

**TRADITIONAL ISLAMIC ETHICS: THE CONCEPT OF SPIRITUAL VIRTUE AND  
ITS IMPLICATIONS FOR CONTEMPORARY HUMAN RIGHTS**

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## **Abstract**

This dissertation is made up of two main sections. The first section argues that the current social culture and legal structure of international human rights needs to be more flexible and inclusive if it truly aims to be universal in scope. This is because The Universal Declaration and its offshoots are still underpinned by secular-liberal principles and therefore, they are at odds with other cultural traditions. To this end, this section critically explores popular human rights histories and contemporary ethical theories that attempt to justify human rights. In doing so, it argues that the debate is still ongoing and therefore, the exclusion of any alternative visions is unjustified. Thus, the goal of the first section is to ‘create a space of dialogue’ for one such alternative vision.

The second section of this dissertation constructs a theory of virtue ethics that has the ability to ‘ground’ an Islamic vision of human rights. This is because virtue ethics addresses fundamental questions concerning human existence which ultimately determine the constitution of human rights. In order to answer these questions, this study operates within the framework of the school of ‘Islamic Traditionalism’ and in doing so, it concludes that much of the friction between Islam and contemporary human rights is due to the fact that the latter emphasizes secular-liberal understandings of freedom, equality, and justice. In contrast, this study argues that an ‘Islamic’ human rights model must be grounded in God and His revelation and moreover, that it must emphasize human duties, inward transformation, and societal balance. It also argues that an ‘Islamic’ human rights society is one that is filled with ‘reminders’ of the Divine presence and structured in a way that allows Muslims to achieve their primary purpose in life – a virtuous ‘Heart’ in this world and felicity in the hereafter. The second section concludes by offering

some introductory remarks concerning contemporary human rights issues such as the implementation of Islamic law in general, pluralism, corporal punishment, and gender. In doing so, this study argues that there are ‘spaces of convergence’ that create a minimal overlapping consensus between the two traditions. However, this study also argues that there are fundamental differences and that these differences should be welcomed by human rights theorists and advocates.

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## TABLE OF CONTENTS

<b>ABSTRACT .....</b>	<b>ii</b>
<b>ACKNOWLEDGEMENTS .....</b>	<b>iv</b>
<b>TABLE OF CONTENTS .....</b>	<b>v</b>
<b>INTRODUCTION .....</b>	<b>1</b>
Holistic Islam, Traditionalism and the Dialogical Approach .....	3
A Note on Sources and Terminology .....	13
Chapter Outline .....	17
A Note on Translation, Transliteration and Structure .....	20
<b>CHAPTER ONE: HUMAN RIGHTS AND THE INCOMPLETE DEVELOPMENT OF A SECULAR-LIBERAL ETHIC .....</b>	<b>22</b>
Introduction .....	22
A Popular Account of Human Rights History .....	24
The Construction and Assumptions of Human Rights Histories .....	28
<b>CHAPTER TWO: HUMAN RIGHTS AND THEIR UNDERLYING ETHICAL THEORIES .....</b>	<b>35</b>
Introduction .....	35
A Critical Exploration of Utilitarianism .....	36
A Critical Exploration of Natural Rights .....	43
A Critical Exploration of Postmodern Ethical Sentimentalism .....	51
Human Rights and the ‘Question of Universality’ .....	58

<b>CHAPTER THREE: RELIGION, ISLAM AND HUMAN RIGHTS .....</b>	<b>66</b>
Introduction .....	66
Islam and the Challenge of Human Rights .....	73
Understanding Contemporary Islamic Thought .....	85
Situating the Traditional School of Thought .....	91
<b>CHAPTER FOUR: TRADITIONAL ISLAMIC ETHICS AND THE CONCEPT OF VIRTUE .....</b>	<b>107</b>
Introduction .....	107
Ethics and Virtue in the Quran and Islamic Tradition .....	118
Traditional Islamic Virtue Theory .....	128
<b>CHAPTER FIVE: TRADITIONAL VIRTUE THEORY AND ITS IMPLICATIONS FOR HUMAN RIGHTS .....</b>	<b>163</b>
Introduction .....	163
Human Rights and the Principle of Servanthood .....	164
Islamic Law, Pluralism, the Penal Code and Gender .....	176
<b>CONCLUSION .....</b>	<b>194</b>
<b>BIBLIOGRAPHY.....</b>	<b>202</b>
<b>APPENDICES .....</b>	<b>228</b>
Appendix A: The Universal Declaration of Human Rights .....	228
Appendix B: Declaration of Responsibilities .....	234
Appendix C: The Universal Islamic Declaration .....	238
Appendix D: The Asean (Bangkok) Declaration .....	248
Appendix E: African Charter on Human Rights and Peoples Rights .....	253

## INTRODUCTION

Human rights – as expressed in the *International Bill of Rights* – are increasingly envisioned as a set of self-evident and foundational truths. In turn, many human rights advocates and organizations are treating them as *the* legal and social norm for the global community. However, despite this growing popularity, it is clear that human rights are far from self-evident or foundational. Rather, they are symptomatic in so far as they are derived from particular worldviews and the latter's basic metaphysical, ontological and epistemological suppositions. Today's human rights are a product of the secular-liberal ethical tradition and have their roots in Christian natural law. Therefore, they cannot be qualified as 'universal'. If this fact is consistently ignored, there will continue to be growing friction and resistance from other cultural traditions around the world. These traditions will carry on seeing human rights as an alien concept that is being employed as a tool for Western or Global imperialism.<sup>1,2</sup> In light of this, this study argues that the legal structure and social culture of human rights needs to be more flexible and inclusive. It needs to open up a space for different human rights visions that share the same goal of protecting citizens by curbing excess of power and helping those citizens pursue their community's particular vision of 'the good'. If this is done, this study's working assumption is

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<sup>1</sup> This study uses *The English Oxford Living Dictionary's* definition of imperialism as "a policy of extending a country's power and influence through colonization, use of military force, or other means". There is a debate concerning imperialism and its 'location of power' in an increasingly globalized and technological world. For a more detailed approach to this debate and its related concepts, see: Loomba, Ania. *Colonialism/Postcolonialism*. 2<sup>nd</sup> Ed. New York: Routledge, 2005.

<sup>2</sup> The argument that human rights are being used as a tool for imperialism is a valid one. Many international organizations, such as the World Bank and International Monetary Fund (IMF), invoke the concept of rights to further their global reach and economic agendas. Unfortunately, an in-depth study of human rights and economics is beyond the scope of this work. For a brief discussion on the topic, see: Freeman, Michael. *Human Rights: An Interdisciplinary Approach*. Cambridge: Polity Press, 2007. Pp. 176-201. Also see: Fairbrother, Richard and McCorquodale. "Globalization and Human Rights." *Exploring International Human Rights: Essential Readings*. Ed. Callaway and Harrelson-Stephens. London: Lynne Rienner Pub, 2007. Pp. 248-255.

that it will result in cross-cultural differences and similarities and the latter would make up the core of what could rightly be called ‘universal’ human rights. However, many theorists, such as Jack Donnelly and Michael Ignatieff, are quick to dismiss tradition in general, and the Islamic religion in particular, as a potential source for human rights. For example, Donnelly writes that “Muslims are indeed regularly and forcefully called upon...to treat other with respect and dignity...[However,] these injunctions...appeal to divine commands that establish duties, not (human) rights.”<sup>3</sup> According to Ignatieff, “In Islamic eyes, universalizing rights discourse implies a sovereign and discrete individual, which is blasphemous from the perspective of the Koran”.<sup>4</sup> The reason for this dismissal of religion is a matter of both theory and practice. In theory, human rights discourse in the West has shifted from the religious sphere into the political and legal sphere and thus, it is in friction with any discourse that is theological in nature. Related to this is the apparent dominance of (liberal) reason in the public space and its assumption that any dialogue based on revelation and belief is outdated and primitive.<sup>5</sup> Indeed, John Rawls (d.2002) – who is normally accredited for the rival of modern liberalism – held that the public sphere, particularly in the area of politics, should be reserved for language that only ‘reasonable’ people would endorse.<sup>6</sup> Of course, delineating what is ‘universally reasonable’ is problematic and this problem is critically explored throughout this study. In practice, Islam is generally considered responsible for many human abuses such as the female genital mutilation (FGM) taking place in Africa and in the Middle East, the penal code implemented in areas such as Afghanistan and Saudi Arabia, as well as the 9/11 attacks carried out on US soil.

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<sup>3</sup> Donnelly, Jack. *Universal Human Rights: In Theory and Practice*. 2<sup>nd</sup> ed. New York: Cornell University Press, 2003. P. 73.

