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## **Human Rights as a Universal Concept in Islam**

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### **Introduction**

Human rights today are defined in a normative framework of democracy and freedom based on the principle of equality. It is in this context that human rights are made in reference to the whole of humanity regardless of ethnicity, religion, social status, etc. The pertinent questions we confront when we reflect upon the issue of Islam and its compatibility with the Universal Human Rights Declaration (UDHR), which almost all of the nations of the world are supposed to uphold, are: (a) Can *shari'a* meet the demand for human rights? (b) Can it become a legal framework in which one can understand and conceptualise the universality of human rights. These are questions which ultimately hinge upon the problem of interpretation of the *Qur'an* and *Sunna* or more specifically that of a hermeneutics of the foundational texts of Islam.

At first glance these questions seems controversial. While there are few who seek to deny categorically that there can be any such thing as human rights in Islam, many thoughtful and also highly influential individuals, including religious and political leaders from the now more assertive nations of the non-Western world, do question and even challenge the universality of Western notions of human rights.

How do we then engage ourselves as culturally-diverse human beings to discuss human rights and seek that human capacity for mutual empathy and understanding? How do we ultimately define a notion of human rights in its "universal dimension" in a world of rich human diversity, difference and cultural specificities? It is indeed a challenging task, one which none of us can any longer avoid or postpone as we enter into the new millennium of our human and civilizational existence. This challenge is all the more pertinent when we consider how processes of globalization over the last two-and-a-half decades have increasingly brought many diverse nation-states and communities into a single 'global' context.

It is not difficult to recognize the argument that Western notions of human rights may be culturally and civilizationaly contingent, not universal. But conceding that point still leaves the non-Western rights-activists faced with the question whether, historically, it has been the Western tradition alone which has formed an explicit concern with human rights, with the rights of people as individuals, as citizens within a political community, and as members of the important social groupings of which civil and political society is constituted. Does

Western discourse alone, even if it is of compromised universality, have the capacity to generate such a concern with or a conception of human rights? <sup>1</sup>

Or can a concern for, an affirmation, articulation and defence of human rights be effectively and autonomously generated from within other, non-Western cultural traditions, philosophical idioms, religious and civilizational frameworks? Perhaps such alternative formulations of ideas of generic human rights have already appeared and been historically elaborated in other (non-Western) cultural forms, grounded in different moral and ideological systems. But even if hitherto they have not--or the potentials for their elaboration have been only partially or fitfully recognized and imperfectly developed---are such intellectual resources made available in other, non-Western contexts and traditions?

The central concern of this paper is to consider these questions through the exploration of one important and revealing case study of a religious tradition: that of Islam, the religion with which I am personally most familiar. I have argued elsewhere that what is done in the name of Islam is often not Islam itself, certainly not normative Islam at the level of central ideas and animating principles.<sup>2</sup> The present discussion again takes up the case of Islam with an explicit objective to explore potentials and realities of--as well as the entrenched resistance to--the generation and elaboration of an effective non-Western discourse of human rights. This enterprise is one that, while it may be as culturally contingent or conditioned in its own way as its Western counterpart, nevertheless has the capacity to yield a notion of universal human rights: the very idea that in virtue of their intrinsic or generic humanity transcending all their contingent cultural and historically conditioned differences, people share certain essential entitlements. Whether embodied within the formal political constitutions of human communities or seen as inhering, by divine creation, within human ontology (e.g. the concept of *fitrah* in the Qur'an), the idea of human rights is too insistent to have been the intellectual discovery of only one of the many historic communities or civilizations of humankind.

In their attempt to find an alternative to the derivatively Western political framework of the modern nation-state and all its constitutional and legal paraphernalia, many societies, such as Algeria, Malaysia and Indonesia—to name just a few--have looked for guidance to their religious community's formative (or historically-significant) and, within their own terms, culturally-authentic experience. This process, as different peoples and societies pursue it in their own various ways, is necessarily differentiating and particularizing. It produces and promotes the elaboration of difference. The huge question facing us is whether it consequently undercuts or narrows the grounds for shared cross-cultural, even universal, understandings of human rights.

