A System of Human Rights in Islam?

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Abstract

This paper advances a framework for the evaluation of Sharia (Islamic law) with respect to the modern notion of international human rights law. The paper argues that certain universal standards of human rights and freedoms, as understood and formulated in international human rights documents, lack precise equivalents in Islamic law, and some generally-accepted principles of Sharia contradict corresponding principles of international human rights law. Sharia's response to the idea of human rights and traditional interpretation of Islamic law are hard to reconcile with international human rights norms and standards. It is also argued that the application of Sharia, public and criminal law in particular, is problematic and results in deficiencies and hardship in Muslim societies. This paper contributes to the debate on Islamic reformism and human rights in arguing that Sharia's contradiction of universal human rights norms cannot be avoided, and that traditional mechanisms of reform within the framework of Sharia are inadequate for achieving the necessary degree of reform. It is suggested that, based on a cross-cultural dialogue and intellectual debate, an essential and primary reform should define the objective foundations of human rights in reason and human dignity, not on Sharia criteria and qualifications.

Keywords: Islamic Law; Sharia; Islam; Human Rights; Dignity.

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I. Introduction

The present article here argues that certain universal standards of human rights and freedoms, as understood and formulated in international human rights documents, lack precise equivalents in Islamic law, and some generally-cceepddd prnrppp of hhar'' oonrrdd oorrpppondnrg prnrppp of international human rights law.[1] hhrr''a's rpppons ooth dda of humnn righss and traditional interpretations of Islamic law are hard to reconcile with international human rights norms and standards.[2]

This artill e also argues hltt the application of Shar''a pubiic lww, crmmml law in particular, would result in problems and hardships in Muslim societies.[3] As will be discussed later, Islam has emphasized the importance of human honor and dggnyyy Howvver, whhhn the frmnework of hhar''a, certann forms of discrimination against women and religious minorities are considered lawful.[4] Notions like full equality of men and women, Muslims and non-Muslims, and freedom of rll ggion are nnll ear conflcct whhlhhar''a prnrii plss. Based on hhar''a rules women suffer from an inferior status, and non-Muslims are at most second-class ii tieens. Th ide of equll proteciion nnShar''a isseff ccoommodatss forms of discrmmmaiion. As aa yer saates, Shar''a "mnndatss unequll treammnt for hh favored and disfavored groups in sotttt y.. (aa yrr, 19911998)[5]

Individualism, liberty, equality, constitutionalism and democracy -- notions fundamental to the development of human rights concepts -- are not established fett urss of hhar''a. The concept of humnn bii ng ss prvvate nnd indvvidull as wll as individual rights nn hle snnse of nnttttlmnmnss are not reoognized nn hhar'' either.[6] Shar''a upholds hle suprmnayy of revll aiion over raason nnd hosiilyyy toward rationalism, and does not recognize reason as an independent source of law.[7] Accordnrg to Shar''a, humnn rights "are hle prvvieege of Allhh, becuus authority ultimately belongs to ii m. (hh dddur 1946 243)[8] We argue that these rights are only duties of individuals, not rights held by anyone. The

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1. See: Mayer, 1994: 320-321; and An-aa 'mm0000B: ....

2. See: Mayer, 1996: 270.

3. Several problems of substantive law, evidence, and procedure are raised by the prospects of implementing iii s rr anch of Shari'a. See: nn -aa 'im, 999BB: ....

4. See: An-aa 'mm0000B: ....

5. See also Savory, 1989: 834; and Mayer, 1994: 323-24.

6. See: Tibi, 1994: 289. Also See: Glenn, 2000: 177-78.

7. See: Mayer, 1991: 58. This issue will be discussed more in Chapter Two. The struggles between proponents of reason and revelation in Islamic intellectual history are described in Arberry, 1957; Khadduri, 1984: 34-39 and 64-70; Al-Shakankiri, 1981: 161-182.