<sup>4</sup> Ignatieff, Michael. “The Attack on Human Rights.” *Foreign Affairs* 80:06 (2001) Pp. 103-104.

<sup>5</sup> The modern resurgence of the liberal belief in the ‘secular-rational human’ is normally traced back to John Rawls and his seminal work: Rawls, John. *A Theory of Justice*. London: Oxford University Press, 1971.

<sup>6</sup> See: Rawls, John. ‘The Laws of People’. *Chicago Journals*. 20:1 (1993) Pp. 33-68.



## Holistic Islam, Traditionalism and the Dialogical Approach

This apparent roadblock between human rights and Islam is unfortunate. It is almost impossible to deny the positive potential that the religion and its over one billion adherents have in advancing human rights. This is especially the case when one considers the significance that Islamic normative texts, such as the Quran and *hadith* literature, place on establishing justice on Earth and the rich 1400-year-old intellectual tradition that accompanies that Divine imperative.<sup>7</sup> For example, the Quran reads:

*O ye who believe! stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do. (4:135)*

It is true that a human rights scheme that is rooted in revelation, Islamic history and traditional norms may not sit well with the secular-liberal tradition and its advocates. However, there is no ‘white man’s burden’ and no duty on those in power to impose what it deems to be good on other peoples. If there is a burden, then it is the ‘human burden’ and that is to take the time to understand the ‘Other’ and not to accept or reject their beliefs for them.<sup>8</sup> This is why this study is

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<sup>7</sup> For an overview of the Islamic intellectual tradition’s approach to justice, see: Khadduri, Majid. *The Islamic Conception of Justice*. Baltimore: John Hopkins University Press, 1984.

<sup>8</sup> In other words, this study rejects all hegemonic neo-liberal/neo-colonial readings of the *Universal Declaration* which attempt to use the latter as an instrument of domination. It also rejects the idea the *Universal Declaration* and its offshoots, at least in their contemporary formulation, adequately represent the different cultural traditions of the world.

primarily dialogical in nature. Irene Oh aptly describes the benefits of a dialogical model when she writes:

The dialogical model aids with understanding persons from different traditions, and cultures than one's own because it recognizes those persons as agents like oneself... To understand others as agents requires that we view them as possessing self-understanding rather than unilaterally categorize them as mere objects of study... In dialogue that promotes understanding, others have voices, and we are required over the course of conversation to acknowledge and respond to those voices. Moreover, and just as important, we recognize through such dialogue our own assumptions, the limits of our knowledge, and the possibilities for understanding, and we therefore present human faces to our interlocutors.<sup>9</sup>

In terms of human rights, this study enters the dialogue as part of the 'pluralist-universal' school of thought, which attempts to negotiate a middle position between the extremes of universalism and cultural relativism.<sup>10</sup> This position is based on the understanding that cultural traditions are both unique and similar. They are unique insofar as they work within particular worldviews and develop according to their own particular socio-historical contexts and they are similar insofar as they are human collectivities that develop with common tendencies and are grounded in a shared humanity. More specifically, this work is concerned with the relationship between human rights and religion in light of the emerging religious typography that is characterized by the so-called 'religious resurgence' and contemporary 'Islamist' movements.<sup>11</sup> It is true that colonization,

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<sup>9</sup> Oh, Irene. *The Rights of God: Islam, Human Rights, and Comparative Ethics*. Washington: Georgetown University Press, 2007. P. 7.

<sup>10</sup> This study proposes a 'middle position' that is created by way of an 'accidental universality' as opposed to a constructed universality.

<sup>11</sup> In general, see: Berger, Peter L., ed. *The Desecularization of the World: Resurgent Religion and World Politics*. Washington: Ethics and Public Policy Center, 1999.

globalization and the pervasiveness of liberalism have replaced traditional Islamic societies with ‘Muslim-majority nation-states’. Nevertheless, these nation-states and Muslims themselves are increasingly looking towards ‘Islamic ideals’ in their attempts at reform and in their critique of current international human rights. For this reason, this study argues in favor of the inclusion of human rights models grounded in sacred religious texts and traditional normative practices. To this end, this study develops an Islamic theory of virtue ethics and addresses the theory’s general implications for human rights. Thus, it focuses more-so on ethical theory than human rights as such; this is because the former is the starting point and foundation of the latter. Moreover, this study focuses on virtue ethics because virtue situates morality within a broader framework of discourse; instead of asking about the right way to act, it starts by asking about the right way to live. Thus, virtue ethics is concerned with ‘right action’ in light of issues concerning the nature of reality, the purpose of human existence and the transformation of character.<sup>12</sup> It is the answers to these types of questions that ultimately determine what people understand and accept as human rights.

This study develops its theory of virtue ethics within the theoretical framework of the Traditional School of thought.<sup>13</sup> The Traditional School developed in the 20<sup>th</sup> Century with the works of its ‘founders’, Ananda Coomaraswamy (d.1947) and Rene Guenon (d.1951).<sup>14</sup> Traditionalism’s central doctrine is that the same metaphysical truths, in different forms and expressions, have existed in almost all civilizations before the rise and influence of modernity.<sup>15</sup>

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<sup>12</sup> For an introduction to virtue ethics, see: Russell, Daniel C., ed. *The Cambridge Companion to Virtue Ethics*. New York: Cambridge University Press. 2013.

<sup>13</sup> The Traditional School is also referred to as ‘Traditionalism’, ‘Perennialism,’ ‘*Religio Perennis*’, ‘*Sophia Perennis*’ and more. For the sake of clarity, this study employs the terms ‘Traditional School’ and ‘Traditionalism’.

<sup>14</sup> Some other significant members of the Traditional School include: Titus Burckhardt (d.1984), Marco Pallis (d.1989), Frithjof Schuon (d.1998), and Martin Lings (d.2005).

<sup>15</sup> For a more in-depth explanation and analysis of the Traditional School’s approach to comparative religions, see chapter three, Pp. 94-108.

According to Traditionalists, these underlying truths are found in revelation, reiterated by the saints and sages, and passed down through unbroken lines of transmission. Moreover, they combine to construct a basic yet common worldview that is centered around the Divine and the Divine-human relationship. On the human plane, these perennial truths are expressed in different religious forms, and inspire all human activity, ranging from religious doctrine to architecture, music, and calligraphy.<sup>16</sup> Thus, Traditionalists also understand premodern cultural traditions as both unique and similar. They are unique because they have flowered in different spacio-temporal contexts and emphasize different aspects of the Absolute. Nevertheless, these differences are understood as providential because they allow for the salvation of different ‘types’ of people. On the other hand, premodern cultural traditions are also similar due to their common essence – in *divinnis* – and in their expression of the same perennial truths.<sup>17</sup> In any case, Seyyed Hossein Nasr applies the Traditional School’s perspective to Islam and writes:

Two centuries ago, if Westerners...were to study Islam, they would have encountered but a single Islamic tradition. Such persons could have detected numerous schools of thought...[and] interpretations... But all that they could have observed...would have belonged in one degree or another to the Islamic tradition; that is, to that single tree of Divine Origin whose roots are the Quran and the...*hadith*, and whose trunk and branches constitute that body of tradition that has grown from those roots over some fourteen centuries in nearly every inhabited quarter of the globe.<sup>18</sup>

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<sup>16</sup> For an introduction and overview to the Traditional philosophy, see: Lings, Martin and Clinton Minnaar, eds. *The Underlying Religion: An Introduction to the Perennial Philosophy*. Bloomington: World Wisdom, 2007.

<sup>17</sup> Traditionalists consider societies based in ‘Western modernity’ as exceptional and therefore, fundamentally incompatible with premodern cultural traditions *on a whole*. However, as this study shows in the case of human rights, there are still ‘spaces of convergence’ over which some agreement can be found.

<sup>18</sup> Nasr, S.H. *Islam in the Modern World. Challenged by the West, Threatened by Fundamentalism, Keeping Faith with Tradition*. New York: HarperOne, 2007. P. 1.

