have pushed aside the true rules devised by the Creator, and have gained illegal benefits from this intellectual backing (of mass), new problems have emerged.

The concept became obsolete and was replaced by ideas and by seeking to remove the role of the supernatural source in the governments they have looked for some solutions to this problem.

This move which in its evolution tried to take out religion from social life and limit it to individual issues is called secularism⁴. Although it is due to atheism and misunderstanding and ill-will, but in so many cases the result of the misuse and unjustifiable functions has been mentioned above. The people who have seen and felt the rulers' misusing of religion and the religious backups for justifying their own ways and manners have tried to disconnect these sequences of thoughts and removed the false aura of sanctity from the rulers. Also, by criticizing the rulers, they have tried to bring hopes of freedom, good governance, and goodwill for themselves. Unfortunately, the ruling systems of the Caliphs of Islam were also of this type. Different Caliphs like the Umayyids, the Abbasids, the Ottomans and similarly the Popes of the Medieval Ages' Europe had claimed to have the same type of divine governments. Yet in reality, they had all been filled with royal glory of their kingdoms, which were more similar to autocratic monarchies, especially since the succession method in all of them were based on the hereditary rule. (Ashoori, Ibid, P.329)

Hence⁵, the scholars, especially those of the westerners are believed to have weak and invigorated beliefs and on the other side had experienced

⁴ "Secularism" Ignoring the differences in the expression of the exact meaning of the word, this idea is clearly an output of "secularism" as it was said before.

⁵ It is seen from this analysis to what extent the actions of the church were affective in giving birth to the philosophy of modern politics and isolating religion from the social activities. However, as it has been mentioned, the performance of the Caliphs and

sufferings from the so called God rule in the name of God, found new ways for getting answers to their latest questions. In their early departure from this new course of thought they have ignored the role of religion in government and politics and on this assumption, they have again asked: Who has the right to rule over us?

In response to this question, three theories are presented:

A: A group of people who have been under the influence of this past thinking were in search of an individual who could be better than the others and have the right to rule over the others and none would have any right to supervise over his unlimited powers. This is called autocracy. The autocrat may gain his power from social traditions or social customs and/or either acquired it by force. In the first case, the legitimate

Muslim kings were also effective in this process. Their behavior also were responsible in separation of religion from politics (secularism) in Muslim communities, because we as see from the very beginning some of the Muslims, too, were strong believers of it, but why religious intellectuals? These Muslims, in reality had suffered from something else. The Sunni caliphs and kings were considered both as Religious Authorities (Olol-Amar) and as the governors and obeying them was considered a religious must. Therefore, the correlation of religion with politics, or governing meant misusing of religion by the politicians. Those who were the real supporters of separation of religion from the government or politics from faith had this concept of politics in their mind. They meant that the Ottoman Caliphs or any ruler should be considered only as a worldly authority and not a religious authority and the religious and national conscience of the nation should be free to criticize them and this was a correct saying as: ...Some of the Arab Muslims who defended the notion of the separation of religion from politics, did not want to deny the interference of common people in politics as a religious duty and even did not want to undermine the religion and religious validity of political leaders..., and the correlation of religion and politics as and according to above given explanation means rulers having a divine position: is based on the Muslim Sunni concept. In Shiism there is no such concept. Explanation of Shi'a from the point of view of the "OlolAmr" (leadership of prophets or Imams) has never been as mentioned above. (Motahhari, *Bitā*, PP.27-29)

autocracy is hereditary or by accepting the rulers' succession sequence and in the second case it is dictatorial. (Ashoori, Ibid, P.330).

B: In comparison, another group of people have tried to keep distance from individualism and tried to find out the favorite rulers from other classes or better groups. Aristocracy, or ruling of elites, is the result of this group's thinking. The meaning of this word, which has ethical justification, is the rule of elites whose advantage depends on hereditary or about noble blood and hence can be interpreted in "racial democracy" or the "rule of the nobles". To find the general criterion (except hereditary) for supremacy is very difficult and until now, in practice, the criterion have hardly been used for choosing the best people. In practice, the government is called autocratic if the power of the government is absolute and is in the hands of the upper class who have taken the rule by inheritance or by class privilege and other classes are not in its way. (Ashoori, Ibid, P.19)

Eventually the third group got the proper answer that is neither autocratic nor aristocratic but the people's rule or democratic ⁶ and is the proper answer. They did not find any proper reason to consider an individual or class or group to be better than the others and worthy to ruling for good.

The supporters of the rule of people consider the people as the source of legitimacy and transfer of the government to the rulers and that is why the vote of people is the only source of legitimacy of the government. Their (the people) will is the only deciding criterion and their satisfaction is the aim and unique desire of rulers.

⁶ Democracy- Democracy is made up of two Greece words "Demos" (means people) and "Cratos" (which means reign or governing)

3. Dimensions of National Sovereignty According to People's Rule Theory

Keeping in mind the vast differences in expression of the entities, various kinds and levels of democracy, (Shahsa, 2002, PP.10-14; Alem, 2001, PP.296-311; MisbahYazdi, 2001, vol.2, PP.198-200), theoretical and practical objections to that has no conflict with the minimum agreement and its overall acceptance. In spite of several views available in this regard, today, from the point of view of concept, as well from assessment indicators and measurements, democracy can find the magnitude. These values, which have gained legal aspects by being embodied in international documents, can be a source of arbitration and comparison of topics of the Constitution of Islamic Republic of Iran, as a written and official document of the Shi'a law with international standards.