8. See: the Annals at 77-8 in Donnelly, 2014: 307.

essentia hharaceeristic of humnn rgghss in hhar''a ss hltt hley constitute obligtt ions. As Siid statss, "humnn rgghss xxss onyy nn relation to human obgggooms (dddd, 1979 73-74) and that what really matters is duty rather than righss. Cherff Bsssiouni rgghffulyynotes hhat hhar''a "nrsisss upon hhe fuffllmmn of nndvvidual oblggaiions bffore the nndvvidual cnn clmmmhis prvvllgges." (Bassiouni, 1982: 13)[1] Coulson maintains that Islamic legal doctrine assumes only divine rights, of which the individual may be beneficiary.[2] Clearly, these characteristics of human rgghts nn hhar''a contradic modern humnn rgghss principles. hhar''a rgghss are not humnn rights by nnterntt oonal humnn rgghts stnndards; a most, hhyy are lgga rgghss held onyyss resu of.on''s lgga or spiritual status.[3] The scope and extent of these rgghss are subeect to hhar'' qualification, and are limited based on gender and faith which affect many human rights and freedoms, including freedom of thought, conscience, and religion, freedom of speech, and the right to participate in public life. Intern. iional humnn rgghts hloory, on hh ohler hnnd, doss not permi "reiigious criteria to override or circumscribe human rgghts. (aa yrr, 19943325)[4]

Thss suudy furhhrr rrgutttt h,,, vvvvvvry no   rr ss no possbltttty of nn Isaam   seeeės evolvnrg into   dmnorr   ottty. (aavory, 1989 839) According to Islamic law, ultimate state sovereignty is vested in God, and hhrri' ss th aaw of hh nnnrd.[5] As will be discussed in the next chapter, the notions of caliphate (the classical Islamic theory of political legitimacy and authority), *umma* (the community of believers), and *shura* (consultation) conflict with the conception of democracy, where sovereignty belongs to the people and equal participation of citizens in public life is protected by law.[6] The nnnnmmen of jus   nd hh Isaam   dorrrnre's emphasss on th wll frr of hh oommuntty iim th soop of nndvvddsss' rights and bbbr ssss uu siims, as believers, have certain duties vis-à-vis the community/state, but not individual rights in the sense of entitlements.[7] The scope and extent of individual rights and freedoms, then, is conditioned upon the Islamic concept

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1. See also Afshari, 1994: 260-261.

2. See: Coulson, 1957: 49-51.

3. See: Donnelly, 2014: 307.

4. On the conditions that can be placed on human rights in international human rights law, see: Buergenthal, 1981: 72; and Mayer, 1991:73-76.

5. See: Sajoo, 1990: 29; and Mawdudi, 1986: 9-33. Mawuuii hll ds hhat pelll e's nnly rll e is t interpret laws for their application and to decide on matters for which there are no divine laws. See: Mawdudi, 1978: 3-5. This characterisiic ff Shari'a mrH ies hhat hmnan eeings cannot change hhe law because hleir atiiuudes or hleir persnnal or communal needs change. See: Amin, 1989: 10-13 and 19. Also See: Sachedina, 2001: 73-75.

6. See: An-aa 'mm0000B: 88-85.

7. See: Tibi, 1191: 289; Sajoo, 1990: 29-30; Khadduri, 1985: 145.

of justice and the welfare of the community,[1] and individual entitlements can always be overridden for communal interests. In fact, in hhrr i' prrrrr r of human rights, the collectivity and duties are preferred over individual and rights. In contrast, the international conception of human rights safeguards "indvvddu freedoms beyond hh raach of rr baaaay s hhortty thrr bby supporting hh nooon of 'fundamnnlll' rgghss. (jjj oo, 1990227)

ll l these components support the study's overall . rgument that Shari'a lacks the modern notion of human rights and freedoms, as documented in international human rights law, and reveals the incompatibility between individual and collectivity-oriented concepts- which, in turn, derives from the conflict between, as Tbb i notes, mn an (reason)-centered and a cosmological theocentric view of the world." (Tib,, 1994: 297) Th incompatibility between Shari'a rights and international standards and the fact that Shari'a system o. government is not democratic have been admitted by many Muslim jurists as well as several Islamic governments' representatives in different international organizations. These statements will be presented as the discussion proceeds.[2]