Similarly, Joseph Lumbard, separates what he calls the ‘*ihsani* intellectual tradition’ from the two modern ideologies of ‘Islamic modernism’ and ‘Islamic neo-fundamentalism’. He writes that the latter two

have almost completely abandoned the principles of Islamic thought. Puritanical reformists [that is, fundamentalists] do so because they favor an opaque literalism which denies the efficacy of our speculative, intuitive and imaginal faculties. Modernists do so because they have capitulated to the mental habits of their conquerors, conditioned as they are by relativism, scientism and secular humanism. Each side continues to advance its position, but there is no room for dialogue; for in the absence of the traditional Islamic modes of interpretation, there is no basis for a common discourse among Muslims.<sup>19</sup>

Thus, Islamic Traditionalism is the Traditional School’s particular synthesis of the Islamic intellectual tradition as a whole – that is, 1400-years Islamic philosophical, mystical and theological thought – and its explanation of how the tradition’s basic metaphysical, ontological and epistemological principles have manifested themselves in the different expressions of Islam throughout history.<sup>20,21</sup> It is this particular understanding of Islam that I use to critically explore contemporary Islamic thought and construct an Islamic theory of virtue ethics. Moreover, it is in this context that I use terms such as ‘traditional Islam’, ‘Muslim mentality’, ‘Islamic worldview’, and the like. For example, on this perspective, the term ‘Islamic worldview’ refers to the common and essential elements that exist in the plurality of ‘Islamic worldviews’ that have

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<sup>19</sup> Lumbard, Joseph E.B. “The Decline of Knowledge and the Rise of Ideology”. *Islam, Fundamentalism and the Betrayal of Tradition: Essays by Western Muslim Scholars*. Ed. Lumbard. Bloomington: World Wisdom, 2009. P. 41.

<sup>20</sup> It is important to note that this work focuses more on the unified synthesis of Islamic thought than on its various expressions throughout history. This is in line with this study’s goal of approaching Islam holistically.

<sup>21</sup> Some contemporary Islamic Traditionalists include: S.H. Nasr, William Chittick, Murata Sachiko, Joseph Lumbard, and Reza-Shah Kazemi.

developed throughout Islamic history. This includes, for instance, the concept of life and judgment after death. In line with Traditionalist thought, it can be argued that the perennial concept of the hereafter, among others, determines many Muslims' general outlook and approach to life, that is, the basic 'Muslim mentality.'

There are several reasons why I have situated this study within the framework of Islamic Traditionalism. First, it approaches Islam in the unified and holistic manner necessary for any dialogical approach. Second, Islamic Traditionalism addresses the basic questions of human existence that need to be answered in order to form any theory of virtue ethics and concomitant human rights model. Third, the Traditional School accepts virtually all of Islam's 1400-year-old tradition and by extension, understands Muslims as self-understanding agents with the right to determine and pursue their own vision of the 'good.' Fourth, Traditionalists generally belong to a single religious form and thus, they speak as 'insiders' from their respective religions.<sup>22</sup> Finally, Islamic Traditionalism's working assumption is that it still represents the majority of Muslims today – at least in terms of their basic intellectual and behavioral orientation.<sup>23</sup> Here, it is important to note that this study's working assumption differs to the extent that it assumes Islamic Traditionalism represents just one of the many Muslim voices concerned with the issue of Islam and modernity. Nevertheless, this study maintains that the 'traditional Islamic voice' is a

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<sup>22</sup> In my opinion, an 'insider' perspective is needed in order to fully comprehend a religious tradition because the latter is a 'lived reality' and not a 'constructed ideology'. However, the insider vs. outsider debate is beyond the scope of this study. For an overview of the issue, see: McCutcheon, Russel T., ed. *The Insider / Outsider Problem in the Study of Religion: A Reader*. New York: The Bath Press, 1999.

<sup>23</sup> Even though Traditionalists argue that Muslim-majority nation-states are no longer traditional in form, these are the reasons why Islamic Traditionalism is still an important source to draw on when considering the construction and implementation of alternative 'Islamic' human rights models. Moreover, the study maintains that the concept of human rights, at least in its essence, is a perennial issue that all religions have and continue to address.

substantial and important one among Muslims<sup>24</sup>, and moreover, that it is underrepresented in Western academic institutions. Thus, drawing on Islamic Traditionalism is important because many ‘Progressive’ Muslim academics seem to underestimate, or wrongly assume they can circumvent the importance that most Muslims place on their traditional heritage as a whole.<sup>25</sup> Thus, they often construct theories that are alien to the Muslim mentality and the net result is that their thought is ignored or condemned. Moreover, the authors of these works are sometimes perceived as ignorant or willing puppets for Western or Global powers. For example, Abdal Hakim Murad – a prominent and popular Muslim figure – reviews Esack Farid’s work<sup>26</sup> and writes:

The age-old European concern with securing the Europeanization of the earth – imperialism, to use a more frank expression – today relies on reshaping the parameters accepted by the Other: accession to Western values can only be guaranteed when non-Westerners think in Western terms. Among secular thinkers this is today a common transformation, but in Esack’s case, his tutors have successfully secured a more interesting paradigm shift of a *theological* order... His book...completely lacks the style and reverent tenor of Muslim reflection, with its characteristic indigenous terminology, and with the deployment of scriptures as sacred archetypes rather than archaic problems.<sup>27</sup>

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<sup>24</sup> This working assumption is based on several observations. This includes the popularity of traditional Muslim figures such as, S.H. Nasr, Hamza Yusuf Hanson, T.J Winter, Martin Lings and others. It is also based on my own interactions with Muslim communities in numerous countries, including, but not limited to, Canada, the United States, England, Tanzania, Syria and Lebanon.

<sup>25</sup> For an in-depth explanation of the Traditional and Progressive Schools of thought and their specific approaches to Islam in the Modern world, see chapter three’s section on ‘Contemporary Islamic Thought’, Pp. 88-109.

<sup>26</sup> Esack. Farid. *Quran, Liberation and Pluralism: An Islamic Perspective of Interreligious Solidarity Against Oppression*. Oxford: Oneworld Publications, 1997.

<sup>27</sup> Murad, Abdal-Hakim. “Book review of Farid Esack's Qur'an, Liberation and Pluralism, Oxford: Oneworld, 1997.” Masud.co.uk. 25<sup>th</sup> Feb. 2018.

In this light, this study argues that any method that historicizes or simply ignores the multifaceted aspects of the Islamic tradition, such as the *hadith* literature or *Sufi* metaphysical thought, will remain alien to most Muslims and therefore, fail in its goal of ‘reform’. One of the Traditional School’s greatest strengths is its ability to navigate Islam’s remarkable plurality, both in theory and practice, and yet, synthesize a common unity without dismissing its differences.<sup>28</sup> Nevertheless, in light of recent scholarship, namely in the areas of postmodern and post-colonial thought, it is important to address the deeper issues concerning ‘meta-narratives’, ‘absolutism’ and ‘essentialism’.<sup>29,30</sup> Here, two important points need to be made. First, an extreme anti-essentialist stance is a counterproductive response to dangerous stereotypical generalizations typified by works such as Samuel Huntington’s *Clash of Civilizations* and Benjamin Barber’s *Jihad Versus McWorld*.<sup>31</sup> It is counterproductive because instead of attempting to construct solutions to real issues, it preemptively puts an end to any meaningful discussion and therefore, positive change. In other words, much postmodern and post-colonial thought argues that ‘The Truth’ is relative to a subject’s point of view, and moreover, that subjects are limited by, or even constructions of, their particular systems of ideology, discourse and language. Thus, a person’s

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<sup>28</sup> Traditionalism is sometimes critiqued for producing an inadequate account of religious differences. However, it seems that this critique is based on a misunderstanding of Traditionalism’s theory of the ‘transcendent unity of religions’. Moreover, the Traditional school opposes the current academic trend of hyper-specialization and the extreme emphasis on difference. Thus, the school sees its intellectual approach as a corrective counter-balance to the contemporary academic methodology generally applied in the Humanities and Social Sciences.

<sup>29</sup> For example, see Edward Said’s seminal work: Said, Edward W. *Orientalism*. 25<sup>th</sup> Ed. New York: Vintage Books, 1978. Also, for a comprehensive overview of the subject, see: Ashcroft, Bill, ed. et al. *Post-Colonial Studies: The Key Concepts*. 2<sup>nd</sup> Ed. New York: Routledge, 2000.

<sup>30</sup> Of course, this is an overgeneralization since postmodernism and postcolonialism are two different schools of thought with considerable differences between and within each school. Nevertheless, they both share a common tendency towards anti-universal particularism based on an emphasis on difference and the negation of essence.

<sup>31</sup> See: Huntington, Samuel. *The Clash of Civilizations and the Remaking of World Order*. India: Penguin Books, 1997. And: Barber, Benjamin. *Jihad vs. McWorld: Terrorism's Challenge to Democracy: Terrorism's Challenge to Democracy*. New York: Random House, 2010.