In short, the concept 'right of participation of everybody in decision-making for public and social affairs' can be considered as an ultimate theory of democracy. The right includes participation in decision-making for basic selection, the establishment of a special political system and granting legitimacy and power to it, making rules and regulations and choosing the rulers and executers.

According to indicators, also matters such as public participation in politics, presence of freedom, political diversity, rule of majority and respect for the minorities, equality of people, prudent distribution of power are the characteristics of democracy in the new age. (Ghazi, Ibid, 758,771 and refer to Huntington, Ibid, PP.44-45)

It is clear that it is not necessary that involvement and participation of people in decision-making, regarding their own and their ruler's destiny, should be done directly.

This process, which can be implemented in primitive and very small societies, is imaginable, but in the present time it is impossible and it can be implemented indirectly ⁷ and through representative democracy.

However, whatever is reflected from the theory of democracy in strongly authentic and official forms and in valid sources of international laws are indicative that the people have free involvement in selecting the type of their government and their executive sources of power.

The basic text in this field is the Universal Declaration of Human Rights which was adopted by the General Assembly of the United Nations on December 10th, 1948, and has come in the preface of this article. The General Assembly has declared the Universal Declaration of Human Rights as a common goal for everyone and all the nations so that every individual and all the elements of the society should constantly keep in mind this declaration and should try to respect this law and freedom through education and training and be expanded by progressive measures both nationally and internationally. It should be ensured that the declaration should be identified and implemented among the nations or

⁷ Directive Democracy: This type of democracy is called direct democracy. This type of rule came into existence especially in Athens (fifth century B.C) and there every person (except women and slaves) took part in law making and for executive management to take up posts and responsibility in turns and for court hearings they were chosen by lottery. The Roman Republic also knew some aspects of democracy and for the first time they used the methods of representatives but with the emergence of imperial system, democracy vanished. But in the present world of 'Government-nation' states, which is known as democracy, this concept is indirect democracy and applied through representatives. It means that through electing the representatives for legislative assemblies who implement the demands of the majority, the people are involved in deciding their faiths. (Ashouri, Ibid, P.157) Although it is said that 'still direct democracy is implemented in some countries, like Switzerland and the United States of America' even in the laws of some countries like France and Italy, the public opinion or the people's votes which are considered as manifestation of people's will and instruments of democracy has been devised. Though, in almost all countries, the basic organization of democracy is indirect since this method, from the point of view of implementation, is more feasible.' (Ghazi, Ibid, P.766)

group of nations and among the people of various nations which are in its domain.

According to Article 21 of this Declaration:

1. Everyone has the right to participate in the affairs of his country directly or indirectly through its representatives.
2. Everybody has the right to access to equal opportunity for getting jobs in their countries.
3. Peoples' wills are the basis of the governments' power. The will can be given by election which should take place periodically. Elections must be general and with respect to fraternity or by secret ballot or any other ways in order to assure free voting.

Same terms have been emphasized in Article 25 of International Convent on Civil & Political Rights passed on December 16th, 1966, by General Assembly of the UN. (Act 16, December 1966 United Nations General Assembly)⁸

But in some sections of the Islamic Declaration of Human Rights different issues have been expressed. Article 23 of this declaration, which was adopted on August 5th, 1990, by the Foreign Ministers of Islamic Conference Organization in Cairo, states:

- a. A province is a safe keeping and any despotism or misuse of it is strongly prohibited because it guarantees the fundamental rights.

⁸ 1. Article 25: Every member of the society has a right and the possibility (without considering any one of those discrimination mentioned in Article 2) and without the unreasonable limitations to:

- a. Participate in public affairs management directly or through representatives who have been elected freely;
- b. In the periodical elections which are done authentically by equal public participation and secret voting and ensures the free will of the electorates to be elected or elect; and
- c. With equal rights based on general conditions they can acquire public posts in his country.

b. Everybody has the right to participate in general administration of his country either directly or indirectly. In the same way he can get general post according to Shari'a Laws.

The second clause 'b' of this article is not inconsistent with those regulations declared in International Declaration of Human Rights and International Convent on Civil and Political Rights. But it is clear that in clause 'a' the literature is entirely different from the above-mentioned documents. The reason of its differences will be seen in coming discussions.

On the basis of what has been said, the final claim and output of this theory of Democracy, two issues are given below. These two issues can be called theoretical and practical aspects of Principles of National Sovereignty.

Firstly: Basically God's demand and order has no influence in the social lives of the people. Whatever is there is the result of the will of human beings, whether in the area of legislative, executive or in the form of executers.

