

The Origin of Human Rights in the Legal Systems of Islam and the West from the Perspective of Neo-Sadraean Philosophers

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ABSTRACT

The question of the origin of human rights is among the most fundamental and controversial issues in the philosophy of law, as the perspective adopted toward it shapes the framework and orientation of an entire legal system. Western schools of thought, primarily grounded in the concepts of social contract and collective will, define the origin of rights through legal positivism, wherein the validity of legal rules depends on social consensus. According to this view, rights exist only when society collectively agrees upon them, and otherwise, no rights are recognized. Such an approach disregards real interests and harms as well as the ontological structure of human beings, reducing legal propositions to contractual constructs imposed upon individuals and society. In contrast, Neo-Sadraean philosophers, drawing on Islamic thought, argue that the origin of human rights lies in the Divine. From this standpoint, legal norms are instituted by God in accordance with real interests and harms and in harmony with the ontological structure of humans and society. This study, employing a descriptive-analytical method, examines the origin of human rights in Western and Islamic legal systems from the Neo-Sadraean perspective. The findings demonstrate that the ontological argument (God's absolute ownership of existence) and the anthropological argument (human incapacity to attain full knowledge of human existence) both affirm that only God can be the source of human rights. Thus, whereas legal positivism confines the origin of rights to social contract, the Neo-Sadraean view situates their true and ultimate foundation in the Divine will.

KEYWORDS: Origin of rights; Human beings; Western legal system; Islamic legal system; Neo-Sadraean philosophers.

INTRODUCTION

The question of the origin of human rights is one of the central debates in the philosophy of law. Theistic and atheistic scholars alike have addressed this issue from different perspectives, each grounded in distinct worldviews and anthropologies. In the Western tradition, the theory of natural law once held a dominant position, positing that the source of human rights lies in human nature or the nature of the universe. According to this theory, fundamental rights—such as the right to life, liberty, justice, and property, as well as the reciprocal rights and duties between the individual and society, parents and children, or rulers and subjects—are all derived from nature itself, and no authority is entitled to revoke these natural rights.

However, with the rise of legal positivism, the theory of natural law gradually lost its influence in the West and was replaced by the contractual theory of rights. Legal positivism asserts that

legal obligations and prohibitions are purely conventional constructs, bearing no relation to objective reality. In this perspective, legal norms do not arise from genuine interests or harms but from human agreements regarding what should or should not be recognized as a right. Consequently, rights are contingent upon social contracts and the consent of the majority, and they may also disappear once public consensus is withdrawn, regardless of the existential structure of human beings or society. Public consent may be expressed directly through elections for legislative and executive representatives, or indirectly through the decisions made by parliaments and governments acting on behalf of the people.

In contrast, the Islamic legal tradition rejects both natural law theory and legal positivism. From the standpoint of Islam, the origin of human rights is God Almighty, who alone possesses the authority to legislate for His servants. Those to whom God has delegated limited legislative authority may enact secondary and context-dependent legal rulings, but always within the framework of immutable divine laws. Unlike legal positivism, which lacks any rational or demonstrable foundation, the Islamic perspective is grounded in both rational arguments and revealed sources. The present study seeks to examine the views of the Neo-Sadraean philosophers on the origin of human rights in both Western and Islamic legal systems

1. Conceptual Clarification

1.1. The Concept of Origin

The term *origin* in its lexical sense denotes source, fountainhead, place of manifestation, beginning, locus of occurrence, and point of emergence (Raghib al-Isfahani, 1412: 807; Qayumi, 1418: 312). In the technical sense, it refers to the efficient cause (*causa efficiens*). Thus, when we inquire into the origin of a phenomenon, we are essentially seeking its causal ground. For example, when we ask, “What is the origin of culture?” we are in fact asking: “What brings culture into existence?” Similarly, to investigate the origin of civilization is to analyze the causes of the emergence of civilizations. In general, every phenomenon, whether conceptual or ontological, cannot exist without a cause; hence, it necessarily has an origin. Law is no exception to this rule and therefore must have a causal source. Accordingly, in the philosophy of law, the inquiry into the origin of rights is essentially a search for the causal ground of legal norms.

1.2. The Concept of Right (*Ḥaqq*)

The term *ḥuquq* (rights) is the plural of *ḥaqq*. Lexically, *ḥaqq* carries nearly seventy meanings, among them: reality, the opposite of falsehood, truth, due compensation, an undeniable existent, and even the Absolute Existence, i.e., God Almighty (Raghib al-Isfahani, 1412: 246). In summary, all these usages contain the notion of *stability* or *establishedness*, whether existential and real, or conventional and constructed (Misbah Yazdi, 1392: 27). Scholars—jurists, philosophers, and others—have proposed around thirty technical definitions of *ḥaqq*, each from a specific perspective, but here we restrict ourselves to the Neo-Sadraean approach.

According to Neo-Sadraean philosophers, *ḥaqq* is an abstract, conventional notion (*i'tibārī, intizā'ī*). Hence, it cannot be defined essentially by genus and differentia, which apply only to real essences (Jawadi Amuli, 1386: 74; Misbah Yazdi, 1392: 27). Its abstract nature means it has no external counterpart; it arises solely in relation to voluntary human actions. Human life entails “oughts” and “ought-nots,” and it is within this framework that concepts such as right and duty are discerned. While a real definition is impossible, Neo-Sadraean thought explains

rights through their constitutive elements: (a) the subject who holds the right (*man labu al-ḥaqq*), (b) the object of the right, and (c) the subject against whom the right is held (*man ‘alayhi al-ḥaqq*). Hence, a right can be defined as “an abstract entitlement established for someone (*man labu al-ḥaqq*) against another (*man ‘alayhi al-ḥaqq*).” Alternatively: “Rights are a set of entitlements instituted and guaranteed by a competent authority (God, the state, nature, etc., depending on one’s theoretical stance) for human beings as such” (Misbah Yazdi, 1392: 19). For Neo-Sadraean philosophers, however, all rights affirmed by Islam are grounded in objective reality (*al-waqi‘*), being derived from genuine benefits and harms rather than from mere conventions.