It is in this context perhaps that it may be useful and challenging for us to examine what "cultural sources" of human rights that religious traditions such as

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<sup>1</sup> According to a contemporary Muslim scholar on human rights, "The claim that human rights, in the present day sense of the word is the product of Western culture is certainly an overstatement that is supported by no evidence. What could be supported by somewhat superficial evidence is that civil and political rights have certain fundamental roots in modern Western cultural and social accomplishments. However present day human rights system has come to fill an immeasurably greater space than civil and political rights." [Said 1997, p. 13]. See Mohamed El Sayed Said "Islam and Human Rights" in *Rowaq Arabi*; a journal pub. by the Cairo Institute for Human Rights Studies, January 1997; pp.4-32.

<sup>2</sup> See Norani Othman, "Shari'a and the Citizenship Rights of Women in a Modern Nation-State: Grounding Human Rights Arguments in Non-Western Cultural Terms" IKMAS Working Paper Series, Number 10, July 1997.

Islam can offer towards the expression of a universal struggle for human rights. Perhaps a far greater challenge that we all face, as humans, within our various cultural expressions of an emerging contemporary “civilization of modernity” is to engage in the *public* debate over human rights as a global issue based on an inter-civilizational dialogue. This negotiation can only be achieved on the basis of finding an “overlapping consensus” on universal principles of human rights derived from some common cultural and ethical foundations that are evidently necessary for our common survival and coexistence with others. One cannot deny that such foundational values characterise all religious traditions and embrace all humankind.

### **The Universal Dimension: finding a normative or overlapping consensus across nations, cultures and religions**

The principle that all human beings should enjoy equal individual rights of freedom and participation is a modern idea born of the intellectual legacy of the Enlightenment in Western Europe. However, it seems natural that members of all faith communities including Muslims, Christians and Buddhists should be committed to promoting and implementing international human rights. After all, do not all religions profess a profound concern for human life and human dignity while providing ethical guidance for the private, public and social lives of their adherents or believers?

A more pertinent consideration is: how does one maintain a basic standard of human life in dignity and freedom in the face of human diversity, pluralism and multiculturalism (as well as the enormous diversity to be found within various religious traditions)? Indeed, how does one go about establishing--or even begin to create the ground for engaging in--inter-faith dialogue? We need to remind ourselves, too, that the first objective of that dialogue is to find a normative consensus for international or global coexistence and cooperation while at the same time accommodating a multiplicity of different convictions and different ways of life. The real challenge is to find a normative and overlapping consensus across nation-states, cultures and religions capable of sustaining and even enriching modern human rights standards.

Yet to say that the explicit articulation of human rights standards is a modern phenomenon is not synonymous with claiming that those modern expressions are superior to traditional or religious forms of ethics and law in terms of its notion of equality and individual rights. One may in fact see the development of human rights as a central theme in a shared history of “civilizational progress”. Yet such a narrative with its central theme of increasing progress would also imply a general superiority of modernity over pre-modern periods; that modern concepts of rights are somehow more “advanced” than the earlier formulations available in the ethical discourse of all of humankind’s great religious traditions. This, I will suggest, is a view or implication that we need not accept.

In this context we must recognize that modern threats to human life and dignity have made it urgent, even imperative, to find new ways of protecting human dignity and freedom. Outstanding modern experiences of injustice and exploitation--such as colonialism and the imperial domination exercised by Western states over large parts of the African, Asian, and American continents, together with the outbreak of various religious, civil and ethnic wars and the dangers of capitalist exploitation, mass impoverishment and proletarianization and unemployment--all attest to that need to find a common global approach to protecting human dignity and freedom. Modernization crises are far-reaching, and

their persistent occurrence has prompted an awareness and the gradual evolution of the human rights concept in its modern international form.

In this context too it becomes logically imperative that members of different communities of faith seek a *critical reconciliation* between the ‘secular’ international standards of human rights on the one hand and the normative traditions of their various religious heritage on the other. A critical reconciliation of tradition and modernity, loyalty (or strong social ties) and emancipation, religious normative claims and secular standards of human rights therefore requires an honest and critical reevaluation of the different historical legacies of each tradition: that is, a re-evaluation that not only acknowledges the strengths of those religious legacies, so far as human rights are concerned, but which also clearly recognizes and addresses, rather than “fudges” its way around, their gaps and limitations. In other words, in the context of Islam this calls for a renewed and critical “ijtihad” which amongst others has first to address the undeveloped concept within a Muslim worldview, that is the concept of equality of all human beings: believers, unbelievers or believers of other kinds of faiths.