However, it is the people's vote which has chosen the ruling law and rightful ruler and has declared it legitimate. Briefly speaking, the will of the people is the basis and source of the governments' power. (Article 3 of paragraph 21 of Human Right Declaration)⁹

⁹ Such an understanding from the paragraph cannot be complete and without compromise. Anyhow for the continuation of this argument with those who have interpreted 'Source of Power' to 'Source of Legitimacy' and for completing their talks, they avoid conflict. The power of the Government as it is clear is different from legitimacy though power itself is crystallized from the 'will of the people' and this meaning is accepted from our point of the view. Nevertheless, it should not be forgotten that in the original text the word 'Authority', which in political terminology means 'Power', is used. Also regarding differences of 'power' there are lots of sayings and if we recognize it as a legitimate power, it becomes closer to the above interpretation even if its translation is not correct, even though the original part of this text is from Paragraph 3 of Article 21 of International Charter of the Human Rights which reads: "The will of the people shall be the basis of the authority of government."

Secondly: The people can and should play a role in the administration of their country. They are not only the source of legitimacy of the rulership and the rulers but should also involve themselves periodically in elections and by selection of administrators and executers of their choice.

They can complete their involvement in the socio-political affairs of the country. Therefore, everybody has the right to participate in the general affairs of the country directly or through elections of their representatives at the parliament.

These two articles are indicators of innovation of philosophical theory of democracy and its practice. The issues related to worldview of democracy, in the previous article have outputs that are practical, while in the second issue the practical process which is the product of belief in the absence of role of religion in the social life has been emphasized.

However in the west what has come up and become popular as a democracy theory is not the only worldview and not only a practical method but a special practical process based on the special belief regarding God, human beings and the world which has resultantly taken form, and the prescribed worldwide.

The second part of the article shows that, from the point of view of supporters of Religious Democracy theory, differentiation can be done between that world view and this practical process, and the method of democracy can be combined with monotheistic world view.

Chapter II: Principle of National Sovereignty and Religious Democracy in the Constitution

1. Projection of theory of Islamic Republic and its coordination with the Principle of National Sovereignty

From the time that Imam Khomeini (P), the late leader of Iranian Revolution, proposed a political system known as 'Islamic Republic' for administering the society after the collapse of the monarchical system in

Iran the public role in this form of government and its interaction with having a faith on rule of God and Velayat-e Faghi (vicegerency of the supreme source of jurisprudence) has become an important question in the mind of people in the world.

In that era his (Imam Khomeini's) strong faith for creation of the Islamic Republic was not an unknown issue, especially when he was in exile in Najaf, Iraq, he got a special opportunity for compiling and producing the theory of Velayat-e Faghi and its issues and in addition the jurisprudential issues 'Kitab-ul Bay'a' (Book on Trade) were made available, but the declaration the establishment of the 'Islamic Republic, later on raised many questions.

He emphasized that his intentions of announcing a republic is the same as everywhere else in the world and on the other side he stated that the absolute republic or the democratic republic or democratic Islamic republic are wrong explanations and that which is acceptable to us and our people is the Islamic Republic only, neither one word more nor one word less.

Due to this, the actual place of national sovereignty as a basis for 'republicanism and democracy' in the political system is based on the will of God and Velayat-e Faghi was one of the important questions and it was very natural, especially when Imam Khomeini (P) said: The Islamic Republic which I mean is exceptional in the world and has no precedent instance in the outside world. (Ibid, Vol.4, P.213)

In response to several questions from foreign journalists in this regard Imam Khomeini (P) tried to give a brief explanation. In one historical analysis we can find two new interpretations of his answers which can truly be considered as a complete explanation to the theory. The explanation he provided for the first time was given to a group of reporters in London. A news reporter asked, 'You say that Islamic Republic must be established. It is not clear for the French because a

republic can exist without a religion as its base. Is your opinion based on socialism then? Is it based on constitutionalism? Is it based on elections? Or based on Democracy? Or is it going to be a dictatorship? How is it?

The Imam (P) replied, “Republic carries the same meaning wherever there is a republic, but the reason that we say Islamic Republic is because the provisions and conditions present in it are dependent on Islam but the elections depend on the nation. (Ibid, Vol.2, P.351)

In the next interpretation the sentences used in response to the question of a British reporter of the Financial Times who said that the western world has no clear picture of your Islamic Republic, Imam Khomeini (P) answered that we would build the Islamic Republic. Republic gives the framework of the government and Islamic Republic is the content of that form which is based on the rules of God. (Ibid, Vol 4, P.157)

These responses show that the acceptance of republic as the framework and style of government and the way the society is managed is in the political thinking of Imam Khomeini (P). Imam Khomeini (P) in reality without accepting the basic concept of the theory of national sovereignty and democracy (separation of politics from religion and denying the influence of religion in the management of the society), welcomed them as a proper way of ruling the country. But is this differentiation possible? Whether it can limit the principle of national sovereignty with respect to some special principles and orders or abide by any terms and condition such as following the Islamic rules and regulations, the differentiation devoid it from its own meaning, and in other words, raises such questions whether phrases like ‘Islamic Republic’ or ‘theocratic democracy’ have any inherent differences or minimum ambiguity?

These were the questions which arose after the explanation of the founders of Islamic Republic and especially in a referendum¹⁰ for declaring the form of government and during the compilation of the constitution in political and practical circles.

In short, the answers to these questions were that not only there is no need to assume the principles of national sovereignty without the reservations of the theoretical framework, because these assumptions are against reality as is impossible.