1.3. The Concept of the Human Being

Multiple definitions of “human” have been offered, four of which are highlighted here to reach a comprehensive synthesis. In logic, the human is defined as the “rational animal” (*ḥayawān nāṭiq*) (Hasanzadeh Amuli, 1388: 8). Classical philosophy commonly defines the human as a “political animal” or “social being by nature,” a definition emphasized by Greek philosophers such as Plato and Aristotle (Plato, 1374: 114; Aristotle, 1371: 46; 1364: 12, 27), and later adopted by Muslim philosophers like al-Farabi and Ibn Sina.

Mystical thought, while not rejecting the logical and philosophical definitions, views them as partial. From a gnostic perspective, the human is “the most comprehensive locus of the unseen and the seen” and “the fullest manifestation of the Necessary Being” (Hasanzadeh Amuli, 1392: 5). Humans possess latent faculties and potentials that, once actualized, lead to true humanity; otherwise, the human remains merely a “speaking animal” (Hasanzadeh Amuli, 1388: 8). Some have also defined the human as “a mortal divine being” (*ḥay muta‘allib mā‘it*), with the genus being “living” (encompassing vegetative, animal, and rational life) and the differentia being “divinity,” i.e., God-seeking rooted in God-knowledge (Jawadi Amuli, 1385: 150; 1390: 17). Mortality is added to distinguish humans from angels, who also share in divinity but are not subject to death (*ibid.*, 19).

Synthesizing these definitions, the human may ultimately be described as: “*a being endowed with diverse potentials and inclinations, who strives to realize them.*” This definition is both comprehensive and exclusive: comprehensive in covering all human tendencies and personality types, and exclusive in that it does not apply to animals or angels, whose inclinations are limited to either corporeal desires (animals) or purely rational faculties (angels). It is precisely this multiplicity of tendencies that renders humans in need of a legal and normative system, a need absent among animals and angels.

1-4. The Concept of Neo-Sadrianism

Before addressing the meaning of Neo-Sadrianism, it is necessary to answer three preliminary questions: What is a school of thought? What is a sub-school? And who are regarded as scholarly adherents of a school? After briefly responding to these questions, we can then clarify who the Neo-Sadrans are.

A *school of thought* refers to an independent intellectual system, comparable to a firmly rooted tree, with its own distinctive methodology and content. In Islamic philosophy, three major schools exist: the Peripatetic school (*mashshā‘*), the Illuminationist school (*ishrāq*), and the Transcendent Theosophy (*ḥikmat al-muta‘aliya*) (Yazdanpanah, 2017).

The term *sub-school* has three possible meanings. Sometimes, it refers to a current that is not fully independent but rather emerges from within a broader school. Such a sub-school is not like a robust tree, but instead adds or removes certain concepts and methods from its parent school. At other times, a sub-school may refer to a framework that is somewhat independent but still incomplete, resembling a sapling rather than a fully grown tree. A third usage refers to an intellectual tendency that draws from several schools, incorporating new elements, but without forming a fully independent and systematic school.

In some cases, the discussion is not about schools or sub-schools but about scholars who follow a school. These scholarly adherents can be divided into two categories: (1) those who do not add anything to the original school but rather systematize and organize it into a coherent structure; (2) those who, while faithful to the school, develop new analyses and arguments that supplement the original framework. For instance, while Mullā Ṣadrā presents three arguments for the unity of the intellect and the intelligible, later Sadrian scholars have added further proofs to this doctrine, as well as to other topics such as the proof of the soul (*ibid.*).

From this perspective, the question arises: prominent figures such as Imam Khomeini, ‘Allāmah Ṭabāṭabā’ī, Shahīd Muṭahharī, ‘Allāmah Ḥasanzādah Āmulī, Jawādī Āmulī, Miṣbāḥ Yazdī, and other contemporary Islamic philosophers—where do they fit? It seems evident that these scholars represent a sub-school in the first sense: they are not founders of a wholly independent school, nor are they merely passive followers. Rather, they emerged from the Transcendent Theosophy of Mullā Ṣadrā, adding new insights and modifying certain aspects of his system. It is for this reason that we refer to them as *Neo-Sadrians*.

2. The Nature of the Human Being in the Islamic and Western Legal Systems

Since the question of the foundation of human rights ultimately depends on the *nature of the human being*, it is essential to examine briefly how human nature is understood within both Islamic and Western frameworks before proceeding further. Philosophical schools have presented diverse and often contradictory accounts of human nature. While an exhaustive review is beyond the scope of this study, we will focus on the conceptions most relevant to our discussion.

2-1. The Nature of the Human Being in the Western Legal System

The human being envisioned in modern Western thought is essentially a material entity, disconnected from God and devoid of any transcendent, immaterial soul. Clearly, if human nature is interpreted purely in materialist terms, this has implications across all human sciences. Ethics, psychology, politics, law, and even the foundations of civilization will be interpreted through a materialist lens. Consequently, the contemporary Western legal system is, at its core, a materialist legal order.