‘truth claim’ does not represent any reality – especially in its totality – beyond the limited self.<sup>32</sup>

For example, on the concept of ‘subjectivity’, Tammy Clewell writes:

Despite diverse and sometimes oppositional formulations, postmodernist and poststructuralist critics share an impulse to “deconstruct” the humanist subject as the intended source of knowledge and meaning. Such accounts redefine the human self as an entity constructed by, and not simply reflected in a culture’s social discourses, linguistic structures, and signifying practices.<sup>33</sup>

Al Hassan Zaidi articulates the problem with this type of approach by quoting Marcel Gauchet and then writing

“a global orientation on behalf of smallness, plurality, and marginality, accompanied by the proliferation of specializations and the bureaucratic explosion of scholarship”<sup>34</sup> does not necessarily render the Other more accessible and understandable. It may, in fact, serve only to further mystify the Other by highlighting the Other's internal indeterminacy, differences and heterogeneity<sup>35</sup>

On this view of subjectivity, there is no possibility of cross-cultural understanding and no method of furthering the cause of peace and justice on a global scale. But again, this view is largely alien to Islamic intellectual tradition and its general belief that human beings share a

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<sup>32</sup> It is important to note two things here. First, this is a general critique since both postmodernism and post-colonialism – in line with their basic assumptions and approaches – are notoriously difficult to ‘pin down’. Second, this critique does not intend to dismiss the importance of post-colonial thought in relation to its critical stance against modernity’s power structures and the marginalization of the ‘Other’.

<sup>33</sup> Clewell, Tammy. “Subjectivity”. *Encyclopedia of Postmodernism*. Ed. Taylor and Winquist. New York: Routledge, 2001. P. 382.

<sup>34</sup> Gauchet, Marcel. *The Disenchantment of the World: A Political History of Religion*. Trans. Burge. Princeton, Princeton University press, 1997. P. 17.

<sup>35</sup> Zaidi, Ali Hassan. *Islam, Modernity and the Human Sciences: Toward a Dialogical Approach*. Diss. York University, 2007. Pp. 4-5.

similar essence (*fitrah*) and that they have the ability to transcend the relative realm – in degrees – and know the Absolute.<sup>36</sup> Related to this is the intellectual tradition's particular emphasis on the connection between truth (theory) and justice (practice).<sup>37</sup> In general, it is only when one knows the truth, that is, the reality of a thing in relation to its whole, that one can implement justice, that is, put that thing in order. Along with being counterproductive, the second point is that an extreme anti-essentialist stance is also intellectually hypocritical. Simply put, this is because anti-essentialism is a meta-narrative itself and therefore falls victim to its own premise. It is stuck with the age-old problem of relativism: the contradictory and illogical claim that everything is relative except the relative. In this regard, Frithjof Schuon – a central figure in the Traditional School – writes:

In short, every idea is reduced to a relativity of some sort, whether psychological, historical, or social; but the assertion nullifies itself by the fact that it too presents itself as a psychological, historical, or social relativity. The assertion nullifies itself if it is true and by nullifying itself logically proves thereby that it is false; its initial absurdity lies in the implicit claim to be unique in escaping, as if by enchantment, from a relativity that is declared to be the only possibility.<sup>38</sup>

This study's response to the dangers of *over*-generalizations is careful and qualified generalizations. The latter is worth the risk, because it is only holistic accounts that can satisfy the human need for meaning, understanding and dialogue. As Gauchet writes:

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<sup>36</sup> For a discussion of Islamic Traditionalism and its understanding of transcendence, the intellect, truth and justice, see chapters three and four.

<sup>37</sup> For example, see chapter four, Pp. 156-160.

<sup>38</sup> Schuon Frithjof. *Logic and Transcendence: A New Translation with Selected Letters*. Ed. Cutsinger. Bloomington: World Wisdom, 2009. P. 6.

Let me assure the reader that I recognize the dangers of this enterprise... I am aware of the damage caused by the “ideas of totality”. My sole excuse for deliberately taking these risks is the need to understand and my conviction that these risks must be taken. This does not mean we should yield to the lures of speculation, but that we should respond critically to the need for meaning whose main victims are those who naively believe they have freed themselves from that need.<sup>39</sup>

Finally, despite the Traditional School’s prolific corpus of work, there are very few comprehensive studies on the subject of justice in general, and almost none carried out on the subject of human rights in particular.<sup>40</sup> Therefore, this study is also an attempt to fill this lacuna of inquiry within the Traditional school. In using this approach, it is important to note that this study is not a work in Islamic Law. This is because it argues that the Islamic legal tradition is grounded in the basic metaphysical, ontological and epistemological assumptions of the Islamic intellectual tradition. Thus, it is the latter that needs to be critically explored in relation to Islam and ethics in general and Islam and human rights in particular.<sup>41</sup>

### A Note on Sources and Terminology

This work develops its theory of Islamic virtue ethics by way of theoretical analysis and in doing so, it uses two main sources. The first and most obvious is the Quran – Islam’s sacred and

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<sup>39</sup> Gauchet, Marcel. *The Disenchantment of the World*. P.17.

<sup>40</sup> The three principal works on the subject are (1) Shah-Kazemi, Reza. *Justice and Remembrance: Introducing the Spirituality of Imam Ali*. London: I.B. Tauris Publishers, 2007. (2) Lakhani, Ali, ed. *The Sacred Foundations of Justice in Islam: The Teaching of ‘Ali ibn Abi Talib*. Bloomington: World Wisdom, 2006. And (3) Nasr, S.H. *The Heart of Islam: Enduring Values for Humanity*. New York, HarperCollins Pub., 2002.

<sup>41</sup> The same is also true of current human rights theory which is a product of the assumptions of modern secular-liberal ethical tradition.

central ‘text’. According to most Muslims, the Quran is the verbatim word of God that was revealed to the Prophet Muhammad over a span of twenty-three years (709-732 C.E.). Muslims generally understand the Quran as a perfect source of guidance for both their individual and collective lives. Moreover, according to Fazlur Rahman’s *Islam and Modernity*,

...the Quranic revelation...lasted for just over twenty-two years, during which period all kinds of decisions on policy in peace and in war, on legal and moral issues in private and public life were made in the face of actual situations; thus, the Quran had from the time of its revelation a practical and political application... This naturally encouraged the Muslim jurists and intellectuals to look up the Quran (and model of the Prophet) as a unique repository of answers to all sorts of questions. That this approach succeeded in practice further strengthened the original belief of the Muslims in the efficacy of the revelation in providing true answers to virtually all situations.<sup>42</sup>

The second major source is the thought of one of Islam’s most significant intellectual figures, Ali ibn Abi Talib (d.661) – the fourth Rightly Guided Sunni Caliph and first Shia Imam. I have chosen Ali as a source because he is accepted as an authoritative figure by virtually all Muslims and a representative *par excellence* of Islamic Traditionalism. Nevertheless, there is disagreement concerning the reliability of the sources attributed to him. For example, this study frequently draws on his famous collection of sayings and sermons known as *Nahj al-Balagha* (The Peak of Eloquence).<sup>43</sup> This collection of work is generally considered authentic by the ‘Shiah world’ but inauthentic by most of the ‘Sunni world’. However, in relation to this study,

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<sup>42</sup> Rahman, Fazlur. *Islam and Modernity: Transformation of an Intellectual Tradition*. Chicago: Chicago University press, 1982. P. 2.

<sup>43</sup> Here on, referred to as *The Nahj*. See: Al-Jibouri, Yasin T. Ed. *Peak of Eloquence: Nahjul-Balagha*. 7<sup>th</sup> ed. New York: Tahrike Tarsile Quran Inc, 2009.

the authenticity of *The Nahj* is inconsequential.<sup>44</sup> This is because Ali's thought is situated within the framework Islamic Traditionalism and the latter's focus on Islam's 'underlying unity' means that the same ideas can be found in any source that is part of the religion's intellectual tradition.<sup>45</sup> For the same reason, this work cannot exclusively be placed within the Shi'ite school of thought. Again, this is because this study focuses on Islam's perennial concepts and therefore, Ali's thought can just as easily be found in the work of other Muslim intellectual figures, such as al-Farabi (d.951), Ibn Arabi (d.1240) and Mulla Sadra (d.1640).

This study also tackles the issue of human rights' terminology in general and its use across cultures and in a global context in particular. Certain human rights terms, such as 'freedom' and 'equality', are fraught with cultural-specific assumptions; however, they have come to possess an unquestionable authority. In the eyes of many human rights advocates, these words possess a sacred quality, and are therefore beyond the scope of any serious critical inquiry. However, the word 'equality' for example, carries the secular-liberal assumption that all types of equality – gender, race, class, etc. – are the same. To deny one is to deny them all and hence, to be an 'enemy of rights and progress'. Poerkson's work critically examines these types of terms and argues that they are 'plastic words'. That is, they are words that gain prominence by being "transmitted into science or some other higher sphere, where they pick up the semblance of generally applicable truths. Then they wander back, authorized and canonized, into the

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<sup>44</sup> Nevertheless, for a 'defense' of the authenticity of *the Nahj*, see the 'prologue' in: Shah-Kazemi, Reza. *Justice and Remembrance*. Also see chapter three in: Jafri, S.H.M. *The Political and Moral Vision of Islam*. New York: Tahrike Tarsile Quran Inc, 2009.