All the speeches which were made in response point to two views which can be useful and instrumental. The problems of both analyses are common, but their origins are different. In the first example, Martyr Morteza Motahhari in response to a claim by some people regarding the ambiguous meaning of Islamic Republic says: "The word Republic clarifies the form of the proposed government and the word Islamic specifies its content. It is their mistake that they consider the concept ambiguous because they assume that the right of national sovereignty is equal to not having a method or ideology and lacking responsibility to a series of principle of thoughts regarding the world and intellectual principles about life. They believe if a person is a follower of and committed to a group, method, ideology and religion and wants to implement those principles or criteria, it is not a free and democratic process. So, if the country is Islamic, it means the people have faith and belief in the Islamic principles and without any questions accept these principles, it will by no means endanger democracy.

"As it was said, the issue of republic is related to the form of the government which is obligatory for a form of democracy. It means the people have the right to undertake their destiny in their own hands and it

¹⁰ First Article of the Constitution: 'The Government of Iran is Islamic Republic which the people of Iran voted in favor of in the general referendum of March 31 and April 1, 1970

does not mean that the people should consider themselves not to be exempted from orientation of any school of thoughts or ideology or from commitment to any schools of thought. The meaning of democracy is that everybody should have their own doctrines or that no one should have any doctrine and they should have no tendency towards any doctrine and they should not accept the principles of any doctrine either. These people should be asked whether belief in a series of logical philosophical and intellectual principles and considering these principles as indisputable are against democracy. Or what is against democracy is that the people do not accept those principles which are approved by the majority of the society and consider as disputable and would not permit the others to dispute their own beliefs and thinking?

Thus, this republic's being Islamic, is not compatible to national sovereignty or democracy as a whole, and the principles of democracy do not necessitate that in any society there should not be the rule of ideology and doctrine.

We see that political parties usually relate themselves with an ideology and this issue is not considered against the principles of Democracy and instead, they take pride in it. (Motahhari, *Around Islamic Revolution*, PP.79-83)

The second speech regarding the absence of compatibility of the principles of national sovereignty in the Islamic system was by Dr. Nasser Katoozian. In his articles which were published in the early days after the victory of Islamic revolution, he emphasized that "Republic is the overseer of the form of government and Islamic provision is related to the content." Meaning of republicanism, in Islamic society's consultation is in the form of customary practices in republican form of government by forming national parliament and the division of duties is done through enforcement agents. But, in this republic, the members of parliament are not free in consultation and law-making and are limited by

the content of republic which is Islam and they cannot make any decision against any the Islamic principles.

In response to the question whether this limitation means negation of national sovereignty, he gave a historical and intellectual explanation and provided a detailed analysis.

That analysis can be summarized under the thought that in democratic government, the government has absolute powers to rule and no obstacles can limit it, which is from Jean Jacques Rousseau, a renowned Swiss writer. Rousseau indicates that the origin of his own theory is based on freedom-loving nature of human being. Free human being cannot be restricted by anything except his own will, hence the foundation of government depends on the consent of all its members and a system gets its power from the agreements and by the creation of a society for meeting their needs.

All the powers are related to this legal personality which is the ruler and no one has the right to deny the rules and regulations which are made by it. Rousseau has termed this collective power as 'national sovereignty' which is neither transferrable nor divisible, and no power can take it from the nation and hand it to other rulers. But these powers should be given importance since giving the weapon of 'national sovereignty' to the hands of the rulers can also be dangerous. No government - either authoritarian or socialist or democratic - can be trusted for handing over the nation to them. There must be respected principles which could stop the misuse and selfishness during the times of necessity.

Those who view 'national sovereignty' as being useful for saving the powers of legislative assemblies try to safeguard at least the rights and freedoms which are necessary for every human being from violation by the law-makers and not leave everything to the hands of the governments. Adoption of regulations under the name of 'human rights' at the international level and obligations of the governments to respect

them and those matters which come under the 'right of nation' or 'freedom' or 'general rights and freedom' in the constitutions of all the countries, more or less, has been seen as efforts made in this regard.

Introduction of these regulations in the constitution means that the law-making government has no right to proclaim any regulations against it.

Now it is time to put forward the question: Why the prohibition of the government from violating the principles of human rights has not any base in the views of Marx and Lenin in the constitution of the republican form of government and national sovereignty. But when we speak of the Islamic Principles such harsh conflicts are evident which one cannot sum up in the concepts of Islamic and Republic. (Katoozian, Ibid, PP.106-119)

2. Chronicle and Suitable Explanation of Meaning of National Sovereignty in Article 56

Academic discussions on the right of national sovereignty and how to implement it in the Islamic system became very serious when the issue of drafting the constitution as an official interpretation and document of the theory of democracy and the Islamic Republic become an agenda of the Government of Iran.

In different places of the 'Details of the Parliamentary Debates on the Finalization of the Constitution of the Islamic Republic' we can find discussions which are explanatory on different and appealing visions regarding this point. Anyhow, the most serious discussions can be found during the compilation and approval of Article 56 of the Constitution of the Islamic Republic of Iran by the Founders Parliament. This article is the only one for which the application of the term of 'national sovereignty' had been introduced and while in the final compilation it could not so happen, but still its meaning has been mentioned under the

same article 'The Right of Sovereignty' and has also been dully discussed.