As Miṣbāḥ Yazdī explains: “Those who equate existence with matter—or at least regard the human being as an entirely material phenomenon—view all laws governing human existence as branches of material laws. Thus, all scientific laws, whether mechanical, biological, or psychological, are analyzed through a materialist framework. For example, modern Western psychology, which dominates many countries today, is heavily shaped by materialist hypotheses. Although some empiricists have partially retreated from their original stance due to deeper studies, the prevailing approach still conceives of the human being as a material

entity. Other social sciences in the West are no exception to this materialist outlook” (Mişbāḥ Yazdī, 2015, p. 38).

Elsewhere he states: “Secular culture either denies the soul altogether or reduces it to a function of the body that perishes with death. For proponents of this worldview, bodily and material pleasures are the primary goods, and while they may sometimes use lofty language about spiritual matters, they have no method of affirming such realities apart from material considerations. Accordingly, spirituality has no intrinsic value for them and, when mentioned, is treated as secondary to bodily life” (Mişbāḥ Yazdī, 2022, p. 113).

Similarly, Ayatollah Khamenei notes: “In the logic of the West and in humanism, the human being is a purely material creature whose ultimate goal is the pursuit of pleasure and enjoyment of worldly delights. This utilitarian orientation has become the axis of Western progress and development” (Khamenei, 2007).

Thus, within the Western intellectual framework, the human being is defined as a material creature devoid of divine spirit, with no meaningful connection to the unseen realm. Western thinkers, relying on such an anthropology, constructed systems that inevitably reflect this reductionist view. Hence, political, ethical, psychological, and legal structures in the West are thoroughly materialist, leaving no room for non-material realities. Even when God or spiritual values are invoked, they are subordinated to the material human being. In modern Western humanism, the relationship is inverted: God becomes secondary to man, rather than man being subordinate to God. Moral and spiritual values, likewise, are made contingent on human will rather than serving as transcendent norms.

As Mişbāḥ Yazdī observes: “Human-centeredness and humanism have resulted in exclusive attention to the material dimension and natural rights of man. According to this view, the human being is nothing but a bundle of instincts and material desires. It is man who creates values, legislates laws, and determines his own destiny. Religion, ethics, and all other domains must conform themselves to human desires, not the reverse. Inevitably, religion is marginalized, and secularism—the separation of religion from politics, economics, and society—becomes the inevitable product of this way of thinking” (Mişbāḥ Yazdī, 2012, p. 236).

2-2. The Nature of the Human Being in the Islamic Legal System

In contrast to the Western conception, Islam envisions the human being as possessing both a material and a spiritual (divine or innate) dimension. Crucially, in both its origin and continuity, the human being is dependent upon God. Although the material and spiritual aspects are deeply interrelated, they are not of equal value: the essence of the human being is spiritual. As Imam Khomeini notes: “The true essence of man is his spiritual dimension, while the body has value only insofar as it provides the ground for the perfection of the human spirit” (Khomeini, 2006, vol. 10, pp. 245–302).

Mişbāḥ Yazdī emphasizes: “In Islam, the human being possesses both material and spiritual dimensions, with primacy belonging to the latter. The material body serves merely as a vehicle for the true, spiritual self. Without spirituality, morality, religion, and attention to the Creator, man ceases to be truly human and is reduced to a mere animal—indeed, worse than animals. Consequently, in all aspects of human life—economy, politics, culture, art, and beyond—spirituality and the true, immaterial self are regarded as the foundation, and religion is integrated into worldly and social life” (Mişbāḥ Yazdī, 2012, p. 236).

It is also important to note that, from the perspective of Neo-Sadrian philosophy, the material and spiritual dimensions of human existence are not absolutely separate. The relationship between body and soul is one of imperfection and perfection: the natural dimension of man is embodied spirit, while the spiritual dimension is ensouled body (Ḥasan-Zādah Āmulī, 2016, p. 257)

Since the human being is a dual-dimensional creature, in his individual, familial, social, and even historical life, two types of inclinations and tendencies emerge from him, resulting in two kinds of actions. Some desires originate from his innate (*fiṭri*) dimension, while others arise from his natural (*ṭabiʿi*) aspect. By virtue of his innate nature, man inclines toward benevolence, altruism, and all forms of goodness; by virtue of his natural disposition, he is self-centered, exploitative, and inclined toward evil. *Fiṭrah* represents the dimension of rationality and unity, whereas *ṭabiʿah* embodies sensuality and egocentrism. Thus, by his natural disposition, man is unsocial and destructive to communal life, while by his innate disposition, he is created as altruistic, justice-seeking, and social.

Therefore, man is neither like the angels, who are solely inclined toward innate and rational perfections, nor like animals, who are entirely governed by instinctual desires. Rather, within him lies the potential for both angelic, rational tendencies and animalistic, sensual inclinations. If the innate aspect dominates his appetitive impulses, he surpasses even the angels of God; but if the animalistic aspect prevails over his rational nature, he becomes lower than the beasts. As Āyatullāh Jawādī Āmulī observes: “Man possesses a *fiṭrah* whose foundation is the divine spirit, and a *ṭabiʿah* that is bound to clay. All virtues stem from his innate nature, while all vices derive from his natural aspect. Should he become heedless of his spiritual identity and turn only to his natural side, he will not only fail to pursue perfection but will fall into decline, to the extent that the Qurʾān declares: *They are like cattle, rather they are even more astray; they are the heedless ones*’ (Q 7:179). Conversely, if he turns toward his innate dimension, he may ascend to the loftiest horizons, surpassing even the station of angels: *While he was at the highest horizon. Then he drew near and came closer, until he was at a distance of two bows’ length or even nearer*’ (Q 53:7–9). Human nature, being mutable and tied to the body, is intertwined with his immutable, monotheistic *fiṭrah* connected to the soul, together forming the reality of man: *I am creating a human being from clay. When I have proportioned him and breathed into him of My spirit, then fall down before him in prostration*’ (Q 38:71–72). Thus, man is neither purely natural, like plants and animals, nor purely innate, like angels; nor is there a disjunction between these two aspects. Otherwise, he would constitute two separate realities rather than one unified being” (Jawādī Āmulī, 2005, vol. 17, p. 124).