Th prnnnn study oooodssput hh dda th Shrr i',, unifdddbody of moral and legal principles, mandates a distinctive approach to human rights. Such a discussion seems necessary here because of its bearing on the study and the orientation that it will take. The study argues that there is no settled Islamic human rights philosophy that induces all Muslim jurists and scholars to look at the concept of rights in a particular way. With regard to human rights, hhrr i' oomprss many oompxxxrrddooos, ofnnn vggu nnd undefnrdd, nnd therefore subject to different interpretations[3] hh,, aa yrr st aan nnd do create conflicts between religious doctrine and human rights norms or that reconcile the two. (aa yrr, 1991 179-185) The founding jurists relied on hh rrddooos nnd inrrrproooos of hhrr i' sourees oo dvvooφ nn Isaamcc approach to rights. One may find significant diversity of opinion among various schools of thought as well as among different jurists of a particular school.[4] Due to the lack of established theoretical views on rights, however, Muslim jurists have been influenced by local cultures and political rule

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1. See: Reisman, 1994: 516.

2. See also An-aa 'mm0000:: 22-25.

3. Charrrr s T an Trr ee of the thesis areee hh a the eermsssible sceee of Shari'a quaiifaaations on rtttt s has been left vague and undefined, and, in practice, Muslim governments are free to determine the scope of rhhlss rr o Shari'a.

4. See also An-aa 'mm0000:: 88-19.

throughout the centuries.[1] This study proposes that if one focuses only on the legal dimensions of human rights issue, one may find that the basic principles of domnman inrrrproooooo of hhrr i’,, rggrr dssss of hh paruuurrr schoo of hhrr i’,, oonfttt wtth inrrrntt ion human rgghts thoory, ss xxpnnndd aarrrrr. Some ethical principles of human rights do emerge from the fundamentals of Isaam aaw, and hhrr i’ do nrll ud som eeemnnss th baar on rgghss,[2] but there is no body of Islamic doctrine on rights.

The conception of human rights and freedoms as individual entitlements seems unknown nnIsmmm ggga rradiiion nnd hvv no gnnunre rooss nnhhar’’a.[3] Ismmm jurssprud.. ee doss n. t dddrsss “humnn rgghss” suhh nnd provddss “no xxpii mod of rgghss prnncppl... (aa yrr, 1991 211) Th ddvocccy of a system of human rights nnhhar’’ ss bssed on a confusoon of humnn rgghss nnd human dignity.[4] Of course, a concern for human dignity is central to Islamic hhlcc nnd ggg trddiiion, nnd hhrr’’’’s soii nnd poiiiiaal percppss “rffccc strong concern for human good and human dggnyyy (oo nnyyyy 2014 307) Accordnng oo hhrr’’,, dddds ss hh seeeês duty to nnhnnee humnn dignity and alleviate conditions that hinder individuals in their efforts to cchvvv hpppnrsss. (dddd 1979 87)[5] However, this is not a recognition of human rights (entitlements) held simply by virtue of being human.[6] In other words, Shrr’’ ooneern for humnn dggntty do no imply human righss, and has not been translated into legal guarantes and protection for human rights and freedoms.[7] Shari’ rccommnndooons, nn thss rggrr d, rr of mor nnd religious nature with no specific legal sanction and judicial enforcement.[8] It may be plausible to say that Islamic law contains some elements of human