For better understanding of different opinions regarding this article and its coordination with the divine rule, it is necessary to emphasize on three issues: Analyzing the past records of the 'principle of national sovereignty' and the necessity of expressing it and finally its relations with the divine rule and Velayat-e Faqih from the viewpoint of the writers of the republic's constitution.

A) Analyses and background

In Article 15 of the draft of the Constitution, it has been proposed that under the topic of Rights of and the National Sovereignty (and the powers resulting from that) the under-mentioned text has been approved:

“The right of national sovereignty is the right of the people and must be applied for the benefit of all and no individual or group can monopolize this general divine right either for their personal interest or group interest.”

In Article 16 of the Constitution it has also been stated that the powers resulting from the implementation of the 'national sovereignty' right are: Legislative powers, judiciary powers and executive powers. (In details, in the IRI Constitution..., 1985, Vol.4, P.7)

The above-written proposal after preliminary studies by different groups of the parliament for finalizing of the Constitution of Islamic Republic of Iran went through some under-mentioned changes and was introduced for the approval of the Parliament:

“Right of National Sovereignty, which is the right of deciding the nation's social fate, is a general right which God has given to every individual of the nation and should be implemented, directly or by nominating, or electing qualified people in full compliance with the laws. No individual or group can allocate this divine general right for

themselves or use it to serve their own personal profit or special group benefits.” (Ibid, Vol.1, P.510)

From discussions and arguments which have taken place among groups who have studied the proposed Article 15 of the Islamic Republic Constitution we have no information as such but anyhow it has the following variations:

1. Suitable definition and comment on ‘national sovereignty’ which is ‘the Right of Determination of Social Destiny’;
2. Even though, in the previous text it has been mentioned that this right is ‘divine’, in the second version of the text it has been added that this is the God-given right to all individuals of the nation;
3. The technique of implementation of the Right of National Sovereignty in the new draft has been clarified, so that the nation can implement its sovereignty directly or by nomination or electing of the other persons. Of course, these persons must be qualified and meet the conditions and their selection must be completely as defined in related texts and according to the laws. Nevertheless, the proposed text of the analyzing group was not approved by the members of the Parliament and after a long and fruitful discussion; Article 56 was introduced in its present form for voting.

‘Absolute Sovereignty over the world and human beings belongs to the Almighty God, and it is He who has made the human beings the ruler of their social destiny. No one can take this divine right from the human being and it cannot be used for the benefit of the individual or special groups. And the nation can implement this God-given right in different ways, which will be presented in the next articles.’

This text was finally approved and ratified with 51 votes for, six votes against, and nine neutral votes. (Ibid, Vol.1, P.536)

B) The Necessity of This Principle

The necessity of this principle is that some of the writers of the IRI Constitution were opposing the inclusion of this article based on 'national sovereignty'. The various reasons for opposing this can be summarized in two arguments:

firstly, the contradiction with basic religion, and secondly repetitions in its contents and meaning. Some of the parliament members in explaining their opposition to the proposed article said, "The Right of National Sovereignty is a foreign term, and what place does it have in Islamic legal system. What verses or anecdotes do you have in this respect? You cannot take any alien legal point then say that that right belongs to the entire nation or belongs to every individual or that it belongs to all sections of the nation. In the Qur'anic verses: "هلل لا مكحلا نا" (In il-Hukmu Illa Lillah)"No one is the legitimate ruler, save for Allah". Sovereignty is confined to the Almighty, so what is your claim to sovereignty? (Ibid, P.524)

One of the members of Parliament pointed out the differences of impressions about the content of this article, stating that 'It has not the slightest relation with Velayat-e Faghi' and due to its ambiguities in its content he opposed and it as it is not known after the passage of 20 years how it may be misused. (Ibid, PP.518-519)

Another group of parliament members opposed the compiling of articles of National Sovereignty not because of their differences with basic religious issues, but because of the fact that National Sovereignty was equivalent to dependence of the affairs of the country on the vote of the people and the participation of the people in administering the society. They believed that there is no need to repeat it. (Article 514) (National Sovereignty) While having all those articles, there is no need for this article. (Ibid, P.517)

This group has added that inclusion of this article is because of the blackmailing by others and tried to make it a big issue. (Ibid, P.513) This discussion points out the repetitive question of the two members of parliament regarding the right of people especially after the approval of the article on Velayat-e Faghi. But in respect to the above opposition, the majority of the members of parliament believed that national sovereignty has no contradiction with divine rule and Velayat-e Faghi. (Ibid, P.512) As stipulated ‘the right of sovereignty’ is not the repetition of articles related to people’s participation because this article expresses the question of relations. It means to see the relation between National Sovereignty and God-given freedom to human beings with the right of the Divine Rule which are related to the Islamic Jurisprudence. (Ibid, P.518)

On the other hand, the articles under consideration are fully written in the first chapter of the Constitution and because the first chapter contains the general article and in the subsequent articles based on these overview, the inference of the matter will be done and in the beginning of each chapter or in the middle of each in future chapters, the issues related to these general principles will be discussed again.(Ibid, P.523) In the beginning of the chapters related to the country’s powers, the plan and discussions related to national sovereignty is necessary. The matter, which we say that these powers of the country emanate from one center, is eloquent in this chapter. (Ibid)