<sup>45</sup> For example, William Chittick uses the framework of Islamic Traditionalism to explore the thought of Rumi, Ibn al-Arabi, and Mulla Sadra. In this regard, see: Chittick, William. *In Search of the Lost Heart: Explorations in Islamic Thought*. Ed. Rustom, Khalil and Murata. New York: State University of New York Press, 2012.

vernacular, where they become dominant myths and overshadow everyday life”.<sup>46</sup> According to Poerkson, these words are actually meaningless. He writes:

The precise meaning of plastic words cannot be discerned. All words have many shifting meanings. But, through context, an author can be precise about which connotation of the word is being used. In contrast, authors have no powers of definition over plastic words; they are general, autonomous, vague and toneless.”<sup>47</sup>

Thus, it can be inferred that the word ‘equality’ gains its authority from the field of mathematics where it is used as a value term but lacks any specific meaning when used in the general vernacular. What happens when ‘plastic words’ are manufactured and consistently employed? Sherman Jackson, drawing on the work of Richard Dryer, observes that

...the real power of American whiteness lays in its effective invisibility. While Hispanics, Asians, blacks and others are immediately recognized as raced, whites enjoy the presumption of being just “humans.” This raises their perspective above critique, since it presents it as being above the biases and limitations of any particular history, ideology or culture. This in turn allows whites to speak for “humanity” as a whole... This...is also the secret behind the power and pervasiveness of liberalism today. Words like “freedom,” “equality,” “reason,” “tolerance” are commonly used without the slightest understanding or hint that their users are invoking liberal freedom, liberal equality, liberal reason or liberal tolerance. Faced with these deployments, Muslims often find themselves debilitated by the feeling that they are fighting a losing battle, stuck in a perpetual mode of apology, hopelessly strengthening and reinforcing their inquisitors’ indictments with every would-be response...<sup>48</sup>

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<sup>46</sup> Poerkson, Uwe. *Plastic words: The Tyranny of a Modular Language*. Trans. Mason and Cayley. Pennsylvania: The Pennsylvania University State Press, 1995. P. 4.

<sup>47</sup> Poerkson, Uwe. *Plastic Words*. P.8.

<sup>48</sup> Jackson, Sherman. ‘Liberalism and the American Muslim Predicament.’ [theislamicmonthly.com](http://theislamicmonthly.com). TIM, 08<sup>th</sup> June 2015.

In light of this, this study pays extra careful attention to the terminology it uses in the context of human rights and modernity. It takes extra pains to precisely define what it considers to be ‘key words’ and to clarify the unspoken assumptions lurking beneath those same words.

## Chapter Outline

Chapter one is a critical exploration of popular human rights histories. This undertaking is important for two interconnected reasons. The first is that history in general, is not an impartial account of past events, communities and people.<sup>49</sup> Rather, it is a construct that is influenced by a particular historian’s underlying beliefs and assumptions. Popular human rights history is generally written by those that assume human rights are a positive, progressive and, in some cases, inevitable stage in the human drama. They present the *Universal Declaration* and its offshoots as universally necessary and valid for all peoples. In many cases, they also contrast human rights with religion and generally ‘describe’ the latter as an oppressive and incompatible ideology.<sup>50</sup> The second reason that a critical analysis is necessary is because these histories are not simply related to understanding the past; they affect people’s understanding and actions in the present. Many advocates of ‘humanitarian intervention’ base their intellectual justification on popular human rights history.<sup>51</sup> Because of this, chapter one argues that these accounts need to be

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<sup>49</sup> On the issue of power and the construction of history, see: Trouillot, Michel-Rolph. *Silencing the Past: Power and the Production of History*. Boston: Beacon Press, 1995.

<sup>50</sup> In this regard, see: Chapter One, Pp. 29-35; and Chapter Three, Pp. 68-70.

<sup>51</sup> In many cases, ‘humanitarian intervention’ simply acts as a means to justify the economic and political exploitation of other – mainly ‘Southern’ – nation-states. Again, the subject of human rights and economics is beyond the scope of this paper. For some general works on the subject, see P. 2., footnote 1.

demystified in order to open up a space for different human rights visions, particularly for visions that are not rooted in the secular-liberal tradition.

Chapter two carefully considers the human rights debate surrounding the ‘question of foundations’. The latter asks if there is, or even needs to be, a foundation that grounds human rights theory. More specifically, it asks, ‘on what basis do human beings have rights and what exactly are those rights?’ This chapter explores three main schools of thought on the issue: utilitarianism, natural law and Postmodernism’s ethical sentimentalism. In doing so, it argues that none of the ethical theories provide a satisfactory answer to the question at hand and thus, the imposition of rights on a global scale is a form of imperialism. It is important to note that this section purposefully leaves aside religion as a possible ‘ground’ for human rights. This is because it attempts to highlight the fact that even within the secular liberal-tradition itself, there is no agreement on the existence or substance of human rights. This means that there is no justification for ignoring alternative visions based on religion and religious norms.

Chapter three looks at the issue of human rights and religion in general, and human rights and Islam in particular. In terms of the latter, it explores the apparent friction between the two ideologies in the areas of law, physical punishment, religious minorities and gender. In exploring this friction, it also looks at the different contemporary Muslim responses and classifies them into four broad groups: liberal, fundamental, progressive and traditional. This study argues that it is the Traditional School that carries the most potential for honest and genuine change<sup>52</sup> and thus, the chapter concludes by situating the Traditional School of thought within the larger framework of religious studies.

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<sup>52</sup> Here, ‘honest and genuine’ means that any changes within the framework of Traditionalism would remain faithful to the Islamic intellectual tradition as a whole and its basic Islamic worldview.



Chapter four develops a theory of virtue ethics by drawing on the Quran and the thought of Ali. In doing so, it explores Islamic Traditionalism's understanding of God as reality; the human being as both the servant and representative of God; and the connection between truth and justice. It argues that many Muslims understand themselves as primarily responsible to God and that this responsibility involves an inward transformation of the soul. Thus, chapter four establishes that 'virtue' must be the focus of any moral theory that is properly grounded in the Islamic intellectual tradition and the basis for any 'Islamic' theory of human rights and flourishing.

Chapter five is specifically concerned with the metaphysical implications of virtue in relation to the concepts of freedom and equality. It argues that an 'Islamic' society is primarily one that is centered around the Sacred and functions to help human beings achieve their primary purpose for existence – that is, a virtuous character in this world and felicity in the hereafter. Chapter five concludes by exploring the implications of its virtue theory in relation to contemporary human rights. It is important to note that these are introductory remarks since the main concern of this study is to identify the parameters within which an Islamic theory of human rights can function. In any case, the chapter argues that 'international' human rights are only partially compatible with Islamic Traditionalism and its understanding of the general Islamic worldview. Therefore, in line with the 'pluralist-universal' school of human rights, chapter five argues that there is a minimal overlapping consensus between the two traditions and that any differences should be welcomed human rights theorists and advocates.

Finally, this study concludes with a summary of its main points and reiterates that the global implementation of secular-liberal human rights is a form of imperialism. Thus, contemporary human rights need to be more inclusive, decentralized and regulated. It is only with these types

of ‘checks and balances’ that the ideology of ‘rights’ can work as a catalyst for positive change. Otherwise, they will simply be another ideology used by the elite to further their own socio-political and economic agendas.

### A Note on Translation, Transliteration and Structure

Finally, in concluding these introductory remarks a brief note on translation, transliteration and style is necessary. For the most part, this work relies on Yusuf Ali’s translation of the Quran and *The Study Quran*.<sup>53</sup> The latter is of particular importance because its method is in line with this study and its focus on a holistic Islam that is explained by way of the Islamic Intellectual tradition and its fundamental principles. In this regard, Nasr, the editor-in-chief, states,

Although we have relied heavily upon traditional sources...we have also consulted reliable sources based on both previous and recent academic scholarship in Quranic studies. We have, moreover, carried out this task with constant awareness of the biases and fashions present in both historical and contemporary writings... We have been fully aware that many of these resources suffer...from the fact that they do not accept the Quran as revelation, they have a truncated view of the Islamic intellectual tradition, or they reject the Islamic worldview as a whole.<sup>54</sup>

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<sup>53</sup> *The Quran*. Trans. Yusuf Ali A. Lahore: Fine Offset Printing, 1934; Nasr S.H., ed. et al. *The Study Quran: A New Translation and Commentary*. New York: HarperOne, 2015.

