democratic. In this view, leadership is based upon the rule of "contract," and satisfaction and peace are considered among its principal components, and we know that the foundation of democracy is the informed satisfaction of citizens with the decisions that shape their lives. In this theory, religion and politics are not separate from one another, but the community is of two kinds: the religious community and the political community. The religious community is based upon equality in faith, and the political community upon order and political commitment despite the different religions and denominations of the citizens.

This is a good path that the late Feirahi opened. I think that if this is conjoined with that very precise separation between "the rational" and "the reasonable," it would be highly useful for delineating the framework of a governance that, by recognizing equal respect for the different religions and denominations in which citizens believe, can establish a kind of political solidarity based upon the satisfaction of all; this means "unity in plurality".

This is a project that I began 30 years ago under the title "the coexistence of union and separation" and have authored a trilogy of which two volumes have thus far been published; they explore the separation of "politics based upon rationality," which is suitable and specific to within cultural communities (religious, philosophical, ethnic, etc.), and "politics based upon reasonableness," which is suitable and specific to the regulation of relations among different cultural communities living in a single political society. I personally have derived much benefit from the late Feirahi's intellectual project in explicating my view, and I think many others likewise evaluate it as an auspicious beginning.

Why do you think Feirahi returned to political jurisprudence and placed it at the center of his research?

Political jurisprudence is a part of the heritage of our political thought that we cannot disregard. But we can, and indeed must, subject it to our review, our recognition, and expose it to time-awareness. This is the task that the late Feirahi prepared himself to perform. There are other experts as well who undertake this difficult task. The road is long, but, in my view, bright and illuminating horizons are also observable. On this path, if continuous intellectual dialogue and interaction between religious new-thinkers in the university and the seminary takes shape, it will certainly bring many fruits.

This is the same reconciliation between religion and knowledge that for more than a century has lit a fire under our religion-oriented reformers. The element of religion is one of the wellsprings of the formation of Iranian identity which, alongside Iranian culture, tradition, and modernity, constitutes the four elements that, in the words of Dr. Farhang Rajaee, without the establishment of a balance among them, comprehensive and sustainable development will not be realized.

Some still imagine that the sciences possess only universal aspects and are heedless of the particularity of important aspects of present-day knowledge. Therefore, they think that the shortcut and tried solution is recourse to secular political knowledge. If there were time, I would explain why recourse to secularism does not solve our problem. In Rawls's expression, secularism is itself a comprehensive and encompassing doctrine that cannot serve as the basis of an overlapping consensus and the social contract arising therefrom. Recent literature in the field of understanding secularism, such as Charles Taylor's magnificent work, also shows why secularism does not become prevalent among Muslim societies.

In your view, what is Professor Feirahi's most important legacy for the discipline of political science in Iran?

Dr. Hossein Bashiriyeh, to whom the science of politics in Iran owes a great debt, in recent years and after a revision in his approach, which previously was more firmly based upon political sociology, draws our attention to the "return to political thought". If we regard political governance as based upon structure and agent, we are necessarily in need of the design of the former and the cultivation of the latter in a manner compatible with the Iranian model of development. For this purpose, we are in need of knowledge-based public policymaking. Political science is an important foundation for this domain, and the important and principal foundation of political science is "political philosophy". In political philosophy, for us Iranians, both the recognition of the intellectual achievements of the West and the recognition of our own intellectual roots — whether Iranian or Islamic — are important. Perhaps this is the very thing to which the late Feirahi continually invited us under the title "return to the wellspring."

May God have mercy upon him, for the wound of losing him is still fresh. We must also remember his devoted wife, who likewise, unfortunately, bade farewell to the mortal realm a short while after him. The bearing of that heavy scientific burden by the late Feirahi would not have been possible without the patient companionship of his wife and family. May their memory be honored.

The interview first appeared in the Persian-language newspaper Iran.

Primacy of right over duty

Feirahi's unfinished project, capacities of democracy



By Mahdi Fadaei Mehrabani

Faculty member at the University of Tehran

OPINION EXCLUSIVE

Davood Feirahi, in the final decade of his scholarly life, pursued a project that one may designate as "a turn from duty to right" in the reading of Shia jurisprudence. This project was not a superficial rectification, but rather a foundational endeavor to alter the "point of departure" of political jurisprudence; a change that, in his estimation, could prevent jurisprudence from cascading into authoritarianism and engender a democratic capacity therein. Nevertheless, the fundamental question is whether jurisprudence, with its duty-centric structure and its vast corpus of normative rulings, fundamentally possesses the capacity to formulate a right-centric theory.

Feirahi maintained that the principal predicament of traditional political jurisprudence resides in the "sultanic order". In his conviction, the historical hegemony of this order caused jurisprudential questions to coalesce predominantly around concepts such as obedience, emirate, and the like, whereas concepts such as consultation and participation were relegated to the periphery. In his view, jurisprudence, within such a context, had presumed the sultanic order to be a natural affair, and this very presumption foregrounded an authoritarian interpretation of religion. Consequently, Feirahi sought to demonstrate that this authoritarian interpretation is a historical and political affair, not an intrinsic attribute of religion; in his estimation, one can read jurisprudence in a manner that does not culminate in authoritarianism.

His solution was to alter the starting point of jurisprudence from "duty" to "right". Feirahi argued that democracy becomes established where a right has been recognized. He held that Islamic jurisprudence is not merely a compendium of duties, but that within it, there exist wellsprings of rights that can fertilize the democratic facets of jurisprudence.

