



Cornell International Law Journal Online

Religion and Relativity in Iran

by Jordan Manalastas*

On Valentine's Day of 1989, the first Supreme Leader of Iran, Ruhollah Khomeini, became perhaps the world's surliest book critic by condemning British author Salman Rushdie to death.¹ Rushdie was charged with blasphemy for his less-than-flattering portrait of the Prophet Muhammad in *The Satanic Verses*.² Rushdie lived, but the violence and death that came to those involved in the novel's publication gave "hatchet job" a whole new meaning.³ Since Ruhollah Khomeini's reign, his successor Ayatollah Ali Khamenei has had a more forgiving taste in Western literature.⁴ More importantly, while his predecessor's reign was marked by a titanic scorn for the West, Khamenei's contempt has been more subdued.

One example of this is the more accommodating policy approach of Iran's new president, Hassan Rouhani, who has been touted (if reluctantly) as a sort of undeveloped Gorbachev.⁵ Indeed, Rouhani's more progressive attitude has shown through in his attempts to negotiate with the West over Iran's nuclear program. More recently, in a move that is almost Glasnostian, the new president has also

* Jordan Manalastas is a J.D. candidate at Cornell Law School, where he is the *Cornell International Law Journal's* Associate on Middle Eastern Affairs and a research associate for the Legal Information Institute. He holds an A.B. in political theory from the University of California, Los Angeles.

¹ See *Ayatollah Sentences Author to Death*, ON THIS DAY, BBC NEWS, http://news.bbc.co.uk/onthisday/hi/dates/stories/february/14/newsid_2541000/2541149.stm (last visited Jan. 26, 2014).

² See SALMAN RUSHDIE, *THE SATANIC VERSES* 93–129 (1988) (depicting "Mahound" as a flawed and desperate businessman in the dream sequence of a madman).

³ See, e.g., Steven Weisman, *Japanese Translator of Rushdie Book Found Slain*, NY TIMES (July 13, 1991), <http://www.nytimes.com/books/99/04/18/specials/rushdie-translator.html>.

⁴ He has gone on record to confess a fondness for Hugo and Balzac. See Akbar Ganji, *Who Is Ali Khamenei?*, FOREIGN AFFAIRS (Jan. 26, 2014), <http://www.foreignaffairs.com/articles/139643/akbar-ganji/who-is-ali-khamenei>.

⁵ See, e.g., Jochen Bittner, *Is Rouhani an Iranian Gorbachev?*, OP. PAGES, NY TIMES (Dec. 5, 2013), http://www.nytimes.com/2013/12/06/opinion/bittner-is-rouhani-an-iranian-gorbachev.html?_r=0; Stephen Kotkin, *Rouhani's Gorbachev Moment*, FOREIGN AFFAIRS (Nov. 24, 2013), <http://www.foreignaffairs.com/articles/140287/stephen-kotkin/rouhanis-gorbachev-moment>.

announced a Charter of Citizens' Rights (the Charter).⁶ The goal of the Charter, the first draft of which was released exclusively in Persian last November, is to "draw[] a clear image of the rights of citizens" in Iran.⁷

But is the Charter a meaningful step forward for human rights in Iran? Maybe not. As an initial matter, the document proclaims its own toothlessness. It is not an expansion of existing rights; nor does it create, under existing law, any new rights⁸—as one hopes to see, for instance, in the Saudi Arabian move to let women finally drive.⁹ Instead, the Charter's primary virtue is to clarify the government's position vis-à-vis its already impoverished rights regime.

Turning to the meat of its provisions, the Charter arguably has a number of additional deficiencies. For example, while Article 3.92 of the Charter prohibits torture, it does not provide any description of what types of torturous activities are forbidden.¹⁰ Moreover, the Charter's prohibition only extends to torture "for the purpose of extracting confession or acquiring information."¹¹ This means torture for other purposes may be tolerable. The death penalty provides another illustrative sample: the Charter does not forbid the execution of persons who were under the age of eighteen when they committed their crimes.¹² Thus, even putting aside its toothlessness, the Charter appears to fall short even on its own terms.