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1. Historically Islam has been a very decentralized religion where a wide range of dissimilar opinions and competing schools of law con be found. One could say that Islamic legal tradition has been a culture of argumentation. This characteristic of Islamic law, which led to a tradition of tolerance of debate and argument among jurists will be emphasized in Chapter Two as well. See: Mayer, 1991: xiii and 1.
2. See: Sajoo, 1990: 24.
3. I seems tha the usage of uuman “rtttt s” an “freeooms” by Musiim schorrrs has eeen fffeeence by oon-religious legal traditions. See: Donnelly, 2014: 307; Coulson, 1957: 50-51; Pollis & Schwab, 1980: 1-18. On fundamental human rights and freedoms, See : Brunelle & Cliche, 1998.
4. The suyy rr efers Rhoda Howard’s definiiinn ff hmnan ii gii yy as “hlc pariicular culuural understanii ng ff hle inner moral worth of the human person and his or her proper pll iiical relaiinns ii hhsoceeyy” “Unlike hmnan rights, which are private, individual, and autonomous, human dignity is public, collective, and prescribed by social nrr ms.” See: Howard & Dnnnely, 19::: 83. See also Howard & Dnnnelly, 19::: 005-807.
5. Also generally See: Tabandeh, 1970.
6. See: McDougal, Lasswell, & Chen, eds., 1980.
7. nnn nelly rhhltyyseees hla “althohhh [Musiims] are relll aryyan forceflll y enoonre rrea fell me with respect and dignity, the bases for these injunctions are not rights but divine commands which establish yyyydtt ies, hla is, iii ch eeal oyyywtth rtttt nnthe sense ff wha is rtttt .” nnnn elly, ::::: :006-307.
8. Amin, 1989: 57; and Sachedina, 2001: 79-81.

rights, but, certainly, the concept of human rights hh indvvddull 's iiii m against the state is not recognized in a legal tradition that privileges the community over the individual.[1]

It has been argued that the concept of human rights as documented in international human rights law is the creation of Western liberal theory, and that human rights as such could not be considered a universal norm. According to this argument, because other cultures and traditions maintain different approaches to the issue, before applying human rights in any society, the religious beliefs and cultural and historical particularities of that society should be carefully considered.[2] Cuttural relavvists are nrcnned "to dnny hhe eegitmncy of using values taken from Western culture to judge the institutions of non-Western culuures. (Myyer, 1991: 9)[3] They also tend to challenge the validity of any comparative examination of, for example, the concepts of Islamic and ineernational rgghss, "becuuse suhh comparssons are beiivved ooinvovve uudgnrg Islamic norms by the criteria of international law, which the relativists view as an ll inn, Wsstern systmm" (Myyer, 1991: 10) On hhe ohher hnnd, uuttura relativists tend to endorse the legitimacy of values, norms, and rules that are produced within the framework of a given cultural system as authentic products, the authenticity of which is accepted by the people of that culture.[4]

Th uuuun rvvvvwsss' rrgumnn h been supordddby svvrr Isaam nnd non-Islamic states as well.[5] These governments maintain that human rights mmus b considered in the context of a dynamic and evolving process of international norm-setting, taking into account the various historical, cultural nnd rggggous bcckgrounds nnd hh prnrcpp ggga syseems".[6] Although these governments avoid a direct challenge to universality of human rights via the

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1. See Howard & Donnelly, 1986: 81-3. Pollis and Schwab present an extreme version of the argument that the cnnce of uuman rtttt s is nnsome aa y irreleva... Trrr Wrr... They rr i tha "i is eii een tha nnmss states in the world, human rights as defined by the West are rejected or, more accurately, are mealllll l ss." See: Pollis and Schwab, 1980: 13.

2. See: Pollis and Schwab, 1980: 1-18; Afshari, 1994: 246-252; Howard, 1993: 315-320; and Adler, 2018: 22-26.

3. Sa'i Ra'''i hh rr asaii , Iran's hhen-ambassarrr hhe. nn tte.. aa ..ons once seeee hha "hhe vvvversal Declaration of Human Rights, which represented secular understanding of the Judeo-Christian tradition, could not be implemented by Muslims and did not accord with the system of values recognized by the Islam Rebbbiic of Iran." NN ccc . ACC///// / R. 55, Para. 95.

4. See: Teson, 1985: 870; Renteln, 2013: 61-87; Falk, 1992: 54; Friedman, 1993: 5; Tibi, 1991.

5. Many Asian and Middle Eastern states as diverse as China, Vietnam, Singapore, Malaysia, Syria, Pakistan, Yemen, Iran, and Saudi Arabia joined in fighting against universality of human rights. See: Thurow, 1993: 17; and Clayton, 1993: 7.