Human rights standards in their modern international conception are, after all, a political means of recognizing human dignity in a legally and binding way across many diverse nations. Yet this legal codification requires first and foremost the endowment of all people regardless of colour, creed or gender with equal rights and freedom—individual and community-based—so that their freedom of varying religious practice and conscience can be equally protected. Crucial here is the need to ensure not only freedom *to* religion but also freedom *within* and even *from* religion: from coerced conformity of minorities to majority religions or to dominant trends within interpretations of the religious faiths to which they adhere.

### **Universal dimension in the Qur’an: the principle of “one-ness” and the notion of “the children of Adam” (*banu Adam*) as the basis for the principle of human universality**

The purpose of this seminar is to seek that critical reconciliation between Islam and the Universal Declaration of Human Rights. Towards that objective, I shall outline how in many of its verses and chapters the Qur’an expressed the one-ness and universality of humankind and how all of humankind (“children of Adam” is the term used by the Qur’an) is conferred dignity and freedom by Allah. This forms the essential quality of being human.

The Quranic approach to the faith in the One God is to call attention to the whole universe in its various physical and biological phenomena, and to its incessant laws and systematic order which maintain continuation and coordination. From these observations, the Qur’an presents the argument about the One God and His attributes, and His relation to His creation. God in Islam stands as the unchanging absolute and abstract reality of all existence, including human existence. The message of Islam is explicitly universal, directed and communicated to all people or humankind (*insan*) on earth. The sense of universalism is also couched within the principle of dignity and the essential equality of all human beings. The notions of vicegerency (*istikhalf*) and trust (*amanah*) pertains to the reasoning of creation based on the idea that humankind takes charge of its own destiny and that of the universe. They also imply certain rights and responsibilities in fulfilling those roles and trust.

The areas about rights and fundamental rights in Islam which we have to be clear and articulate are: the relations between men and women, and those between Muslims and non-Muslims or the “Other”. Muslims have to deal with all including the non-Muslims or people of other faiths with justice, fairness, and kindness and to promote peaceful actions and relations, “for verily, God loves those who act justly” (*Qur’an*, 60: 8). Many Muslims may accept the requirement of being “nice” to the other, but not the principle that the other is “equal” to him or her. Many also believe or think that the two attitudes are the same, or that “nicety” may suffice or substitute for equality. But they are not the same; “nicety” is essential for human relations, while “equality” is crucial to both the individual legal entitlement and the entire order of legal justice. Equality may also be merely a legal outward formality if it is not based on “moral” conviction and virtuousness. Whatever the “nicety” in human relations may be in daily life, “equality” has to be secured and sanctioned by law. We may be talking in two different languages with those who believe in universal human rights, when we insist on speaking about our belief in, and practice, of nicety and tolerance, while they need an explicit and clear commitment of “equality” of the “other” to “us” from us, in spite of whatever difference there is between the “other” and “us”.

I have also argued elsewhere that two main issues confront modern Muslims.<sup>3</sup> First, there is a need to examine currently prevailing *shari’a* definitions of human and citizenship rights. What is at issue here is not the rights of Muslims, of non-Muslims, of majorities or of minorities but the rights of human beings as simply human beings, generically. Any consideration of the position of any special category or “sub-set” of human beings can only follow from, and be couched within, the parameters of such an examination. This awareness is by no means alien to Islam but is grounded in the Qur’anic notion of a common human ontology [*fitrah*], couched in an Islamic idiom of moral universalism which predates much of the Western discourse about human rights. I could have made you all the same, Allah explains to humankind in the *Qur’an*, but I chose to make you different, so that you might come to know one another and thereby better understand your own selves (see for example *Al-Maidah*, 5: 48, Qur’an “... if Allah had so willed, He would have made you a single people, but [His plan is] to test you in what He hath given you, so strive as in a race in all virtues. The goal of you all is to Allah; it is He that will show you the truth of the matters in which ye dispute”; see also *Hud*, 11:118-119, Qur’an “If thy Lord had so willed, He could have made mankind one people; but they will not cease to dispute, except those on whom thy Lord hath bestowed His Mercy: And for this did He create Them: and the Word of thy Lord shall be fulfilled: “I will fill Hell with jinns and men all together.”).