Elsewhere he remarks: “By his innate disposition, man is civilized, God-conscious, justice-seeking, and eager to assist his fellow human beings. Yet by his natural disposition—rooted in clay and bodily constitution—he is subject to desire and anger, preoccupied with subjugation, enslavement, and exploitation of others. Because his nature is closer to sense and matter, it dominates both his individual and social life. Just as he harnesses minerals, plants, and animals to serve his needs, he also seeks to exploit his fellow humans for his unilateral benefit. On the one hand, he cannot live in isolation; on the other, he recognizes the reciprocal expectations of his fellow beings. Hence, he is compelled to engage in mutual service and to comply with social norms. However, once he gains power and authority, he tramples upon all national, regional, and international laws and obligations, subordinating both scientific and practical capacities to his own domination. Accordingly, from the perspective of his material nature,

man is not *madanī bi-l-ṭab* ('civil by nature' or 'justice-oriented'), but rather *mustakhdim wa-wahshī bi-l-ṭab* ('exploitative and predatory by nature'). It is only through reason and *fiṭrah* within, and revelation and prophethood without, that his rebellious disposition can be disciplined, directing him toward reciprocal service and adherence to law and order" (Jawādī Āmulī, 2006, vol. 10, p. 456).

Therefore, in the Islamic perspective, the human being is, first, a creature endowed with two dimensions: the natural-material and the innate-divine; and second, by virtue of his natural aspect, he is exploitative and inclined toward evil, whereas by virtue of his innate aspect, he is altruistic and disposed toward goodness. The outcome of these two premises is that man requires a legal system under whose protection he may live in peace and security (Jawādī Āmulī, 2006, p. 50).

As Muṭahharī Miṣbāḥ Yazdī explains:

"The existence of conflicts in social life is analogous to the internal conflicts of individual desires, which, in the process of their gratification, interfere with one another. This very interference constitutes the origin of moral values. A similar interference arises in society, for the desires of individuals—whether stemming from instinctual impulses or innate inclinations—inevitably conflict in the course of their fulfillment. Such conflicts, particularly in the use of material resources, inevitably lead to disputes—disputes over who should use a given object, how much, and in what manner. To resolve these conflicts, rights must be established and duties defined" (Miṣbāḥ Yazdī, 2013, p. 50).

Accordingly, God has structured human existence in such a way that, on the one hand, man cannot but live in society since he is a social being; and on the other hand, He has embedded within the human soul two contradictory tendencies: the inclination toward social cooperation, rooted in *fiṭrah*, and the inclination toward exploitation, rooted in *ṭabi'ah*. If the natural dimension dominates the rational and spiritual one, then when such a human being enters society, he seeks, by every possible means, to appropriate the possessions of others for his own benefit. Bereft of human perfection, such individuals attempt to deprive others of their right to pursue perfection, thereby obstructing human societies from attaining felicity. Conversely, those in whom the rational and spiritual dimension prevails over the sensual and natural, their individual and social actions are rational and benevolent. Such persons not only refrain from violating the rights of others—such as the right to life, liberty, spirituality, and servitude—but also strive to open the path of felicity for humankind and to remove the obstacles that hinder its perfection.

Now, since these two types of human beings—with two distinct modes of thought, action, and purpose—enter society, there arises the need for a just legal system so that rights are not violated and chaos does not ensue. However, according to the Neo-Sadrian philosophers, the necessity of a legal system is not merely to restrain human desires and social tendencies so that individuals do not exploit one another and thus preserve order and security. Beyond this, one must affirm that human beings and societies possess a specific perfection to which they must attain—the essential and ultimate perfection being the worship of God and proximity to Him. To achieve this perfection, a legal system is indispensable (Miṣbāḥ Yazdī, 2017, vol. 1, p. 96). More precisely, the primary need of human beings and societies is *'ubūdiyyah* (worship), and all other needs are shaped by the kind of worship they adopt. Hence, man requires a legal system for the perfection of worship. If the legal system is divine, the result will be the perfection of

worship directed toward God Almighty; but if it is non-divine, the inevitable outcome will be the perfection of worship of the world.

From what has been said about the nature of man, it becomes evident that in contemporary Western thought, the human being is regarded, first, as a wholly material creature devoid of any share in an immaterial soul; and second, as self-sufficient and independent of religion and God Almighty. Among such supposed self-sufficiencies is the human independence from divine law. By contrast, Islamic anthropology maintains, first, that man is not merely a material being but one who, in addition to his material aspect, is endowed with a divine spirit; and second, that he is always, throughout his life, in dire need of God Almighty. Among these existential needs is the human necessity for a divine and just legal system, so that under its shade he may live in tranquility and perfect his servitude.