On this theme also ‘why the right of sovereignty which is a term of another culture’ has been brought up. It should be the pride of our culture and religion and literature that we should be able to answer the different topics and prevailing questions in the human culture and if, supposedly the right of sovereignty is not available in our culture and literature (the argument on this is a separate issue and not our present concern). As the type of terms and thoughts are raised, we shall also include them in our

Constitution and say that those issues which are available in the legal and political culture of the world are considered. From our point of view it has this provision and this source and resurrection. (Ibid)

C) Relation between National Sovereignty, Divine Rule and Velayat-e Faghi

Except for those few who consider the issues of national sovereignty contrary to Divine Rule and topic of Velayat-e Faghi, the writers of the Constitution emphasized the lack of contradiction of these concepts with each other. In between the discussions related to this principle we can extract several analyses which could prove the relation between National Sovereignty with Divine Rule and Velayat-e Faghi and among all those the issues related to the right of election is the most significant.

According to other views, even though the right of sovereignty belongs to God and from His side the sources of Islamic Jurisprudence (Foghaha) have received their legitimacy, the presence of elections rights can be considered as a right related to National Sovereignty. "We are the people and it is all the nations who even chose their religions..."

This indicates the same supreme source of (jurisprudence) that we mentioned in Article 5... the majority of the nation has chosen him and he is their elected choice. Therefore, in everything, even in choosing religion and the leader, the right of rule and right of election belongs to the nation...and this right is not in contradiction with the real argument based on forging God's rule. Thus, the right of governing and the right of election belongs to the nation...It is the nation who chooses, so the right of National Sovereignty is for the general public without having a special relation with a group or association. And on the basis of the right of national sovereignty they elect the Velayat-e Faghi (Supreme Source of Islamic Jurisprudence). (Ibid, P.512)

So, even Article 50 is not unrelated to the people's role. (Ibid, P.523)

Therefore, from the point of view of the writers of this Constitution there is no doubt about the right of sovereignty which basically belongs to God and on the other side, God has given this right to the people. They have named this God-given right, a right of sovereignty and interpreted as 'the right of deciding social destiny'. According to them, this right has no contradiction with the Divine Rule and Velayat-e Faqih, because firstly it is in line with God's absolute rule and not independently authentic. Secondly, even though in the absence of the Twelfth Imam (May Allah hasten his reappearance and uprising) the management of the general affairs of the society are "entrusted in the hands of just, pious, aware of the needs of the time, brave, and sagacious source of Islamic sources of jurisprudence", but according to Article 107, the (Supreme Source of Islamic Jurisprudence) alone, is responsible for that matter, and according to that article 'selection of the supreme leader is the duty of experts who are elected by the people'¹¹.

The presence of the right of election shows that the people have God-given rights for deciding their social destiny, under the framework of regulations and religious orders.

However, due to the reason behind the entire theoretical challenges which came up during the compilation of Article 56, first the adjective 'national' (Ibid, P.522) and after that the term (Right of National Sovereignty) was deleted from the main text (Ibid, P.535) and the preference was given to emphasizing on 'the absolute sovereignty over the world and mankind, which belongs to God' and should be mentioned only for the equivalent term 'the Right of Deciding Social Destiny'. Hence contrary to the previously proposed texts, this topic was added under Article 56 that reiterates 'The nation will implement the God-given rights freely in the way which comes in the following articles'.

¹¹ Article 117 of the Constitution has been reviewed in 1980

Those articles have included details on the three branches of the government (judiciary, executive and legislative branches of power) which are accordingly under the full control of Velayat-e Faghi, or the leader of Ummah (nation) without any limitation.

The Parliament's vice speaker at the end of the discussion in which the final version of the Constitution was discussed stressed that "This article would be further clarified in upcoming articles which would define the meaning of the leadership's legitimacy and its barriers." (Ibid, P.530)

As we will see the 'later articles' make clear the ways for applying the principle of National Sovereignty based on acceptance of democracy as a way of administration of the society and negating it would be based on a particular worldview.

3. Combining the Methods of Democracy with Monotheistic Worldview

Now is the time to come back to the first question: What is the place of the principle of National Sovereignty in the theory of religious democracy as approved and stressed in the Constitution of Islamic Republic of Iran?

We can come to the conclusion that in all the articles of the Constitution, democracy can be equivalent to the methods for management of government and general public affairs. It has not only no contradiction with the political jurisprudence views of the Shi'a school of thought, but also emphasized and approved explicitly and practically by it.

Yet, democracy, as a world view that naturally has effect in practice cannot be absolutely approved. By consulting the text and those approved articles and interpretations which lack Islamic explanation, this point is clear that in 'Islamic Declaration of the Human Rights' after the approval and acknowledgement of the entire Islamic countries. As seen in Clause 'A' of Article 43 of that Declaration instead of the phrase 'The base and

source of the government is the will of the people' which has come in the Human Rights Declaration, the element 'Velayat' or a trusteeship of God which should not be misused, has been emphasized.