Human diversity and cultural pluralism in this Qur’anic view are not a regrettable mistake or limitation nor a political obstacle but a sign of divine grace and blessing among humankind. Like modern discourses about human rights, the Islamic tradition is centrally concerned with the human, moral and therefore ultimately religious meaning of human beings themselves, within and also transcending their cultural differences and social diversity. This question of the human meaning of human beings presents a growing challenge to *all* theological traditions, cultures and civilizations. In the increasingly interdependent and globalised world which we all now inhabit and must share, human beings have rights

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<sup>3</sup> Ibid. In this paper, I shall not focus on a discussion of equal rights for Muslim women. The concern in this essay is on the notion and concept of universality of human rights in the context of pluralism and difference.

simply as human beings, regardless of differences of race, gender and religion. We must find humanly inclusive ways of sharing our world while also grounding our common rights--including our right to be who we are, and hence to be different from others--within it. This, doctrinally, is the view that lies immanent but central within the Qur'anic "worldview" itself. The challenge to contemporary Islam, and Muslims, is to adopt that same standpoint as its, and their, own. The challenge to today's Muslims--and especially the new traditionalist ideologues who provide the main intellectual and political impetus for all the kinds of religious resurgence that are gathered together under the vague label of "fundamentalism"--is to begin to see humans, all humans, in the way that their faith insists God or Allah (himself) sees them. This is also the challenge to today's Muslims to define and elaborate an understanding of the concept of pluralism not only within the community of Muslims but throughout all the communities of humankind. Human diversity or pluralism can be seen as not only inherent in the divine scheme of things but also deliberately designed to promote understanding and cooperation among various peoples. Perhaps one of the central challenges of *taqwa* (faith) for today's Muslims is how to make a judgement of human worth based on the person's moral conduct rather than by his or her membership in a particular ethnic, religious or other affiliations.

This may pose as a central challenge because just as one can select the above verses of the Qur'an (as many Muslims had done when making an argument for the universal concept of human rights in Islam) to demonstrate its "inclusive" concept of pluralism as embracing all human beings, there are those other verses in the Qur'an which also speak about "exclusivity" in the sense of "believers" as *awliya* (allies and supporters of one another) and "non-believers" as *awliya* of one another [see for example verses of the Qur'an such as 3:28; 4:139, 144; 8: 72-73]. Clearly one is faced with a problem of how to address such apparently conflicting verses of the Qur'an.

Second, Muslims need to contribute their own modern and Islamically appropriate conceptions of social relations, established on a basis of equality, between men and women. Here again, Qur'anic conceptions of the rights and duties of men and women--in the family, to own and manage property, and to participate in public life and to hold public office, for example--provide the basis for a far more enlightened and egalitarian view of gender relations than the regressive ideas that are currently offered--quite misleadingly in the name of Islam itself and with the supposed imprimatur of its faith--by resurgent Islamists and traditionalist ideologues the world over.<sup>4</sup>

In debating these issues, Muslims must also recognize another dimension--the dimension of existing international human rights documents with their own distinctive conceptual basis and perspective. Until the two main issues which I have just outlined are clearly addressed, any Muslim critique or rejection of those documents remains premature, even questionable. Those instruments and their moral foundations, derivatively Western perhaps in their origins and history, can be neither embraced wholesale nor summarily rejected at the outset of any such process of consideration by modern Muslims. Only after a critical reevaluation of their Islamic heritage--and especially the idea of an underlying common humanity that finds variable cultural expression within the differing societies of a diverse humankind--can progressive Muslims decide in what ways

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<sup>4</sup> See Norani Othman "Shari'a and the Citizenship Rights of Women in a Modern Nation-State: Grounding Human Rights Arguments in Non-Western Cultural Terms" IKMAS Working Paper Series, Number 10, July 1997.

and to what extent they should accept, reject, modify or renegotiate the stock of the so-called derivatively Western concepts and ideas that are now offered as the basis for a universal discourse or theory of human rights.

The challenge and the process that I have just outlined is not one unique to Muslims. It faces all the great faith communities of humankind and is a key task for their thoughtful adherents. As we all in clear sight and good conscience examine our own varying religious and civilizational heritages, we will be drawn not further apart but closer together, on the grounds of a culturally and religiously pluralistic but together humanly inclusive reconsideration of human plurality itself.