In light of these two divergent conceptions of the nature of man, we may now briefly examine the foundations of human rights in the Islamic and Western legal systems

The Origin of Human Rights in Islamic and Western Legal Systems

The most central—and indeed the most challenging—issue in the philosophy of law across different schools of thought is the nature and origin of rights. In other words, what is a right, and where does it originate? These two questions constitute the primary inquiries in the field of law, and different schools have answered them according to their own cosmological and anthropological frameworks. While the detailed discussion of “what a right is” lies beyond the scope of this study—although it has been briefly addressed in the conceptual section—the present discussion focuses on the origin of human rights. Various schools, based on their specific epistemic and philosophical outlooks, have offered different perspectives. Since the scope of this study is limited to Islamic and Western schools of thought, we examine the origin of human rights in the views of these traditions, particularly from the perspective of Neo-Sadrian philosophers.

3.1. The Origin of Human Rights in the Western Legal System

In the Western tradition, there are two main perspectives regarding the origin of rights: natural rights theory and social-contract theory. Natural rights theory asserts that nature is the source of rights. For example, humans possess the right to life, liberty, and justice; society has rights over individuals and individuals have rights over society; parents have rights over children and vice versa; superiors and subordinates have mutual rights; and so on. All these rights are derived from nature, which grants them to human beings. The concept of “nature” can be interpreted in two ways: as the natural world or as human nature itself (Mişbāḥ Yazdī, 2013, p. 47). In both interpretations, nature serves as the origin of rights.

However, with the advent of the Renaissance, natural rights theory faced serious criticism and gradually lost its prominence. Western thinkers began to seek alternative legal theories, and over time, legal positivism emerged to replace natural rights as the dominant framework. Consequently, the contemporary Western legal system is primarily contractual, and social-contract theory has become the principal legal doctrine in the modern West.

Mişbāḥ Yazdī notes: “What is prevalent today in the West regarding law, and is almost universally accepted, is legal positivism. This approach considers the will of the people as the origin of rights” (Mişbāḥ Yazdī, 2017, vol. 1, p. 93).

Jawādī Āmulī adds: “The source of rights, according to the dominant Western thinkers, is social contracts. Many believe that the formation of society was based on social agreements, and all human rights are ensured through these laws. Therefore, it is clear that human rights must stem from social contracts, and no other source should be sought” (Jawādī Āmulī, 2008, p. 147).

Although contractual theory originated in the West, it has gradually spread to other countries, influencing their legal systems to varying degrees. Since social-contract theory is the principal legal doctrine in the West, this research focuses on it and does not address natural rights theory in detail.

Legal Positivism

As mentioned, the primary legal theory in contemporary Western thought is social-contract theory or legal positivism. Legal positivism claims that the origin of rights lies in collective agreement and social contracts. Rights emerge from societal consensus: if society agrees on a matter, a right is established; if there is no agreement, no right exists (Jawādī Āmulī, 2008, p. 147). For example, if society agrees to accept homosexuality, a right to homosexuality emerges; if society accepts unveiled dress, that right is established; or if society permits consanguineous marriage, that right becomes recognized. Conversely, if the social contract is dissolved, the rights established through it also vanish. In short, rights are contingent upon social contracts: individuals gain rights according to what society agrees upon, and if the agreement is annulled, the rights cease to exist.

Miṣbāḥ Yazdī states: “The prevailing view in the philosophy of law is legal positivism. Its main claim is that the source of rights is collective agreement. What gives rise to a right is society’s acceptance of it. The existence or nonexistence of a right depends solely on whether society recognizes it. For instance, if society agrees that a father has rights over his child and the child has rights vis-à-vis the father, these rights are established. If the consensus is dissolved, the rights are nullified” (Miṣbāḥ Yazdī, 2013, p. 51).

He further emphasizes: “Legal positivism regards the origin of rights as the will of the people. In other words, if asked about the source and legitimacy of rights, the positivist answer is that rights derive solely from human will; nothing beyond human consensus affects their validity” (Miṣbāḥ Yazdī, 2017, vol. 1, p. 93).

Thus, according to legal positivism, legal obligations and prohibitions are purely contractual and have no inherent relation to reality or the nature of things. Legal norms are not derived from objective goods or evils; they are established by human agreements on what is considered a right. Rights emerge from social consensus and the approval of the majority; if consent is withdrawn, the rights are annulled. Methods to ascertain social consent vary: sometimes directly through elections for executive or legislative representatives, and sometimes through decisions made by government or parliament, which represent the people.

Critique and Analysis

Neo-Sadrian philosophers have raised several critiques against legal positivism, some of which are summarized below:

1. Absence of a Stable Foundation for Rights

According to legal positivism, there is no fixed basis upon which universal human rights can be established. In other words, under the social-contract approach, legal systems can vary across time and place. From a positivist perspective, no society has the authority to impose its

legal system on another society, which consequently resolves debates about international law. For example, the Western legal system, accepted by Western society, has no right to interfere in the Islamic legal system, which is endorsed by the Muslim community, and cannot deem it as violating human rights. As an illustration, the Western system cannot object to the death penalty law in Islamic jurisdictions; the response would be that the rejection of the death penalty pertains to your society, but in the Islamic community, where people accept religious laws, the death penalty is recognized as one of the legal rules. Therefore, based on the very premises of legal positivism, it has no right to intervene in the legal norms accepted by another society. This critical objection applies broadly to human rights, constitutional law, and other enacted laws (Mişbāḥ Yazdī, 2017, pp. 94–95).