ON INFIDELS

But perhaps the Charter's most glaring blemish of all, at least to Western eyes, is its subtle refusal to proffer anything cognizable as a freedom of religious

⁶ See Arash Khalatbari, *Draft Charter of Citizen Rights for Iranian*, PRESS TV (Dec. 4, 2013), <http://www.presstv.ir/detail/2013/12/04/338266/iran-charter-human-rights-president-rohani-law/>.

⁷ Mohammad Saleh Sodqian, *New Iranian 'Citizen Rights Charter' Met with Mixed Reviews*, AL MONITOR (Dec. 6, 2013), <http://www.al-monitor.com/pulse/tr/contents/articles/politics/2013/12/iran-charter-citizen-rights-controversy.html#ixzz2rY49FFYS>.

⁸ See Draft Charter of Citizens' Rights, art. 1.1, Nov. 26, 2013 (Iran), available at <http://president.ir/att/shahrvandi.pdf>. [hereinafter Charter]. See also Nazila Ghanea, *The Iranian Charter of Citizens' Rights*, EJIL: TALK! (Dec. 10, 2013), <http://www.ejiltalk.org/the-iranian-charter-of-citizens-rights/> ("The Charter itself announces that it will not have an effect on existing rights, laws and obligations or on international conventions.").

⁹ See Ian Black, *Saudi Arabia's Women Hold Day of Action to Change Driving Laws*, GUARDIAN, Oct. 25, 2013, at 39. See also Jordan Manalastas, *Women Take the Wheel: A Humble Reformation in Saudi Arabia*, 1 CORNELL INT'L L.J. ONLINE 67 (2013), <http://cornellilj.org/saudi-arabia-women-take-the-wheel/>.

¹⁰ See Charter, *supra* note 8, art. 3.92.

¹¹ See *Iran: Charter of Citizens' Rights Must Enshrine Human Rights for All*, AMNESTY INTERNATIONAL (Dec. 19, 2013), <http://www.amnesty.org/en/library/asset/MDE13/057/2013/en/0583b691-f8ec-4693-97e6-bd8f0e35943f/mde130572013en.html>.

¹² *Id.*

expression. Like the Iranian Constitution, the draft Charter pays lip service to the varieties of religious experience, as expressed in a plurality of *mazaheb*.¹³ Language here is critical. *Mazhab*, or in Arabic *madhhab*, refers to a school of Islamic thought. Iranians enjoy the latitude to choose freely among these schools. However, a question naturally arises: what of non-Islamic schools or even non-religious schools? Likewise, under Article 3.117 the Charter declares that Iranians are free to organize and attend religious ceremonies.¹⁴ However, this right only extends to those religions recognized in the Iranian Constitution.¹⁵ The Constitution, in turn, acknowledges Zoroastrianism, Judaism and Christianity¹⁶ but conspicuously excludes Iran's largest religious minority, the Baha'i.¹⁷

What the Charter *does* protect is a limited scope of religious freedoms, conditioned on compliance with the law of the land.¹⁸ However, considering the inherent strictures built into that law, one wonders whether Iran enjoys a religious freedom worthy of the name. The *fatwa* on Rushdie's life, for example, remains firmly in place.¹⁹ There, Mr. Rushdie's thoughtcrime was not religious, but literary, and showed the ruthlessness of a regime that privileges *Shari'a* over free expression. Worse still, Iran still counts itself among the handful of countries that enforce, under penalty of death, the Qur'anic prohibition on apostasy from Islam.²⁰ This is particularly troubling from a religious liberty perspective because of Iran's prevailing clerical inking that the entire Baha'i religion is one collective apostasy.²¹

Having analyzed the Charter's toothless implementing mechanism and some of its substantive provisions, it appears the Iranian government's rhetoric that it respects its citizens' rights is, at best, empty posturing. More cynically, one might say that the Charter obscures what a "right" even means in the religious

¹³ See Charter, *supra* note 8, art. 3.21; see also Constitution of Iran, 1979, art. 12 ("Other Islamic schools, including the Hanafi, Shafi'i, Maliki, Hanbali, and Zaydi, are to be accorded full respect, and their followers are free to act in accordance with their own jurisprudence in performing their religious rites.").

¹⁴ See Charter, *supra* note 8, art. 3.117

¹⁵ See *id.*

¹⁶ Constitution of Iran, 1979, art. 13 ("Zoroastrian, Jewish, and Christian Iranians are the only recognized religious minorities, who, within the limits of the law, are free to perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education.").