Differentiating between the two can put an end to practical conflicts, misunderstanding¹² and public fallacy and erroneous beliefs.

A) Acceptance of Democracy as Being Equivalent to the Ways of Managing the Society

According to the Constitution of the Islamic Republic of Iran, "Management of the country must depend on the general views of the Iranians, by election of the President, Members of the Islamic Republic's

¹² Unfortunately, this type of misconception does not only prevail in the political atmosphere of the country but it can also be seen vastly in intellectual gatherings. For example, Ayatollah Mesbah-e-Yazdi, by pointing to this "basis of the western Democracy in the area of law-making" states that it is based on that which is a fact and is not separated from the demands of the people till we can derive the should and should not's." (1992, Vol.1, P.163) It is concluded that 'acceptance of Islam as a set of rules and regulations and law governing the society and acceptance of Democracy in law-making is not compatible at all'. (Ibid, P.165) But Hojjatoleslam Mohammad Murtazavi-e-Shabistani compares democracy as the one and only 'form and method of government' and without paying attention to the basic obvious differences, he criticizes Mesbah as 'one of the staunch opponents of Religious Democracy' (1991, P.108) It is also Ayatollah Mesbah-Yazdi who has clarified, "if democracy in terms of law-making means giving authenticity to the people's votes even if the laws are against Almighty's order, this type of democracy is not acceptable from the point of view of the Muslims and Islam. But if Democracy has any other meaning by which basic tenets of Islam and Islamic values can be preserved, the people can be involved in the legal and social issues of their society by electing their representatives, and by specifying their representatives who can formulate special laws for special times and places, then this is the process which is applicable in our country. It means that the people elect the representatives of the Parliament, the MPs consult and discuss the bills and then adopt them but the adopted issues are so conditioned that they should not be against Islamic Laws.

Anyhow, the people for specifying the regulations variables, under special conditions of time and place, chose representatives. This is the process which is available in our country and Imam (Khomeini - P) has signed this process, our Constitution has also acknowledged it and if democracy in law-making has the same intention then democracy exists and nobody is against that. (Ibid, P.181)

Parliament and councils' members and the like, or through referendum on matters which are defined in other articles of this Constitution. (Article 6)

“People of Iran, irrespective of the clan or tribe have equal rights, and color, race, language, and the like cannot be considered a privilege for anyone.” (Article 19) “The non-Muslims, or the followers of other religions and well-known faiths, also have the same equal rights regarding voting. They have their representatives in the Islamic Parliament, Majlis.” (Article 64) “They are free to perform their religious ceremonies and are free to follow their own faith in personal matters and religious education according to their own jurisprudences.” (Article 13) Also the government is responsible for providing all the facilities and implements them to avoid unjust discrimination and to provide justifiable facilities for all. (Article 3, Paragraph 7)

“The government is responsible for providing the socio-political freedom under the limitations of the laws.” (Article 3, Paragraph 8) It is responsible for providing the basis for general participation of the public in deciding their own political, social, and cultural destiny’ (Article 3, Paragraph 8) and ‘...for elimination of all forms of tyranny, dictatorship and monopoly’. (Article 3, Paragraph 6) The government officials are responsible for “...organizing economic planning of the country so that the forms, contents and working hours are such that every person, apart from his/her profession, would have enough time and energy for spiritual, political and social self-building and could actively participate in leadership of the country and for the betterment of their expertise and innovation.” (Article 43, Paragraph 3)

Moreover, “In Islamic Republic of Iran, it is the responsibility of everyone to call for well doing, propagating of the good and forbidding of the evil, and everybody is responsible towards each other, while the government is responsible towards the people and the people towards the

government. (Article 8) In this way, the people not only participate in the selection of the ruler and management of the country's affairs but they are also involved in 'Right to General Supervision' of the ruling group, as it is said in today's world. This is not only a right but also considered a responsibility.

In this way, "No official has the right to deny the legitimate freedoms of the people, by making rules and regulations in the name of preserving independence and defending the sovereignty of the country." (Article 9) "Inquisition is forbidden" (Article 23) and the press and publications are free in expressing opinion. (Article 24) The establishment of parties, societies and political and trade associations and Islamic associations and the well-known minority religious establishments (Article 26) and also gathering and demonstrations (Article 27) are considered rights and freedoms of the people.

Even from the point of view of law-making in the prescribed range of the Constitution, "The legislature is the responsibility of the Islamic Parliament, Majlis, which is made up of the elected representatives of the people" (Article 58) and above all "...in highly crucial economic political, social and cultural issues it is possible that legislature can take place through referendum and direct voting by the people." (Article 59)

People, even in the villages, by forming local councils "...supervise all social economical, developmental, healthcare, culture and educational programs" (Article 100) and "The governors, officials and other office bearers, who are appointed by the government, according to the power of the councils, are obliged to respect the decisions of these councils." (Article 103)

The entire system officials they get their positions based on the votes of the people, of course sometimes they are elected with the direct vote like the president (Article 114) and Parliament members (Article 62) and sometimes through 'indirect voting' such as "the selection of the

Supreme Leader, which is the responsibility of the Experts Council whose members have been elected by the people” (Article 107) and the experts on behalf of the people watch his activities and “...if necessary ‘he is removed from his position by them.’” (Article 111)

B) Denial of Democracy as a World Order

The Constitution of Islamic Republic Iran based on Islamic ideology and Jurisprudence has not accepted democracy as a special ideology. More clearly speaking, based on several articles of the IRI Constitution, some of which have been mentioned, the votes of the people for selecting the principles of political system¹³, management of the country’s affairs and selection of all office bearers does play main a role, but this does not mean that the Constitution does not consider any role for the religion and Divine Law in the social lives of the nation.