The problem of universal human rights for most Muslims may also be related to certain other general conceptual matters (apart from the concept of pluralism mentioned earlier) that has remained somewhat unresolved. One example often cited by Muslims themselves is that “some specific details in the UDHR issued by the General Assembly of the United Nations in December 10, 1948 have raised some controversy among Muslims, at the head of which has been human freedom of changing beliefs [article 18]”.<sup>5</sup> But the divine sources of Islam--the Qur’an and the Prophet’s traditions (or Sunna)--do provide ample if not comprehensive legal principles and also some specific rules in the various arenas of human life including the social, political and governance. The Qur’an addresses, in many verses, the “Children of Adam” in the sense of “human beings” as a whole, while at the same time it addresses in many other verses, those “who have attained to faith” or simply “the believers”. That human beings are all different cannot be argued. but that does not mean or imply that they are not one. “Islam is a monotheistic religion, built on the notion of one-ness of god. Corollary with this essential position is the doctrine of one-ness of humankind”.<sup>6</sup> The Qur’an states that Allah honours and confers dignity on all the “Children of Adam” (*Al Isra*, 17: 70) whatever their inborn and acquired differences may be. The “Other” is as equally human as the Muslim or the believer since the Qur’an emphasizes that all of humankind came out from one couple: a male and a female, in spite of all their diversification into various peoples and tribes which are meant to develop knowing and complementing one another through the diversity of human qualities (see for example, *Al Hujurat*, 49:13, “O mankind, We create you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other...”). Diversity is thus a natural law for humankind, and no conformity or domination of one single way of thinking or way of life can be expected. People are different in their various abilities so as to be tested with how they deal with their differences and constructively interact with one another, while benefitting from God’s gracious guidance in their efforts (see Qur’an, 5: 48; 11: 118-9; 49: 13). Here again the challenging task in the promotion of universal human rights is an appreciation and practice of the principle of “equality” not merely implementing a policy of “nicety” or *religious tolerance*. Muslims and non-Muslims should be equal in rights and obligations in a Muslim country which means for the non-Muslims: the right to vote, to be a member of parliament, a minister, a judge, an officer in the army; i.e. not just the enjoyment of their belief or practice of their religion. A substantive principle of equality and the right of freedom together form the underlying principle of the entire order of

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<sup>5</sup> See Fathi Osman “Islam and Contemporary Problematics of Human Rights” paper submitted for a conference on “Islam and Modernity”, London; unpub. mimeo dated 6 July, 1996.

<sup>6</sup> See Mohamed El Sayed Said “Islam and Human Rights” in *Rowaq Arabi*; a journal pub. by the Cairo Institute for Human Rights Studies, January 1997; pp.15-17.

right. Freedom plays the central role within the conceptual framework of right comparable to the role of moral autonomy within the conceptual framework of morality while equality is in fact the precondition to the recognition of everyone's freedom. They form two interconnected aspects of one and the same principle that recognizes and promote human dignity. The right to freedom is expressed in the Qur'an by the assertion of the *al Baqarah* surah "let there be no coercion in the matters of faith" (2: 256). In this verse, the Qur'an secures the rights of free belief, and what is inseparable from it such as free expression of this belief, and free assembly of the believers, whether in the form of a temporary gathering or a permanent organization for the support of this belief. God consciousness cannot produce its moral and behavioural consequences if it is not deeply rooted in the human heart and mind by free will and full conviction.

The way of how to achieve such an order of right lies at the centre of what may be called the Qur'anic worldview of human dignity, its plurality, and moral autonomy and responsibility. A closer and careful examination of various verses from the Qur'an attest to a moral and ethical judgement and conduct which upholds free will, entitlements and respect among all humans.<sup>7</sup> A few examples of the Qur'anic worldview which supports the notion of human rights as a universal concept are given below. They are taken from a recent publication by a much-respected contemporary Muslim scholar, Professor Fathi Osman, 1997 *Concepts of the Qur'an: A Topical Reading*. I chose only the three topics (below) from many others that the author has judiciously selected to make his strong argument in support of what I called a Qur'anic worldview of universal human rights, freedom and justice.

### **1. One Faith, different laws and practices**

"And to you We have sent the Book, setting forth the truth, confirming the truth of whatever remains of earlier revealed books, and watching over it; so judge between them [the People of the Book] according to what God has revealed, and follow not their whims, diverging from the truth that has come to you. To each of you We have appointed a law and a way to follow. And had God so willed, He would have made you all one single people, but [He willed it otherwise] so as to test you through what He has given you. Vie, then, with one another, in good deeds; unto Allah you shall return, and He will make you understand all on which you differed. (5:48)<sup>8</sup>

This verse clearly spells out the place of the Qur'an with regard to the earlier divine books that had been revealed before and were still remaining when the message of Islam came. Although Muslims believe that the Qur'an is the final word to humanity and thus represents the culmination of the divine revelation that has addressed, in a condensed way, essential human needs in different times and places, they must also believe that "there is no coercion in matters of faith" {2: 256}, and that God has created humanity to be diverse.