2. Inadequacy in Addressing Human Nature and Ultimate Interests

Another critique of legal positivism is that:

- Legal systems must be designed with a comprehensive view of human benefits and harms.
- Positivist legal systems focus exclusively on the material and natural aspects of humans while neglecting their spiritual and innate dimensions, which constitute the essence of humanity.
- Therefore, positivist law lacks genuine legitimacy.

Human beings are not merely material entities; in addition to their physical nature, they possess a spiritual and divine dimension. The essence of humanity lies in the spiritual aspect, and the natural aspect acquires value only insofar as it serves the development of the human spirit.

Consequently, a legal system or society that reduces human existence solely to the physical dimension and denies the continuation of spiritual existence cannot claim authority to define human rights. A legal system ignorant of human existential levels will mistake secondary needs for primary ones and confuse benefits and harms, thereby drafting legal norms that do not serve humanity. Such a legal framework, based on a misunderstanding of human nature and essential needs, is not truly for human beings but against human rights because it does not promote human well-being but instead creates conditions for human suffering.

Jawādī Āmulī emphasizes:

“Humankind has a long past behind and an uncertain, mysterious future ahead. Anyone seeking to legislate about humans must thoroughly understand the past and future of both the world and humanity. Humans are not beings who exist in isolation, disconnected from other components of the cosmic order. To truly understand such a being, one must also understand these other components and know the trajectory and history of each. In the elaboration of human rights, which requires making judgments about humans, such comprehensive knowledge is indispensable. Humans can never fully attain this understanding. One must know human needs, benefits, and harms. Can humans themselves accurately comprehend their needs to legislate rights for attaining them?” (Jawādī Āmulī, 2007, p. 100)

Therefore, designing a legal system for humans requires both a comprehensive understanding of human needs and a thorough knowledge of the world in which humans live. Humans cannot accurately discern their own needs, fully comprehend the universe, or precisely discover the relationship between humans and the cosmos. Accordingly, they do not have the right to independently legislate for their lives apart from the Creator and Owner of humanity and the universe.

3-2. The Source of Human Rights in the Islamic Legal System

From the discussion above, it becomes clear that, according to Neo-Sadrian philosophers, the source of rights is neither nature nor social contracts. This raises the question: what, then, is the source of rights from the Neo-Sadrian perspective? The answer is that the source of rights is solely God Almighty. Additionally, those whom God permits to enact legal rules can also serve as secondary sources for certain legal norms.

In other words, from the Neo-Sadrian perspective, God is the intrinsic source of human rights, while human legislators, under God's will, can be incidental sources for specific mutable laws, provided that these laws are grounded in immutable divine legal principles. Hence, in all cases, the ultimate source of rights is God.

A key point in the Neo-Sadrian view is that these legal norms, derived from God's will and agency, are aligned with the existential structure of humans; they are not alien or detached from human nature. Put differently, in the Islamic legal system, the **active source** of law is God, and the **passive source** is human nature. This contrasts sharply with legal positivism, which considers legal systems as dependent on social contracts and disconnected from the fixed existential structure of humans.

Jawadi Amuli states:

"The authority to determine human rights must rest with God alone, for He alone is fully aware of the true rights of humans. Delegating this authority to any other source, even to the individual, inevitably leads to injustice and the erosion of rights... It is God who determines both the innate and natural rights of humans, as well as their individual and social rights, defining their limits and consequences. He distinguishes between true and false rights and specifies the duties of individuals regarding these rights... God says: 'Truth is from your Lord' (Al-Imran, 3:60). A subtle point in this verse is the use of the preposition *min* with 'truth,' indicating that God is the source and origin of truth, not merely its companion or associate. The path to realizing and reviving true rights in personal and social life cannot be more genuine than the divine path taught to the prophets through revelation" (Jawadi Amuli, 2008, pp. 157–158).

Imam Khomeini emphasizes:

"No one except God has the right to govern or legislate. By the dictates of reason, God must establish governance for people and enact laws. Anything contrary to Islamic law is not a law; all law must comply with Islamic legislation" (Khomeini, n.d., p. 184; Khomeini, 2006, Vol. 7, p. 536).

Thus, according to Neo-Sadrian theory, God is the source of human rights. This means that all rights—God's rights over humans, humans' rights over themselves, familial rights, and societal rights—are established by God based on real human interests. Neo-Sadrian philosophers provide several justifications for this claim, including **ontological** and **anthropological** arguments.

3-2-1. Ontological Argument

One of the key justifications offered by Neo-Sadrian philosophers is the ontological argument, which consists of two premises and a conclusion:

Premise 1: God is the Creator of all existence.

Everything in existence, from the smallest particles to the largest beings, is created by God. All created beings are utterly dependent on their Creator for both existence and continuance.

Premise 2: God is the Owner of all existence.

Since God is the Creator, He possesses ownership and sovereignty over all existence. Rationally and logically, the owner has the right to dispose of and legislate over their property,

a fact acknowledged by all jurists and scholars. Therefore, God has the right to legislate over His creation.

Conclusion: Only the Necessary Being (God) has the right to legislate over contingent beings; no one else possesses this right, except for those whom God permits. Contingent beings cannot truly own or legislate over one another. Therefore, God alone has the authority to legislate.

Miṣbāḥ Yazdī explains:

"From a rational standpoint, the establishment of rights depends on ownership; only the owner has the right to dispose of their property. Anyone who is neither an owner nor granted permission by the owner has no right of disposition. In theology, it has been established that God is the Creator and Owner of all existence, and all beings derive their existence from Him. God alone exists in and of Himself, independent of any cause. Considering these two premises—the right of the owner to control their property and God's creative ownership of all existence—we conclude that God, as the Creator of the universe and humanity, possesses true ownership and thus the right to legislate. All beings, including humans, exist and continue to exist by His will. If God wills otherwise, their existence ceases" (Miṣbāḥ Yazdī, 2017, Vol. 1, p. 104).