On this basis, he endeavored, by emphasizing the "duality of the concept of right and ruling," to re-read a narrative of Shia jurisprudence that reckons the domain of "right" as more expansive than that of "ruling," and thus to furnish an opportunity whereby democracy might assume the seat of governance.

To substantiate this primacy, Feirahi turned to the "practical principles". By examining the conduits of the production of right in jurisprudence, he made use of principles that posit the default as the absence of duty. His argument was that in instances where no clear ruling exists, the basis of exemption propels the jurist toward the "principles of non-ruling," and "the absence of evidence is evidence of the absence of ruling". In his view, this situation is the product of the lack of evidence, and it is designated as "rational permissibility," wherein both reason and revelation are conduits for the production of right and confer discretion upon the duty-bound. Feirahi even went further and stated that "the most abundant and richest source of the production of right in Shia thought is the religious ruling and especially the rights emanating from the generalities of the law."

Nevertheless, this is precisely the point at which one may pause within Feirahi's project. He himself acknowledged that Shiism, in contrast to the West which arrives at democracy via the path of natural rights, and the Sunnis who arrive via the path of consultation, can open a path toward democracy only from "spheres devoid of text". This acknowledgment implicitly confirms that the principal arena of jurisprudence is the arena of duty, and that right can only emerge on the periphery and in the shadow of the Lawgiver's silence. It is for this reason that certain scholars, in their assessment of Feirahi's project, have articulated this limitation with clarity: that he was able to find a path from within the jurisprudential tradition for the justification of fundamental human rights, but this path encountered numerous limitations before religious texts. For the practical principles to which Feirahi appealed were operative only where the terrain was devoid of religious text.



Davood Feirahi
faradeed.ir

This limitation is precisely where the more fundamental critique becomes manifest. The principal bulk of jurisprudence is rulings and oughts and ought-nots; a jurisprudence that deems its principal task to be the determination of the duty-bound's obligation before the Lawgiver. Within such a structure, "right" is not a foundational concept, but rather an incidental and conditional affair. Feirahi, in order to open a space for right, was compelled to take refuge in the "region of emptiness"; the very place where jurisprudence is silent.

But this refuge-seeking is, in a sense, a contradiction of purpose: if the democratic capacity of jurisprudence is activated only in its silence, then this capacity arises not from the heart of jurisprudence, but from its void. Feirahi himself formulates this reality thus: that the instances in which one arrives at a ruling directly and independently from the Holy Qur'an and the Sunnah are exceedingly few, and therefore in most instances where no clear ruling exists, one must posit one's basis upon exemption. This position, though an endeavor to magnify the "region of emptiness," is simultaneously an acknowledgment that the principal burden of jurisprudence rests upon duty.

Another question that arises here is why Feirahi insisted that this reconstruction be undertaken within jurisprudence. His answer was clear: in Feirahi's conviction, Islamic civilization is jurisprudentially centered, and "whatever is to occur in this civilization must pass through such a discipline." He regarded jurisprudence as "the most corpulent discipline of Islamic civilization," which occupies the place of civil wisdom in the West. Therefore, from his perspective, any political rectification in the Islamic world must inevitably pass through jurisprudence. This argument, though historically comprehensible, places itself before the question of whether other Islamic disciplines do not possess greater capacities for democratic formulation. Feirahi's critics have likewise foregrounded this point: why did he not envision a path other than jurisprudence? Would the latent capacities in other Islamic disciplines not have paved a smoother path to democracy?

In this midst, Islamic mysticism, by virtue of its gradational and stratified epistemology, offers a different capacity. Mysticism, in contrast to jurisprudence which operates within the domain of binding norms, emphasizes the inner journey and transformation of the human being and regards truth as a gradational affair. Within such a framework, "right" is formulated not in opposition to "duty" and in a region devoid of text, but as the manifestation of the existential truth of the human being and his relation to the Absolute. This capacity, though it does not directly culminate in political democracy, furnishes a space for a non-authoritarian understanding of the human being's relation to God and to the other, which differs from the duty-centric logic of jurisprudence. Feirahi himself showed no attention to this path, but his project at least leaves this question remaining: whether the democratic reconstruction of Islamic thought must pass solely through the passageway of jurisprudence or can also avail itself of other wellsprings?

In sum, Feirahi's project must be evaluated as a sincere endeavor and a serious theoretical undertaking for the reconciliation of jurisprudence and democracy. By propounding the primacy of right over duty, he opened new horizons and demonstrated that jurisprudence can be read otherwise. But the duty-centric structure of jurisprudence and the dependence of his project upon the "region of emptiness" renders manifest the limitations of this path. Perhaps the most important achievement of Feirahi is not the presentation of a final model, but rather the opening of this very question: whether jurisprudence, with all its historical and structural weight, can bear a project that is, at its foundation, in tension with its internal logic?

The article first appeared in the Persian-language newspaper Iran.



Davood Feirahi (R) listens to a critique of his book, titled "Jurisprudence and Politics in Contemporary Iran," by his colleague Saeed Edalatnejad in a session attended by students and scholars on April 14, 2015.
AMIR GHOLAMI/IBNA

> Feirahi maintained that the principal predicament of traditional political jurisprudence resides in the "sultanic order". In his conviction, the historical hegemony of this order caused jurisprudential questions to coalesce predominantly around concepts such as obedience, emirate, and the like, whereas concepts such as consultation and participation were relegated to the periphery. In his view, jurisprudence, within such a context, had presumed the sultanic order to be a natural affair, and this very presumption foregrounded an authoritarian interpretation of religion. Consequently, Feirahi sought to demonstrate that this authoritarian interpretation is a historical and political affair, not an intrinsic attribute of religion.