Pluralism is therefore a fundamental law of nature, with which the messages of God and their laws comply "*to each among you We have appointed a law and a way to follow. If God had so willed, He could surely have made you all*

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<sup>7</sup> Unless otherwise stated, all verses of the Qur'an are cited from Abdullah Yusuf Ali, *The Holy Qur'an: Text, Translation and Commentary*. Brentwood: Amana Corporation, revised edition; 1989.

<sup>8</sup> Fathi Osman, *Concepts of the Qur'an: A Topical Reading*. Kuala Lumpur: ABIM (Muslim Youth Movement Malaysia) Publications; 1997.



one single, but [His plan is] to test you through what He has given you". All adherents of earlier divine revelations who believe truly in the One God and in human accountability in the life to come and conduct their life according to God's moral guidance and righteousness will be fairly judged and rewarded and need not fear their present or future [see Qur'an, 2: 62; 3:113-115; and 5: 69]. Followers of different messages and ways of life should "*vie with one another in doing good deeds*", and thus pluralism should stimulate constructive competitiveness as well as essential cooperation [Qur'an, 2: 177; 5:2; and 49: 13]. God's laws in the Qur'an then secure pluralism which complies with human diversity, and although Muslims believe that the divine revelation which they follow is the final word of God, and that it has remained intact since that time of revelation, the Qur'an does not impose one system or expression of beliefs at the expense of others, nor does it claim to monopolize righteousness and God's grace in this life and the life to come. Accordingly, human consent is conditional for any legitimate obligation, and compulsion nullifies any human statement or agreement.<sup>9</sup>

## **2. Human dignity, the right to development, and freedom of movement and mobility**

We have conferred dignity on the children of Adam, and carried them on land and sea, and provided for them sustenance out of the good things of life, and favored them far above many of Our creation. [17:70]

God has favored human beings with the spiritual and intellectual faculties to make judgement about right and wrong, and with *free will* to choose what he/she may believe in or how he/she may act [e.g. Qur'an, 90: 10, and 91: 7-9]. Human beings can use their physical and intellectual abilities to move from place to place through land or sea, or by other ways including air and space [e.g. Qur'an, 42: 29; and 45: 12-13]. It is the right and obligation of the individuals, society and authorities to secure and develop human powers to their full potential in various dimensions. Human being is created to be universal, and to move from place to place to earn his/her living or to gain more knowledge, and to contact other peoples and develop human relations and ties such as economic cooperation with them.

It is a human right and obligation to acquire sustenance out of the good things of life that ought to be nutritive and fairly distributed in the society and exchanged in the whole world. This has to be secured through fair chances for work, and laws that secure justice in business and in the labour market and prevent exploitation and fraud by all means. Human dignity cannot be maintained and developed unless an awareness of individual and public responsibility is nurtured, and the fulfillment of human obligations is combined with the demand

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<sup>9</sup> This interpretation and commentary is taken from Fathi Osman, *Op. cit.*; 1997 p. 752.

of human rights. Quranic “human dignity” combines rights and duties. It is comprehensive for the holistic human needs: physical, intellectual, spiritual and moral. It is universal as it secures dignity for the human being as a human being, regardless of gender, ethnicity, faith or power. It is stated by God who is the Creator of all humanity and is not biased with or against any of them, and it is guarded by God-consciousness which is deeper in its roots and wider in its range than any human philosophy, national constitution or international documents.<sup>10</sup>

### **3. Moral responsibility of government, and guiding public opinion and actions**

Those who if We firmly establish them [and enable them to seize power] in the land, keep up prayer and render purifying welfare dues (zakat), and enjoin the doing of what is right and forbid the doing of what is wrong; with God rests the final outcome of all events. [Qur’an, 22:41]

Since spreading righteousness and justice and resisting evil and injustice sum up the message of Islam and its followers, these become the essential duties of those who are entrusted with authority from among the people, by them, in any land. Such individuals have to use their authority to secure the moral values and principles of justice in God’s message in the land under their power, and to give support for morality, justice and peace all over the world. It is only when such a commitment to righteousness and justice is fulfilled internally and universally that Muslims become a constructive power in the world for the good of themselves and humanity [Qur’an, 3: 110]. The Conveyor of God’s message will be the witness over them in fulfilling their responsibility, while they become witness over the whole of humanity in this regard [Qur’an, 22: 78]. This is a universal moral