<sup>54</sup> Nasr, S.H., ed. et al. *The Study Quran*. P. xiiv

Thus, *The Study Quran* draws on the Quranic commentary of figures such as Muhammad ibn Ahmad al-Qurtubi (d.1272), Fakhr al-Din al-Razi (d.1210), Husayn Tabataba'i (d.1981), Umar Ibn Kathir (d.1373), and others.<sup>55</sup>

Finally, Quranic verses and Ali's words are italicized, centered and separated from the main body of the text so that the two principal sources of this study can be found without difficulty. Any changes in emphasis or translation are accounted for in the footnotes. Moreover, this study has decided to forgo the use of transliteration for two reasons. The first is that many of Arabic words that are used, such as shariah, Sunni and Shia, have already been, or are in the process of being, absorbed into the English language. Secondly, it is because this study is not solely a work in Islamic studies; it is interdisciplinary and includes, among other fields, that of human rights and comparative ethics.

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<sup>55</sup> For the comprehensive list, see: Nasr, S.H., ed. et al. *The Study Quran*. Pp. lvii-lix.

## CHAPTER ONE

### Human Rights and the Incomplete Development of a Secular-Liberal Ethic

#### Introduction

In 1948, Eleanor Roosevelt – chair of the human rights committee – commissioned a group of experts to draft the *Universal Declaration of Human Rights* (UDHR).<sup>56</sup> The group was led by the Canadian lawyer, Chris Humphries, and their goal was to create a single document that would be accepted and applied by multiple cultural traditions. However, these traditions were based on significantly different worldviews and consequent social structures and behavioral norms. If the drafters attempted to construct an ideological synthesis, it would have been superficial at best. Thus, they did not seriously address the ‘question of foundations’. That is, the drafters did not fashion a theoretical basis that attempted to explain, and thereby legitimize, the existence of rights. Instead they formed the document by accepting or rejecting particular articles based on relevance and applicability. Jacques Maritain – the French natural law representative – later explained the process by stating, “Men mutually opposed in their theoretical conceptions can come to a merely practical agreement regarding a list of human rights [based] on the condition that no one asks why.”<sup>57</sup> Moreover, in the context of events such as World War II and the Holocaust, a document that appeared to lack a set of absolute principles must have seemed

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<sup>56</sup> Although the UDHR was adopted as a declaration in 1948, its impact is virtually immeasurable. Grace Kao writes, “While the UDHR is only hortatory in character, it has inspired more than sixty human rights instruments and legally binding treaties...has arguably obtained the status of customary international law, and remains one of the most cited human rights documents today.” See: Kao, Grace. *Grounding Human Rights in a Pluralist World*. Georgetown: Georgetown University Press, 2011. P. 173.

<sup>57</sup> Jacques, Martin. *Man and the State*. The Catholic University of America Press, 1951. P. 76-77.

attractive and even necessary. This is because ‘absolutism’ was used to justify many of the horrors witnessed by the twentieth century and the *Universal Declaration* was largely a response to those horrors:

*Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people...<sup>58</sup>*

Thus, the *Universal Declaration* is clearly a product of its own history.<sup>59</sup> Its culturally relative nature is, at least in large part, responsible for the current backlash against international human rights. It cuts the lines of cross-cultural communication and leads to calls of Western imperialism. This is because the *Universal Declaration* is steeped in the secular-liberal tradition and the latter’s ‘idealistic universalism’ seems to dismiss any divergent religious or philosophic approaches. In this regard, Abdulaziz Sachedina writes that

As long as the moral and metaphysical foundations of human rights norms remain unarticulated, they will be easily dismissed as yet another ploy to dominate Muslim societies by undermining their religiously based culture and value system. Moreover, ...Muslim authorities...have found it legitimate to dismiss compliance with some articles in the Universal Declaration...by labeling them as imperialistic or culturally Eurocentric, parallel with the “Asian Values” argument...<sup>60</sup>

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<sup>58</sup> See Appendix A. (Emphasis added)

<sup>59</sup> Nothing is created in an ideological vacuum. Although no principles were articulated in the Universal Declaration, they existed in the form of an (incomplete) theory of secular-liberal rights derived from Christian natural law. See chapter two section on ‘natural rights’ and Appendix A, articles 1-24. Moreover, during the drafting process, representation was ‘suspect’ and large segments of the world population were left out altogether. In this regard, see chapter three, Pp. 73-74.

<sup>60</sup> Sachedina, Abdulaziz. *Islam and the challenge of Human Rights*. New York: Oxford University Press, 2009. P. 5.

For this reason, and in light of a new geopolitical order, it is necessary to consider a different approach. To this end, this chapter begins by critically engaging popular human rights histories and their narrative that religion and human rights are alternative ideologies that present opposing paradigms of justice.<sup>61</sup> More specifically, it argues against historical narratives that portray human rights – in its contemporary formulation - as humanity’s ‘saving’ ideology. In doing so, this study maintains that international human rights need to adopt and operate within a paradigm of pluralism. Recognizing multiple human rights models is the only way that human rights will become truly universal and hence, acceptable to most of the citizens of the world. Moreover, this recognition would carve out the desired ‘middle position’ between universalism and relativism. However, any overlapping consensus would be accidental and not essential in nature. This type of consensus would ensure that a particular human rights paradigm is organic and integral to its own particular tradition and not an artificial product that is planted based on an imagined Western superiority.<sup>62</sup>

### A Popular Account of Human Rights History

The following is a summary and then critique of popular historical accounts about the development of human rights. This is important for two reasons. First, it provides the necessary context for the following section on human rights theory. Second, and more importantly, it is

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<sup>61</sup> As this study argues, the view that Islam and contemporary human rights are completely at odds is misleading because it ignores the dynamic and complex nature of the two traditions as well as their overlap in theory and practice.

<sup>62</sup> In other words, this study is proposing alternative human rights models for different cultural traditions with the working assumption that these models will result in an ‘accidental universality’, that is, an ‘after the fact’ minimal overlapping consensus.

because historical sources arguably play one of the most significant roles in producing contemporary attitudes towards human rights. These histories, along with human rights theory, need to be demystified before human rights can become truly universal.

It is possible to trace the concept of human rights back to the world's earliest known religions. For example, the Vedic scriptures (1500-1000 B.C.E.) and Judaic law both speak to social justice, human worth and ethical conduct between individuals. The concept of human rights can also be traced back to earlier rational and secular philosophies. This is seen, for example, with Hammurabi (d.1750 B.C.E.) and his 'code of law'; Confucius (d.479 B.C.E.) and his vision of 'common humanity'; and Cyrus (d.530 B.C.E.) and his 'cylinder'.<sup>63</sup> However, these early religions and 'secular philosophies' worked within the confines of hierarchical societies and focused on duties and moral responsibilities as opposed to personal-legal rights. Therefore, contemporary human rights – in its specific secular-liberal form – originated with the Renaissance and the rise of Protestantism in the West. In this regard, Paul Lauren writes:

The Renaissance of the fourteenth, fifteenth and sixteenth Centuries helped to spread ideas about the right to be free from censorship and intolerance by emphasizing human reason, individual expression, intellectual freedom and worldly experience... The Reformation and emergence of Protestantism in the fifteenth and sixteenth centuries...[emphasized] spiritual emancipation, individual conscience, freedom of religion and political and social reform. In doing so, all these forces combined to mark a shift in natural law, from (mainly religious) duties, to rights that were now understood to have a religious or secular basis.<sup>64</sup>

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<sup>63</sup> Human rights theorists often describe Confucius, Hammurabi and Cyrus as 'secular'. However, this view is highly contested. For example, Hammurabi refers to his legal objectives using terms such as 'righteous', 'God-fearing', and 'evil-doers'.

<sup>64</sup> Lauren, Paul G. "History of Human Rights." *Encyclopedia of Human Rights*. Ed. Frolythe. New York: Oxford University Press, 2012. P. 6.