6. The Resolution of the Twenty-first meeting of foreign ministers of the Islamic Conference Organizations, held in Karachi, Pakistan, in April 1993, in anticipation of the Second World Conference on Human Rights, held in Vienna, in June 1993 in Mayer, 1994: 371.

endorsement of a qualified universality, they give priority to cultural and religious factors over human rights.[1] The cooperation of several countries from various cultural backgrounds in challenging the principle of the universality of human rights during the 1993 Vienna World Conference on Human rights was significant. They appealed to culture and religion, on the one hand, and to national security, on the other, and tried to discredit international criticisms of their human rights record.[2] In hh uu siim wordd, hh Isaam govrr nmenss' participation in the debate on human rights issue is not only a response to the development of the international discourse, but also a response to reports of human rights violations in their countries by international observers, such as the Human Rights Commission and Amnesty International.[3] It also reflects the pressure and demand from within the Muslim countries for greater democratization and respect for human rights.[4]

It should be also added, in passing, that the objection of some Muslim governments to international human rights standards has led some orientalists and scholars to believe that human rights are distinctively Western and discordant with Islamic culture;[5] and that the promotion of the principle of universal human rights would result in cultural conflict and the rise of Islamic fundamentalism.[6] Although the present thesis argues that notions like individualism, constitutionalism, human rights, and liberty are unknown in hhrr i',,   by no maans fooows th   Shrr ''a ss th who   of Isaam or Isaamcc culture, in view of the diversity of Muslim societies. Many Muslim scholars have supported the idea of international rights on Islamic grounds, and the demand for human rights and democracy is increasing in Muslim countries.[7] aa ny uu siims, howevrr,   aa yrr no   rnnnn th Wttt 's

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1. See: Mayer, 1994: 371-372 and 375.

2. See: Mayer, 1994: 371-379; and Mayer, 1994: 280-282. Also Cerna, 1994: 740-752.

3. Since Muslim jurists generally clamntha Shari'a is a cmnprehensvce syseem for rrrrrr ral mmman rhhlss (see Chapter Two) and applicable to all societies, regardless of their cultural variety, the argument of Islamic states for the cultural relativity of human rights seems incompatible with that claim. Since Muslim govermnesss are aaa re hh Shari'a is n the rr iii n of nrrrnational mmman rtttt s la an tha Shari'a lass cnntradic ttt ernatocnal norms an saaaaaads, hlcey have   resrr t the cll trr al relatiii sss' armmucn   rr eer to justff mmman rtttt s ii olatocns nnooth Shari'a an their corrrr ies.

4. See: Halliday, 1995: 154.

5. See: Huntington, 1993: 22. The article generated sufficient controversy and attention to convince the same ocurnal   uubiish several commenss nn tttt gggocn's thesis. See: Lubjuhn, 1993: 2. Huntington offered a rebuttal in Huntington, 1993. See: Mayer, 2014: 309-314.

6. See: Huntington, 1993.

7. The human rights movement in Muslim countries contradicts the Western mindset and stereotypes that the gap between Western and non-Western cultures cannot be bridged. See: Mayer, 1994: 379-388; Howard, 1993: 315; Said, 1994; E. Said, 1993: 62; Al-Azm, in Rothschild, 1984: 349-367; Donoho, 1991, 345 and 353; Hussein; Olson; & Qureshi, eds., 1984; Daniel, 1993; Binder, 1988: 85.

rhetorical endorsement of universality where it is accompanied by a double standard in the actual application of rights principles.[1]

Although the debate on cultural relativism versus universality of human rights is beyond the scope of this study, a few points are noteworthy. First, it should be pointed out that most of the states that support the idea of cultural relativism in human rights issue tend to be undemocratic and repressive, regardless of their cultural backgrounds, and, in the Islamic context, regardless of whehhrr or no they ppply hhrr i' aaws.[2] Many Muslim governments use Islam as a pretext for denying rights, and appeal to Islamic culture only to justify deviations from international standards. The schemes for the Islamization of rights, proposed by Muslim governments, are also used to justify enormous violations of human rights in these countries. It is in their political interest to resort to Islamic culture and civilization in order "to find rationales for asserting the non-applicability of international rights norms" (Mayer, 1994: 373) and to respond to the reports of human rights violations by international human rights organizations.