For example, the right to life is universally acknowledged as a fundamental human right, from which other rights, such as dignity, freedom, and property, derive. But the question arises: who grants humans this right to life? It is evident that all contingent beings exist by the will of the Necessary Being; thus, God wills human existence and the right to life. Without God's will, humans would neither exist nor possess the right to life. Consequently, the most fundamental right, which serves as the foundation for all human rights, is the right to life, and its source is God, the Ever-Living.

Similarly, other rights, such as the right to make choices, depend on the right to life. If God had not endowed humans with conscious, voluntary life, they would not possess the right to choose, nor rights regarding housing, nutrition, clothing, or occupation. All these rights are contingent on the gift of divine will; without it, they would not exist.

3-2-2. Anthropological Argument

Another key argument offered by Neo-Sadrian philosophers for the source of human rights is the **anthropological argument**. Rights are part of the human sciences, and the human sciences are contingent upon complete knowledge of human beings and their needs. Since no one has full knowledge of the dimensions of human existence except God Almighty, only God has the authority to establish rights for humans.

Humans are extremely complex beings with multiple layers and levels of existence. Human existence extends from the lowest terrestrial level to the highest celestial plane. The lowest level is the physical body, followed by the imaginal level, the rational level, and ultimately the sacred, divine, or supra-rational level. Each level of human existence possesses multiple faculties. Importantly, the highest level of a human being is intimately connected to the lowest level. While humans have multiple layers, they remain a unified being; the highest level affects the lowest, and vice versa.

Therefore, only an entity with complete knowledge and awareness of all layers and levels of human existence can have the authority to establish rights for humans. How can anyone who reduces human existence solely to the natural and physical dimensions, or denies the continuance of human existence, claim the right to legislate human rights? One who is ignorant

of their own nature cannot serve as a legitimate source of rights for others. Rights based on ignorance of human nature inevitably lead to human destruction.

If individuals or societies are unaware of the multiple dimensions of human existence, they may mistake secondary needs for primary ones, consider genuine interests as harms, and treat harms as benefits, thereby crafting a flawed legal system. Such a legal system, founded on ignorance, does not serve humanity but is **anti-human rights**, fostering human misery rather than well-being. Consequently, the only being inherently entitled to legislate human rights is God, the All-Knowing and Wise. God possesses complete knowledge of all levels of human existence; hence His legal framework is both knowledgeable and wise. Those whom God endows with knowledge and wisdom, and whom He authorizes, can also serve as secondary sources for legislating human rights.

Jawadi Amuli states:

"The prerequisite for establishing human rights is to know humans and their needs. Understanding these needs requires complete knowledge of the various dimensions of human life. Clearly, only God has this comprehensive awareness, for He knows both the unseen past and future of the universe, as well as its present reality. Therefore, only God is capable of establishing human rights" (Jawadi Amuli, 2007, p. 107).

He further explains:

"Humans have an intimate connection with their Creator. This connection is not limited to the moment of creation; rather, it continues throughout human life. Consequently, humans cannot progress along their evolutionary path independently. Thus, the establishment of human rights—which is part of humanity's developmental journey—must originate from the same ultimate source of existence" (Jawadi Amuli, 2007).

In other words, human rights express the relationship between humans and their ultimate perfection. No one except God Almighty fully comprehends this relationship. Therefore, no entity other than God has the authority to legislate human rights. Human beings are created to achieve their ultimate perfection, which lies in servitude and obedience to God. A legal system must precisely safeguard this supreme purpose, and this requires that the lawgiver have complete knowledge of human nature and goals. Only God inherently possesses such knowledge; hence, He alone has the right to legislate human rights.

CONCLUSION

This study examined the source of human rights in Islamic and Western legal systems from the perspective of Neo-Sadrian philosophers. From the Neo-Sadrian viewpoint, humans are beings with multiple interests, and to pursue these interests, they must interact socially. Because humans have conflicting interests and must live within society, they require a legal system to prevent chaos and to guide them toward the perfection of worship and ultimate fulfillment.

The question arises: who should satisfy this vital human need, and what is the ultimate source of human rights? Different schools of thought provide distinct answers. Natural law theory asserts that the source of human rights is nature, whereas legal positivism—the framework underlying contemporary Western law—claims that rights originate from social contracts. According to positivism, legal propositions are not based on actual interests and harms or the fixed structure of human existence and society.

Neo-Sadrian philosophers argue that, from the Islamic perspective, natural law theory and legal positivism are invalid, irrational, and inconsistent with reason. They maintain that God Almighty is the ultimate source of human rights. God enacts legal provisions based on real interests and harms, in accordance with human nature and societal structure. Neo-Sadrian scholars offer rigorous rational and textual arguments for the Islamic position on the source of rights, including:

1. **Ontological Argument:** Demonstrates that only God, as the Owner of all contingent existence, can be the source of human rights.
2. **Anthropological Argument:** Shows that, due to humans' inability to fully comprehend their own nature, only God has the authority to legislate human rights