In the Islamic Republic of Iran, “The votes of the nation are the main scale” but not in terms of ignoring the religious norms and that rule is because one of the Divine laws and regulations is respecting the public opinion. Due to this, both the people and their representatives are responsible for using their rights in this respect in the framework of obeying the Divine obligations. For example, „Choosing the leader is the responsibility of the experts elected by the people,” (Article 107) but in making this choice of theirs “...they should not violate the term in articles 5 and 109 of the Constitution”, which are derived from the regulations of the jurisprudence (Ibid). In the same way the Islamic Consultative Assembly cannot formulate laws which are contrary to the principles and rule of country’s official religions (Article72) and the Islamic norms are ‘...applicable to all public principles of the Constitution and the other rules and regulations’ and even the legitimacy of the IRI President, who “...is directly elected by people’s vote’ (Article 114) is not recognized

¹³ “The Government of Iran is Islamic Republic which the Iranian people voted in favor of in their referendum.”

without “...the leader’s signature after being elected by the people and he has no religious or legal legitimacy for assuming office otherwise.”¹⁴

That is because according to the constitutional norms “...the leader is elected by the experts and has the duties of guardianship and the other responsibilities related to it”. (Article 107)

Acceptance of democracy as a process and its denial as an ideology equivalent to the theory derived from the analysis of western thoughts towards democracy at the same time, are combined in this Constitution. It has been seen that the issues related to democracy have been introduced in those western regions when the denial of religions’ role in politics and formation of the governments was accepted. They have accepted this preconception that God and His Divine Rule have no control over the social destiny of the human beings, and finally come to this decision that the best philosophy and method for the management of the society is based on the votes of the people.

This apt saying cannot be denied that “The main difference between Islamic thoughts and democracy relies on answer to the basic question: Whose rule it is originally authentic?” Democracy says it is derived from the people themselves while Islam says it belongs to the Almighty.

Democracy states that no one, not even the Almighty, let alone the prophets (P), the Imams (P) and Velayat-e Faqih, has the right to rule and decide for human beings. Anyone else apart from man cannot rule over

¹⁴ Imam Khomeini (P) believed that ‘If the President is not appointed by the Faqih (Islamic Jurisprudence), he is not legitimate. When it is illegitimate, it is idolatrous (Sahifehye Nour, Vol.9, P.251) and on the basis of this belief and in the process of implementation of paragraph 9 of Article 110 during the signing of the appointment of the first president, wrote, “...On the basis of this appointment, I validate the votes of the nation and I appoint him for this post, but validation and appointment and the votes of the Iranian nation is limited to this that he should not violate any sacred rules and would strictly follow the Islamic Constitution of Iran’”(Sahifeh-ye Nour, Imam Khomeini - (Vol.12, P.139). This same content was repeated in the appointment of the next presidents of the country. (Ibid, Vol.15, P.168; Vol. 15, P.279; Vol.19, P.371)

the mankind unless the people themselves would give this right to him “...Unless the human beings would give this permission to anyone no one has the capability to govern and rule over them, neither God nor the prophets and neither the Infallible Imam (P) nor the country’s guardian Vali-ye Faqih nor anyone else (in democratic systems)”. (Mesbah Yazdi, 1901, P.134) It is natural that this viewpoint would not be acceptable for those who with the establishment of ‘The Principles of Denial of Supremacy’ and on the basis of intellectual and religious reasoning have reached to the conclusion that apart from the Almighty no one has originally the right to rule over the others, not even His prophets and messengers (P) (Sadr, 1421, P.19) The outcome of this belief is that every legitimate government is dependent on the selection and appointment by the Almighty and the rules and regulations of social life and ways of managing the society is based on the ‘Divine Revelation’ of the Almighty, which in the absence and prevalence of religious orders, can facilitate the demands of the people and their representatives.

The Constitution too, which is based on this theory does not necessitate respecting the votes of the people’s rule unlimitedly. According to the Constitutional Article 2, the “Islamic Republic is a system based on faith in:

1. God (Who is One and there is no god besides Him) and dedication of rulership and law making in jurisprudence to Him and abiding by the His will as a dire necessity;
2. ‘Divine Revelations’ and their basic role in devising rules and regulations;
3. Resurrection and its constructive role in the process of human evolution towards God;
4. God’s justice in creation and legislation;

5. Continuous Imamate and Leadership and its crucial role in continuation of Islamic Revolution; and

6. Dignity and value of the human beings and their freedom along with responsibilities towards God...”

Article 56 also speaks about the right of National Sovereignty, before everything else, emphasizing that Absolute Power over the world and human being is only of the Almighty and He has made the human beings as the ruler of their own social destinies...”

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