Moreover, the study disputes the existence of a distinctive Islamic culture and civilization with regard to the human rights issue, one which differs from the Western approach and stands in the way of adopting international human rights norms and standards.[3] There are over fifty Muslim states in three continents of the world, with different cultural backgrounds and a variety of social, legal, and political systems.[4] There is not a single, distinctly Islamic position on this question that relies on Muslim cultures and traditions.

Many Muslim scholars have responded positively to universal human rights ideals and argued on Islamic grounds for the applicability of international human rights law in Muslim countries. Some Muslim states have supported universal human rights norms in international forums as well.[5] The Muslim govrrnmenss' rooæ ooIsmmm uuuun nnd rrddoooæ, hhrrffor,, do   no seem appropriate, and only serves their political interests. However, a dominant

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1. See: Mayer, 1994: 313.

2. Human rights violations under basically secular and socialist regimes and under monarchies that show little interest in applying Islamic law have been as severe as those in countries where Islamic law is heavily relied on, and the rights violations in both groups of countries are in many respects similar. Countries like Iraq, Libya, Syria, and Bahrain, and others like Iran, Saudi Arabia, and Sudan, are examples of these two groups respectively. See: Mayer in Lindholm, & Vogt, eds., 1993: 119; Ghadbian, 1997.

3. See: Mayer, 1994: 402.

4. See: Halliday, 1995: 155.

5. Tunisia, for example, was in the forefront of the battle for universal human rights in the 1993 Vienna Conference. See: Halliday, 1995: 155-156. Ironically, Tunisia's nnn mmmæn rtttt s recrr   is tttt e rrrr .

hhrr i' nrrrproooooooof human rights issue predominates in the Muslim world, whcch oonftttt s inrrrnaooon human rights aaw. This thiii s xxamin hhrr i'a as a body of legal provisions, not Islamic culture -- which accommodates a diversity of opinions and is not an obstacle to democratic freedom and the rccognoooo of human rgghss. Thrr ffor,, hhrr i''' s oonrrddiiii on of nrrrnoooonll human rights law is by no means a confirmation of cultural relativism. Atthough hh inrrrproooooo nnd prcc f hssoo ormuoooooo of Shrr i'a are influenced by the sociological, economic, and political circumstances of a prruuurrr oommuntty and uuluur nn iim,, Shrr '' inrrrproooooo of rgghts, from which human rights violations result, prevails among Muslim jurists everywhere.[1] Therefore, unlike Mayer's veew hha "hh saak in hh bttt ovrr human rgghts saandrr ds rr uiiimllll y poiiiiaa'''''' (aa yrr, 1994 211) hhss rr gumen shows th Shrr i',, ooo, ss nn obseeeeecoo bbbbbbbnrg humnn righss norms in Muslim societies. As we will see throughout this thssss, Shrr ''a qualifications on human rights and freedoms do restrict international standards.

Finally, although the modern concept of human rights is of Western origin, and first emerged in Europe and North America, it does not follow that the idea and principles of human rights are essentially and exclusively connected with Western culture and philosophy, and hence only applicable to Western societies.[2] Human rights are rooted in human nature and dignity. The Universal Declaration of Human Rights speaks of the ii nherent dignity", "spirit of brotherhood", and "inalienable rights" of the "human family". (UN Doc. // C. 3/39/SR. 65, Para. 95) It endorses civil and political liberties as well as social and cultural rights, and prohibits slavery, oppression, torture, and discrimination. In a cultural context, none of these conceptions seems alien to the ideals of non-Western cultures and traditions. In fact, as Bielefeldt puts it, human rights and freedoms ddo not compete with cultural and religious traditions directly, but concentrate on political and legal aspects of human coexistence." (Bielefeldt, 1995: 601) Therefore, regardless of the Western origin of human rights concepts, the establishment of cross-cultural foundations and dialogue might foster the development of the concept of universal human rights in its ethical and legal claims,[3] without imposing a particular set of Western values, but instead aiming at

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1. See: An-aa 'mm0000:: an Mayer, 4444: vvv.