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<sup>10</sup> This discussion, with some minor editing, is also taken from From Fathi Osman, *Op. cit.*; 1997 especially pp. 758-9.

responsibility of all believers, men and women, but should be secured and supported by those who are in power.<sup>11</sup>

### **Concluding Remarks**

Whatever the various implications of the international pluralism and justice may be, the moral responsibility of all human beings with all their inborn and acquired differences as individuals, groups or communities lies in their thought, judgement and conduct. As the Qur'an itself states: "Verily, God does not change people's condition unless they change their inner selves" (13: 11).

The above citation demonstrates what another contemporary Muslim scholar describes as "choice and/or interpretation of verses in the Qur'an (or any other text for that matter) in relation to human experience and relationships is necessarily informed by the orientation of the person in question."<sup>12</sup> As he rightly asserted "Muslims, for example, have always differed, and will always differ, in their choice of verses to cite in support of their views, and also in their understanding of the verses they quote. That is one of the reasons why there are so many schools of Islamic theology and jurisprudence, with a wide variety of views within each school. This feature of Islamic discourse is often cited by Muslims [themselves] with great pride as conclusive evidence of the flexibility and adaptability of Islam to the different circumstances of time and place."<sup>13</sup>

Indeed we now come to the heart of the matter: the historicity of interpretation of religious texts. As stated earlier it is not Islam per se that is problematic in its relationship with modern human rights standards but it is the re-traditionalizing interpretation of the *shari'a*--one which renders the *shari'a* as a comprehensive system of politically enforceable normative regulations. To deny that there is no problem with the relationship between the *shari'a* and human rights is simply unrealistic if not an intellectual dishonesty. A notable Muslim judge in Egypt has already pointed out that Muslims must not confuse the his

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<sup>11</sup> Fathi Osman, *Ibid.*

<sup>12</sup> See Abdullahi Ahmed An-Na'im "Towards an Islamic Hermeneutics for Human Rights" chapter xvi in An-Na'im *et al.* (eds.) *Human Rights and Religious Values: An Uneasy Relationship?* ; Williams B. Eerdmann Publishing Company: Michigan, U.S.A., 1995

<sup>13</sup> *Op.cit.* p. 233

torical jurisprudence (*fiqh*) as of equal status with revelatory guidance.<sup>14</sup> For all Muslims the Qur'an is divine, sacred and authoritative. But for the "re-traditionalizing interpreters" and their supporters, they also

"treat as virtually no less authoritative and binding the interpretations of that sacred text that were made—under the often limiting sociolegal conditions then prevailing—by the early Muslim legal scholars who codified Islamic law in its traditional or classical formulations. For the adherents of this approach, history offers not new possibilities but imposes a troubling remoteness, even alienation. As history advances, it takes the *umma* ever further away from the paradigmatic ideal of its founding generations, from the secure example and guidance of those who enjoyed a direct understanding of Islam in its authentic and formative phase. For them, accordingly, the way to close that gap—to heal the wounding distance imposed upon modern Muslims by relentlessly advancing history—is to reaffirm and to reimpose in the present the understandings of Qur'anic ethical imperatives of those early times: that is, as they were first codified in their not simply premodern but actually [for our times] most archaic legal forms. Seen in this way, the desire to implement what its proponents regard as the essence of Islamic law—[including those that are contrary to modern human rights standards]—becomes understandable. But it can also be recognized for what it really is: an anachronistic attempt to impose in modern times and upon modern Muslims of good faith what is not the essence or culmination of Islamic law but only Islamic law in its most archaic, provisional and historically unevolved form."<sup>15</sup>

In evaluating issues such as human rights we confront not only the problem of coping with the historicity of early post-Qur'anic Islamic texts but, no less difficult, of how we are to read even the eternal message of the Qur'an itself into the present. In either case,

we in the present have to read those texts in order to understand them at all; but in seeking to understand them we—like all Muslims throughout history—bring to our own reading of those texts the frameworks of understanding of our own time and place. We hear the past voices that speak to us speaking with contemporary accents, as it were—our own. So we are always, like all the great *ulama* of the past—even if they were not aware of it—both reading the present back into the past from which we seek contemporary guidance, and also left with the problem—even if and where we think we know clearly and authoritatively what the past is telling

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<sup>14</sup> Muhammad Said al-Ashmawy, *l'islamisme contre l'islam* (Paris: la découverte, 1989), p.124-15 [my thanks and appreciation to Heiner Bielefeldt for providing this citation]. See also Heiner Bielefeldt, *Philosophie der Menschenrechte. Grundlagen eines weltweiten Freiheitsethos* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1998).