REFERENCES

1. Avicenna (Ibn Sina), H. b. A. (1374/1995). *Al-Isbarat wa al-Tanbihat*. Qom: Nashr al-Balaghah.
2. Aristotle. (1364/1985). *Nicomachean Ethics* (R. Moshayekhi, Trans.). Tehran: Dekhoda Bookstore Publishing.
3. Aristotle. (1371/1992). *Politics* (H. Enayat, Trans.). Tehran: Organization for Islamic Revolution Publications.
4. Plato. (1374/1995). *Republic* (F. Rouhani, Trans.). Tehran: Elm va Farhang Publishing.
5. Al-Asfahani, R. (1412/1992). *Al-Mufradat fi Gharib al-Quran*. Beirut: Dar al-Shamila.
6. Tahanavi, M. A. (1996). *Kashaf al-Ishtilahaat al-Funun wa al-Ulum*. Lebanon: Maktabah Lebanon.
7. Jawadi Amuli, A. (1386/2007). *Shams al-Wahi al-Tabrizi*. Qom: Markaz Nashr Israa.
8. Jawadi Amuli, A. (1384/2005). *Fitrat dar Quran* (3rd ed.). Qom: Markaz Nashr Israa.
9. Jawadi Amuli, A. (1386/2007). *Falsafeh-ye Huquq-e Bashari* (5th ed.). Qom: Markaz Nashr Israa.
10. Jawadi Amuli, A. (1390/2011). *Hayat-e Haqiqi-ye Ensan dar Quran* (6th ed.). Qom: Markaz Nashr Israa.
11. Jawadi Amuli, A. (1387/2008). *Haq va Taklif* (2nd ed.). Qom: Markaz Nashr Israa.
12. Jawadi Amuli, A. (1385/2006). *Tafsir Tasnim*. Qom: Markaz Nashr Israa.
13. Jawadi Amuli, A. (1385/2006). *Tafsir Ensan be Ensan* (2nd ed.). Qom: Markaz Nashr Israa.
14. Jawadi Amuli, A. (1385/2006). *Velayat-e Faqih*. Qom: Markaz Nashr Israa.
15. Jawadi Amuli, A. (1391/2012). *Jame'eh dar Quran*. Qom: Markaz Nashr Israa.
16. Hasan Zadeh Amoli, H. (1392/2013). *Doroos-e Ma'rafat-e Nafs* (2nd ed.). Qom: Alef Lam Mim Publications.
17. [Author Unknown]. (1388/2009). *Ensan dar Erfan-e Erfan*. Tehran: Soroush Publishing.
18. [Author Unknown]. (1395/2016). *Sirb al-Uyun fi Sharh al-Uyun*. Tehran: Boostan-e Ketab Institute.
19. Khomeini, R. (1385/2006). *Sahifeh-ye Imam*. Tehran: Mo'asseseh Tanzim va Nashr Asar-e Imam Khomeini.
20. Khomeini, R. (1368/1989). *Sharh Chehel Hadith*. Tehran: Markaz Nashr-e Farhangi Raje'.
21. Khomeini, R. (n.d.). *Kashf Asrar*. Qom: Mostafavi Publications.
22. Sabzevari, M. B. (n.d.). *Taqiriri bar Usool-e Falsafeh va Ravesh-e Realism*.

23. Seyyed Ali Khamenei. (1386/2007). Speech delivered in Mashhad during meeting with students from Khorasan universities.
24. Tabatabai, M. H. (n.d.). *Tafsir al-Miẓan*. Qom: Islamic Publishing Office, Jam'iyat-e Modarresin-e Howzeh.
25. Tousi, K. N. (1373-1374/1994-1995). *Kholaq-e Naseri* (M. Minavi, Ed.). Tehran: Khwarazmi Publishing.
26. Tarehi, F. (1375/1996). *Majma' al-Bahrain*. Tehran: Maktabah Morteza'iyeh.
27. Farabi, A. N. M. (1361/1982). *Ara' ahl-e Madinah-ye Fadila* (S. Sajadi, Trans.). Tehran: Tahuri Library.
28. Qayoumi Maqri. (1418/1997). *Al-Misbah al-Munir*. Beirut: Maktabah al-Asriyyah.
29. Motahhari, M. (1389/2010). *Bist Gofar*. Tehran: Sadra Publications.
30. Motahhari, M. (1383/2004). *Falsafeh-ye Tarikh*. Tehran: Sadra Publications.
31. Mesbah Yazdi, M. T. (1396/2017). *Naẓariyeh-ye Huquq-e Islam*. Qom: Imam Khomeini Educational and Research Institute.
32. Mesbah Yazdi, M. T. (1392/2013). *Huquq va Siyasat dar Quran*. Qom: Imam Khomeini Educational and Research Institute.
33. Mesbah Yazdi, M. T. (1392/2013). *Negah-e Gozara be Huquq-e Bashar az Didgah-e Islam*. Qom: Imam Khomeini Educational and Research Institute.
34. Mesbah Yazdi, M. T. (1394/2015). *Pishniazhaye Modiriat-e Islami*. Qom: Imam Khomeini Educational and Research Institute.
35. Mesbah Yazdi, M. T. (1401/2022). *Chakide-i az Andishehaye Bonyadin-e Islami*. Qom: Imam Khomeini Educational and Research Institute.
36. Mesbah Yazdi, M. T. (1391/2012). *Porseshba va Pasokhbha*. Qom: Imam Khomeini Educational and Research Institute.
37. Malkian, M. (1377/1998). *Tarikh-e Falsafeh-ye Gharb*. Tehran: Daftar-e Hamkari Howzeh va Daneshgah.
38. Yazdan Panah, Y. *Doroos-e Mabani va Usool-e Hikmat-e Mot'aliyeh*, Maqam Aval, Mokhtas-e Aval.