2. Rather, human rights are historically connected with the experience of pluralism and multiculturalism that have become realities of many societies all over the world. See: Bielefeldt, 1995: 593-594; and Sajoo, 1994: 27-28.

3. See: Tibi, 1994: 285-286; and Adler: 2018: 20-22.

the recognition of a universal minimum of human rights in pluralistic and multicultural society of the world.[1] WWhat counts", Reisman notes, "is the treatment of individual human beings, regardless of the origin of the authority sanctioning the treatment." (Reisman, 1994: 510) Justifications of human rights violations and discriminations based on cultural relativism would deny the universality of claims of all human beings to dignity, and would definitely conflict with the idea that there are certain human rights demanded by all human beings, regardless of their cultural and religious traditions, race, or gender.

Tradooαo   mcchanisms of rfform wtthin hh framework of hhrr i' rr e inadequate for achieving the necessary degree of reform. They are limited by hh rtttttttt tt ns of hhrr i' prnɪppp   and, ss An-aa 'im no   w   rr aaee extremely serious problems in prcc..... ..(aa yrr, 1994 34)[2] The current study, mor   'work-in-progrsss' than   fnɪα or oonuuɪsiv seeeɪmnn propos hɪtt any approach to human rights must first seek to establish and demonstrate how the basic human rights derive from, and are directly attributable to, the fundamental characteristics of the human personality. It should locate the objective foundations of human rights in reason, human dignity, and natural law, as noted earlier. From this perspective, human rights are not a religious matter. They are extra-religious and comprise those basic values that deal with all human beings equally, whether they are believers or not.

This argument relates to both An-aa 'im's and ooroush's thoor   s nn -''' im's reform mtt hodooɔgy, hhhɪdɪ th   pragmatic solutions and traditional rfform cɔchnqqɪ   wihlnn hhar'' iimtts wouddd only genrr   hlooraaaaɪaand prcc   robmmsmuu siim schorrrs shouddthnn "aafffɪr hh bbbbbbbɪmen of   new prnɪcpp of nrrrrproooooɪ (nn -''' im, 1990B) nnorder oomkk Shrr i'a laws more compatible with international human rights norms and standards. oo r mmpornnɪly, hhis rr gumnn oonrɪdd   whhhooroush's hlɪory th   nnny nrrrrproooooɪ of hhrr i' is bound by th   pruuɪpposooɪɪɪos nn th   schorrr's intellectual worldview -- and therefore extra-religious factors should be considered here as well.

Furthermore, this study argues that practical problems have almost always been the cause and motive behind the reform movement in Muslim societies. In other words, the direction of religious reformism has mostly been a

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1. See: Bielefeldt, 1995: 594.

2. See: An-aa 'mɪ0000::   Taha, 6666: 1   nn -aa 'mɪ9977:   -aa 'im, 7777: ...

movemen from hh nnsdd oowrr ds th outsdd, from Shrr''a's dffnnnnnsss towards the realities of the time, towards finding a desirable harmony saving religion in the modern world. The study proposes that a dialogue between what is internal and what is external to religion would result in the compatibility of hhrri' prnrppp wtth inrrrnooon humnn righss saandrr ds, nnd may aoow Muslim societies to solve their ongoing difficulties. This proposal is not a modern vrrsom of Shrri',, nor do reeeeœoo hhrr'' .... I ss rooonll argument. It provides the intellectual foundations for Islamic thought in the field of human rights, first and foremost.