These ideas continued to be developed during the 17<sup>th</sup> Century Enlightenment. Most notably, Hugo Grotius (d.1645) – known as the ‘father of international law’ – and John Locke (d.1704) – known as the ‘father of modernism’ – argued that humans had natural rights and it was the government’s duty to institute and protect them.<sup>65</sup> This, along with the Habeas Corpus Act (1679) and the English Bill of Rights (1687) challenged the monarchy’s claim to absolute rule. During the beginning of the 18<sup>th</sup> Century, philosophers such as Montesquieu (d.1755), Voltaire (d.1778) and Rousseau (d.1778), continued to develop concepts that would eventually characterize the ‘modern’ period: universalism, rationalism, empiricism, individualism and the like.<sup>66</sup> These ideas made up the philosophy of secular-humanism and the latter provided the ideological foundation for the newly established nation-states of America and France.<sup>67</sup> This is seen, for example, with the American adoption of the *Declaration of Independence* and the French institution of the *Rights of Man and Citizen*, two documents that were written in highly universal language. Despite this universal language, however, many groups of people such as women, slaves and the poor, were excluded from the category ‘human’. This changed, at least to some extent, in the 19<sup>th</sup> Century, with the recognition of ‘second-generation’ rights, that is, social and economic rights.<sup>68</sup> This was a byproduct of the industrial revolution, which created poor working conditions that resulted in an exploited working class. Marx (d.1883) and his followers argued in favor of revolution and the creation of a society free of private property and class struggle.<sup>69</sup> Others opted

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<sup>65</sup> In general, see John Locke’s influential work: Laslett, Peter, ed. (1960), *Locke’s Two Treatises of Government*, Cambridge: Cambridge University Press, 1988.

<sup>66</sup> In general, see: Kenny, Anthony. *A New History of Western Philosophy*. Oxford: Oxford University Press, 2010.

<sup>67</sup> Modern societies are human rights societies in the same way that pre-modern Western societies were Christian. In other words, in pre-modern Western societies the Church formed the foundation of society and its doctrine informed the latter’s institutions. However, the human rights revolution inverted this system. Hence, human rights became the foundation of society and informed the development of its institutions, including that of the Church. Thus, the rise of the Reformation, ‘Christian human rights’ and the Church’s general goal to ‘keep up with the times’.

<sup>68</sup> They are also known as ‘freedom-to’ or positive rights as opposed to ‘freedom-from’ or negative rights.

<sup>69</sup> In general, see: Singer, Peter. *Marx: A Very Short Introduction*. New York, Oxford University Press, 2000.



to address the issue by looking towards the institution of labor unions and their concomitant mechanism of collective bargaining. Although the ideal of socialism was never fully realized, some human rights' historians, such as Micheline Ishay, recognize 'second-generation rights' as the socialist contribution to the global human rights movement.<sup>70</sup> However, this understanding seems to ignore the fact that neo-Marxists generally understand human rights as an oppressive ideology, implemented and used by the economic elite to further their own agendas.<sup>71</sup> In the 20<sup>th</sup> Century, the two World Wars largely determined - both in theory and practice - the development of international human rights. On the one hand, this period witnessed the violation of more rights than any other period in history. This was the result of a combination of factors: colonialism, the Great Depression, the rise of nationalism, the regimes of Mussolini (d.1945), Stalin (d.1953) and Hitler (d.1945), and perhaps most significantly, the civilian casualties of World War II. On the other hand, this period also destroyed old power structures; a space was created for the establishment of new institutions based on personal-legal rights. Moreover, groups that were previously excluded from having human rights, such as women and slaves, contributed to the war campaign and on the basis of their contributions, demanded to have their rights recognized. Among other changes, this resulted in the recognition of 'third-generation' rights, that is, collective or group rights. Thus, by the end of the 20<sup>th</sup> Century for example, women had the right to vote and nation-states were afforded the right to self-determination – at least in theory and to some degree. Moreover, the horrors of World War II and the Holocaust evoked the 'conscience of mankind', and they led to the establishment of the United Nations, and the drafting of the *Universal Declaration of Human Rights*. Eleanor Roosevelt assembled a group of 'experts' that

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<sup>70</sup> Ishay, Micheline R. *The History of Human Rights: From Ancient Times to the Globalization Era*. Berkeley: University of California Press, 2004. P.4.

<sup>71</sup> See: Kolakowski, Leszek. "Marxism and Human Rights" *The MIT Press*. 112:04 (1983): 81-92.

represented a wide range of religious and cultural values; they deliberated and debated on a number of human rights' issues until they reached a consensus of sorts. This study argues that this 'representation' was incomplete because it excluded significant segments of the world's population. It also points out that the drafters exclusively agreed on a practical level and therefore, there was little to no consensus on any fundamental issues.<sup>72</sup> In any case, the National Assembly passed the *Universal Declaration* in 1948, and thus began the new world order of human rights. This brief historical overview is typical of popular accounts concerning the history of human rights.<sup>73</sup>

### The Construction and Assumptions of Human Rights History

These types of histories generally share some, if not all, of the following assumptions. First, they see the development of human rights as linear and progressive. In this sense, they perpetuate one of the dominant ideologies of the Enlightenment period. Immanuel Kant (d.1804) aptly summarized this view on progress when he wrote that

The history of mankind can be seen, in the large, as the realization of Nature's secret plan to bring forth a perfectly constituted state as the only condition in which the capacities of mankind can be fully developed, and also bring forth that external relation among states which is perfectly adequate to this end.<sup>74</sup>

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<sup>72</sup> In this regard, see chapter three, Pp. 73-74.

<sup>73</sup> For example, see: Ishay, Micheline R. *The History of Human Rights from Ancient Times*; and Lauren, Paul G. "History of Human Rights." *The Encyclopedia of Human Rights*. Pp. 1-27.

<sup>74</sup> Kant, Immanuel. "Idea for a Universal History from a Cosmopolitan Point of View". (1784) Marxists.org. Marxist Internet Archive. 08 Dec. 2017.

This idea of progress is not always explicitly laid out in contemporary human rights' narratives. This seems to be the case because the idea is becoming increasingly contentious. In other words, the belief in progress is being reexamined in light of current world affairs, such as the international environmental crisis, and in light of the postmodern thought and its general deconstruction of linear-progressive ideologies.<sup>75</sup> Nevertheless, the theme is almost always discernible in some form and to some degree. For example, Paul Lauren writes that the history of human rights did not have a straight line of development and sometimes regression was paradoxically needed as a springboard for progress.<sup>76</sup> Ishay writes:

That is not to say that reactionary forces have completely nullified each phase of progress in human rights. Rather, history preserves the human rights record as each generation builds on the hopes and achievements of its predecessors while struggling to free itself from authoritarianism and improve its social conditions.<sup>77</sup>

Even Lynn Hunt's *Inventing Human Rights*, which describes the 'trial and error' nature behind the development of rights, gives the impression that the latter developed according to its own inherent, albeit unpredictable, progressive nature.<sup>78</sup> It can be argued that the belief in progress developed in light of the scientific and industrial revolutions in the West; these revolutions gave people the impression that humans possessed an unlimited potential for discovery and development. Moreover, in light of increased scientific knowledge and a higher standard of living, people generally began to believe that these modern developments were positive and

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<sup>75</sup> In general, see: Sim, Stuart, ed. *The Routledge Companion to Postmodernism*. 2<sup>nd</sup> ed. New York: Routledge, 2005.

<sup>76</sup> Lauren, Paul G. "History of Human Rights." *The Encyclopedia of Human Rights*. P.1.

<sup>77</sup> Ishay, Micheline R. *The History of Human Rights from Ancient Times*. P. 4.

<sup>78</sup> In general, see: Hunt, Lynn. *Inventing Human Rights: A History*. New York: W.W. Norton and Company, 2007.

therefore, that they should be pursued by all means and without end. Today however, many people, particularly in the fields of science and philosophy, are questioning how much we actually know about the world and even if, there is such a thing as objective knowledge at all. Furthermore, changes in science, industry and technology have seemingly alienated human beings and, in doing so, have created an existential crisis. Hence, it can be argued that this is the reason for the rise of mass consumerism as well as the contemporary growth of numerous new-age spiritual movements. Thus, 'progress' has come at a cost and this cost arguably means that there has been no 'positive development', that is, progress, at all.<sup>79</sup> In any case, in relation to human rights, Samuel Moyn argues that these 'celebratory histories' are religious in nature because they interpret every set-back as a necessary stage in 'furthering the cause'. He maintains that history has always allowed for a number of open possibilities and therefore, human rights should not be seen as the inevitable, saving-truth of humankind.<sup>80</sup> In this regard, Moyn writes:

In recasting world history as raw material for the progressive ascent of international human rights, [contemporary historians] have rarely conceded that earlier history left open diverse paths into the future, rather than paving a single road toward current ways of thinking and acting...historians have been loath to regard [human rights] as only one appealing ideology among others. Instead, they have used history to confirm their inevitable rise...A different approach is needed to reveal the true origins of this most recent utopian program.<sup>81</sup>

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<sup>79</sup> In other words, it can be argued that scientific and material progress have also caused individual and spiritual regress and therefore, the notion that humanity collectively progresses over time cannot be taken as a matter of fact.