<sup>15</sup> Norani Othman "Hudud law or Islamic Modernity?" in Norani Othman (ed.) *Shari'a Law and the Modern Nation-State: A Malaysian Symposium* (Kuala Lumpur: SIS Forum Malaysia, 1994), p149.

us—of deciding *how* we are now to implement or proceed upon that understanding.<sup>16</sup>

Abdullahi Ahmed An-Nai'm, a contemporary Muslim legal scholar has also called for a new hermeneutic approach to reading the Qur'an. For An-Nai'm, "the community of believers as a whole should be the 'living frame of interpretation and ultimate arbiter and mediator of interpretative rules, techniques and underlying assumptions".<sup>17</sup> According to him "...the process of religious revival and reformation is often about breaking the monopoly of the clergy or technocrats of hermeneutics and reclaiming the right of the community to be the living frame of interpretation for their own religion and its normative regime."<sup>18</sup>

Ultimately it is for Muslims themselves who have to contend with the fact that *shari'a* is a product of human understanding. Thus in making decisions concerning implementation in our modern times and circumstances of the eternal imperatives of the Qur'an, we bring to that process of interpretation and decision our own contemporary understandings. We simply cannot do otherwise. Both

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<sup>16</sup> Norani Othman "The Sociopolitical Dimensions of Islamisation in Malaysia: A Cultural Accommodation of Social Change?," in Norani Othman (ed.) *Shari'a Law and the Modern Nation-State: A Malaysian Symposium* (Kuala Lumpur: SIS Forum Malaysia, 1994), p. 128.

<sup>17</sup> Abdullahi Ahmed An-Na'im "Towards an Islamic Hermeneutics for Human Rights" chapter xvi in An-Na'im *et.al.* (eds.) *Human Rights and Religious Values: An Uneasy Relationship?* ; Williams B. Eerdman Publishing Company: Michigan, U.S.A., 1995; p.235.

<sup>18</sup> Abdullahi Ahmed An-Na'im *Op. Cit.*

the eternal text of the Qur'an and the historical, contingent texts of the *sunna* and *shari'a* are read and humanly understood by living people—*ulama* and other believers—of their own particular time and place. Our history, our past never speaks to us directly, and even the Qur'an—however it speaks to us—is only heard and understood by real living people, limited in the ways and by the circumstances of their own time. All our understanding is imperfect, human, historical and provisional—and capable, accordingly, of being changed and even deepened in the light of changing circumstances of a constantly unfolding future in ways that, in the very nature of the case, it is impossible for us now to anticipate or even imagine. The past, in whose light we wish to read and find guidance for the present, is itself known only through an image into whose formation our own present enters. In Islam there are things that are divine and eternal, but they are only ever known by humans in forms that are stamped, and also limited, by the historicity of all human understanding.<sup>19</sup>

One often hears in Islamic discourse the proposition that “Islam is suitable (valid) for all times and places”. It is for this maxim that Muslims must consider and accept that there must be flexibility and change in the understanding and implementation of Islam over time and place. A crucial issue in this effort is the credibility of advocates of universal human rights in the eyes of their own local constituencies. These advocates must draw upon the symbols, and sources of their own culture and history; speak the ‘language’ of their own people, know and respect their concerns and priorities. It is only within this strategy that they will be in a position to advocate universal human rights standards in cultural terms that are locally persuasive and authentic.

Towards this objective I shall quote from An Na'im who said that “in the final analysis, the acknowledgment and implementation of universal human rights should be regarded as a cooperative process as well as a common objective—a global joint venture and not an attempt to universalize a particular cultural or religious model”.<sup>20</sup>

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<sup>19</sup> See Norani Othman (ed.) *Shari'a Law and the Modern Nation-State: A Malaysian Symposium* (Kuala Lumpur: SIS Forum Malaysia, 1994), p.128-129.

<sup>20</sup> Abdullahi Ahmed An-Na'im *Op. Cit.*; p. 241.

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OR “Human Rights as a Universal Concept in Islam”

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