Notions like justice, freedom, and human rights are generally defined on rational and intellectual grounds and cannot be determined by religious criteria and qualifications alone. Fundamental human rights are intended for the development and full realization of the human personality, which is thought to be the foundation of human dignity -- with all the responsibilities that this implies -- which distinguishes humankind above all other creatures. The human intellect and will are indispensable, and liberty is their most eminent characteristic, the very foundation of human dignity and responsibility. Therefore, human rights are derived from, and are directly attributed to, the fundamental characteristics of human personality.[1] Human rights are also political and legal standards. As a political means of recognizing human dignity in a legally binding structure, they have to do with political justice, bbbbbbbhnrg th normavvv rrrrrr ggnnuinll y modern sffegurrds oo facilitate human life with dignity. To provide such safeguards is the purpose of human rgghts. (ff shari, 1994: 248; Donnelly, 2013: 64)

The role of extra-religious issues in understanding and interpreting religious sources helps harmonize what is internal and what is external to religion.[2] In hh Isaamcc ooneex tt oouddrnndrr hhrri' prnrcpp mor compatible with the realities of modern time and provide theoretical and practical solutions.

What supports this proposal is that every religion has, in one way or another, contributed to the idea of rights, raising the value of mankind and merit of human honor and dignity.[3] Any religious society can prepare its own laws and legal system based on these general principles as well as its

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1. See: Freeman, 1994: 491-514; Kasper, 1990: 253-269; Perry, 1993: 1027; Donnelly, 2013: 16-19; and Donnelly, 1986: 52.
2. See generally Marty, 1996: 97-106; Berman, 1974: 107; and Berman, 1993: 1-20.
3. See: Hersch, ed., (UNESCO: 1968); and Henkin, 1987: 589-590; An-aa 'mm 1990A: 47-48; and Kasper, 1990: 253-269.

collective rationale, wisdom, and human nature in its own historical context.[1] Human rights law requires an adequate intellectual framework as well. Muslim scholars should acknowledge human rights as individual entitlements, and promote the idea of equality of all individuals before the law, regardless of gender, religion, etc. In Muslim societies, neither men nor believers should derive their rights from their gender or faith. The idea of human rights assumes that all human beings are autonomous persons, not only components of family or community.[2] Human rights could be applied only in a society where the concept of the individual has been introduced and well situated in its cultural patterns. In other words, a civil and plural society with democratic political structure is the kind of society in which human rights are appreciated and human freedoms are enjoyed.

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1. The philosophy of law stipulates that historicity is a necessary dimension of any law even if one believes that laws should be linked to religious sources. Legal norms are, from this point of view, always conceived within a place and time-bound framework. Laws and regulations are rationally formed and executed according to the needs of society. See: Knox, trans., 1965: 14-18; Dworkin, ed., 1977: 1-2. Also generally Dworkin, 1977: 38-65; Morawetz, 1980: 5-10; Kant, 1974. In Muslim societies, nevertheless, the problem emerged when early jurists considered Shari'a provisions as sacred and eternally fixed laws, and all tied beyond time and circumstances. While, the existence of laws and rules in Shari'a may be necessary or justified, Shari'a laws coincided with the establishment of the first Islamic state by the prophet in Medina, reflecting the needs of that society for laws. The Qur'an is not and does not profess to be a code of law or even law book. It establishes certain basic standards of behavior for the Muslim community. It may contain some legal rules, but these pertain only to an earlier phase of Muslim society and its leadership in Medina. They were not meant to govern every Muslim society; although this is how they have been so understood by Muslims. Therefore, those parts of Shari'a which deal with the legal aspects of human life may be considered as time-bounded and not an essential part of religion. See: An-Na'im, 199AA: 20-22; 18-19; and Bielefeldt, 1995: 595.

2. Needless to say, the individualistic feature of human rights does not deny the social dimensions that human rights contain. See: Mayer, 1991: 47.

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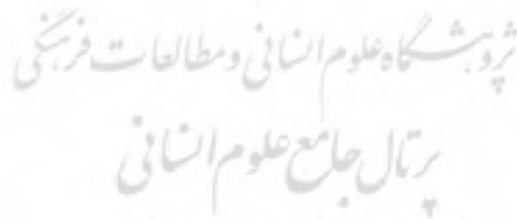
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