¹⁷ See generally NAZILA GHANEA, HUMAN RIGHTS, THE U.N., AND THE BAHAI'S IN IRAN (2002).

¹⁸ See Charter, *supra* note 8, arts. 1.1, 3.11.

¹⁹ See Damien McElroy, *Mahmoud Ahmadinejad: Sir Salman Rushdie 'Still Under the Threat of Death'*, TELEGRAPH (Sept. 24, 2012), <http://www.telegraph.co.uk/news/worldnews/middleeast/iran/9563686/Mahmoud-Ahmadinejad-Sir-Salman-Rushdie-still-under-the-threat-of-death.html>.

²⁰ See 2010 INTERNATIONAL RELIGIOUS FREEDOM REPORT: IRAN, U.S. DEPT. OF STATE 3 (Sept. 13, 2011), <http://www.state.gov/documents/organization/171734.pdf>.

²¹ See DAVID P. FORSYTHE, HUMAN RIGHTS AND COMPARATIVE FOREIGN POLICY 217 (2000).

context. So while the president insists that the charter ought to be a point of Iranian pride,²² the Charter still falls short of any legitimate attempt to repair the cultural and normative gap announced so venomously by the first Ayatollah.

On Relativism

One should keep in mind that the Western conception of religious freedom, as cherished in America, did not emerge *ex nihilo*. It is premised on the principle of voluntariness, which was itself a distinctively religious notion—“forced worship stinks in God’s nostrils”²³—immortalized in Locke’s *Letter Concerning Toleration*.²⁴ We have inherited, of course, a more secularized version, but our latitudinarianism springs from a tradition that takes individual conscience almost *too* seriously. This is why the Iranian spin on religious liberty seems altogether alien.

With this in mind, it may seem unrealistic or even unfair to impose onto Iran a normative heritage it does not share. However, as a purely normative matter, a belief in *human* rights must entail some sense of universality, cultural difference notwithstanding. Otherwise, one risks enabling a solipsistic culture ruled by clerical decree. More importantly, Iran is a party to the Universal Declaration of Human Rights (UDHR), which protects not just freedom of thought and religion, but also the right to leave one’s faith.²⁵ By any sensible standard, Iran’s flimsy rights regime stands in violation of its international obligations under the UDHR.²⁶ Thus, whether Iran likes it or not,²⁷ the country’s leaders should afford religious minorities greater protection. Where individual conscience and human lives are at stake, it is not simply a matter of taste.

²² See Khalatbaria, *supra* note 6.

²³ PATRICIA U. BONOMI, UNDER THE COPE OF HEAVEN: RELIGION, SOCIETY, AND POLITICS IN COLONIAL AMERICA 35 (1986) (quoting Roger Williams).

²⁴ See JOHN LOCKE, A LETTER CONCERNING TOLERATION (James H. Tully ed., Hackett 1983) (1689).

²⁵ See Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc. A/810, at art. 18. (Dec. 10, 1948); UNITED NATIONS, YEARBOOK OF THE UNITED NATIONS 1948–1949, at 535 (1950), available at http://unyearbook.un.org/1948-49YUN/1948-49_P1_CH5.pdf (noting that Iran voted in favor of the Declaration).

²⁶ Of course, being just a U.N. declaration, the UDHR was not originally binding. However, since its adoption, many parts of it have become customary international law. See Tai-Heng Cheng, *The Universal Declaration of Human Rights at Sixty: Is It Still Right for the United States?*, 41 CORNELL INT’L L.J. 251, 270 (2008).

²⁷ The head of Iran’s judiciary has implied that it does not. See *The Head of Iran’s Judiciary: The Universal Declaration Mistakenly Joined*, BBC NEWS (Feb. 2, 2012), http://www.bbc.co.uk/persian/iran/2012/02/120202_123_sadeq_larijani_iran_un_human_rights.shtml. In opposition to the liberal democratic paradigm enshrined in the UDHR, Iran has adopted also the *Shari’a*-friendly Cairo Declaration on Human Rights in Islam. See EVA BREMS, *Islamic Declarations of Human Rights* in HUMAN RIGHTS: UNIVERSALITY AND DIVERSITY 241–84 (2001).