<sup>80</sup> In general, see: Moyn, Samuel. *The Last Utopia: Human Rights in History*. London: Harvard University Press. 2010.

<sup>81</sup> Moyn, Samuel. *The Last Utopia*. P. 5.

The second assumption of popular human rights' histories is that they generally consider the world's earliest known religions as an important historical stage in the history of human rights. For example, Ishay begins her book on human rights with a section on world religions. She states that "religions contain the humanistic elements that anticipated our modern conception of rights."<sup>82</sup> In a similar fashion, Lauren writes that the "first significant philosophies came from religion whose principles would inform later human rights developments."<sup>83</sup> Thus, these histories locate proto-human rights concepts in selected passages of sacred scripture as well as in exceptional historical cases such as the code of Hammurabi, the philosophy of Confucius and the cylinder of Cyrus the Great.<sup>84</sup> After connecting religion and human rights, historians generally proceed to sever the same connection with the rise of the Renaissance and Protestant revolutions. At this point, religion becomes stagnant and even 'backwards' and the newly born concept of secular-liberal human rights begins to take hold and 'develop'. Interestingly, religion, at least to some degree, was responsible for the birth of human rights, but now, the two approaches are apparently irreconcilable. In this regard, Thomas Banchoff and Robert Wuthrow write:

It is common for writers to argue that the modern conception of human rights triumphed only as traditional religious authorities eroded... The story usually makes some acknowledgement [of religious contributions] ... But the dominant story is one of traditional religious authority opposed to the secular Enlightenment ideal of rational, autonomous individuals as bearers of universal rights... In this view it is legitimate for religious people to insist on freedom of belief and worship. But when they join with others of like mind about different policy agendas, they should do so as citizens and not as people of faith. To engage more broadly in the politics of human rights – to press their

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<sup>82</sup> Ishay, Micheline. *The History of Human Rights from Ancient Times*. P. 5.

<sup>83</sup> Lauren, Paul G. "History of Human Rights." *The Encyclopedia of Human Rights*. P. 2.

<sup>84</sup> These cases are considered 'exceptional' because they seem to be secular philosophies in a religious world. However, their 'secularity' and thus, 'exceptionality', is highly contested.

own ideas of what those rights mean and how they grow out of their traditions – is to inject religion where it does not belong...<sup>85</sup>

This view concerning the connection between religion and human rights is contested on two different fronts. First, it is contested by human rights theorists that argue that ‘religion as a historical stage’ is misleading because there is no interdependence between the two ideologies. For example, Jack Donnelly argues that religions did not have a word for ‘subjective right’, that is, a word that referred to individual rights. Instead, they exclusively focused on ‘objective rights’, that is, on the idea of ‘what is right/good’. In other words, Donnelly distinguishes between ‘it is right that’ and ‘the right to’ and argues that the latter exclusively came into existence with modern political theory.<sup>86</sup> Therefore, according to Donnelly, human rights are both exclusively Western and modern.<sup>87</sup> However, the view of ‘religion as a historical stage’ is also contested by human rights theorists that argue that the Renaissance and Enlightenment did not produce ‘new ideas’ that formed the foundation of all subsequent human rights developments. For these theorists, human rights are a perennial issue that existed, and continue to exist, in the world’s religious traditions.<sup>88</sup> For example, Bonny Ibhawoh mentions that pre-colonial African societies had a concept of justice that was informed by rights and supported a measure of individualism.<sup>89</sup> Therefore, according to this view, human rights are not exclusive to

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<sup>85</sup> Banchoff, Thomas and Robert Wuthrow. “Introduction”. *Religion and the Global Politics of Human Rights*. Ed. Banchoff and Wuthrow. New York: Oxford University Press. 2011. P.4.

<sup>86</sup> For a critique of this position see: Freeman, Michael. “Beyond Capitalism and Socialism.” *Human Rights and Capitalism: A Multidisciplinary Perspective on Globalisation*. Ed. Dine and Fagan. Edward Elgar Publishing, 2006. Pp. 8-9.

<sup>87</sup> Donnelly, Jack. “Human Rights and Human Dignity: An Analytic critique of Non-Western Conceptions of Human Rights”. *The American Political Science Review*. 76.2 (1982) Pp. 303-316.

<sup>88</sup> On the continuous intersection between religion and human rights, see: Banchoff, Thomas and Robert Wuthrow. “Introduction”. *Religion and the Global Politics*. Pp. 1-22.

<sup>89</sup> Ibhawoh, Bonny. “Restraining Universalism: Africanist Perspectives on Cultural Relativism in the Human Rights Discourse” *Human Rights, The Rule of Law and Development in Africa*. Ed. Zeleza and McConaughy, Philadelphia: University of Pennsylvania Press, 2004.

the Western liberal tradition or only relevant when mentioned in reference to post-1948 developments.

The last common assumption is that the Medieval Age was a ‘dark’ and oppressive time in the West. This period is generally painted as being full of disease, poverty and enslavement. It is remembered as a time of stark class distinction - from kings down to peasants. This depiction is partially true; however, as Norman Cantor points out, the Medieval Age covers a long period of history (approximately 476 -1500 C.E.) and therefore cannot be generalized in a single way. He argues that along with oft-mentioned events such as the inquisition, this period also saw times of unprecedented creativity and growth that was due to, and not despite of, the Church and ruling aristocratic system.<sup>90</sup> Martin Lings also challenges the assumption and counter-intuitively argues that the Middle Ages would have been even ‘darker’ if it had not been for the church and the prevailing social structure.<sup>91</sup> Finally, S.H. Nasr argues that even if there was sickness and war, people still had a profound sense of meaning and purpose - a sense that, according to him, is no longer carried by people today.<sup>92</sup> In this light, he writes that

Human beings are in need of meaning as much as they are in need of air to breathe and food to eat. Modern materialistic reductionism has not only resulted in chemically infested food and polluted air, but also the loss of meaning in its ultimate sense. There can in fact be no ultimate meaning without the acceptance of the Ultimate in the metaphysical sense. It is indeed a great paradox that human consciousness in modern times has produced a view of the cosmos which has no room for consciousness. And when human beings do seek to find consciousness in the objective world, or experience what they consider to be encounters with conscious beings outside of the human realm, they are marginalized and condemned to the category of hallucinating men and women in need of psychiatric care.<sup>93</sup>

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<sup>90</sup> Cantor, Norman F. *Inventing the Middle Ages*. New York: Harper, 1991. Pp. 17-47.

<sup>91</sup> Lings, Martin. *Ancient Beliefs and Modern Superstitions*. Cambridge: Archetype Chetwynd House, 2001. P. 48.

<sup>92</sup> For Nasr, an ‘Islamic society’ is a society that functions in accordance with traditional customs and laws (*urf*) that are rooted in Divine revelation and have been passed down – in different forms – through unbroken lines of transmission.

<sup>93</sup> Chittick, William C., ed. *The Essential Seyyed Hossein Nasr*. Indiana: World Wisdom, 2010. P. 227.

Critically challenging popular historical accounts is important because they play a central role in determining the attitudes and practices related to international human rights today. For example, the belief in progress, culminating in the establishment of a universal human rights regime, justifies an ‘us vs. them’ mentality and its closely related practice of ‘humanitarian intervention.’ Moreover, these histories can demonize, undermine and/or misunderstand other traditions and their particular institutional manifestations in areas such as education, culture, law and gender.

The next section looks at some of the different theories that attempt to provide a rationale for the existence and implementation of universal human rights’ norms. More specifically, it critically explores utilitarianism, modern natural rights, and one vision of postmodern rights, that is, ethical sentimentalism. It argues that these theories are problematic, even within the secular-liberal ethical tradition itself, and that this is among the greatest impediments to the implementation of rights on an international level. The section then goes on to address the question of universalism by briefly discussing some of the human rights’ views coming out of the African, Asian and Islamic traditions.<sup>94</sup>

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<sup>94</sup> Chapter two’s discussion on Islamic views on human rights is limited in scope. This is because the topic is treated in full from chapters three through five.



## CHAPTER TWO

### Human Rights and Their Underlying Ethical Theories

#### Introduction

The American Declaration of Independence (1776) and the French Rights of Man and Citizen (1789) both claim that human rights are self-evident. Thomas Jefferson famously wrote: “We hold these truths to be *self-evident*, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”<sup>95</sup> However, there is ambiguity and disagreement on virtually every human rights issue, including that of their existence. Alasdair MacIntyre goes as far as to say that “there are no such rights, and belief in them is one with belief in witches and unicorns.”<sup>96</sup> Thus, the argument of ‘self-evidence’ is insufficient; human rights need to be justified. On what *basis* do human beings have universal, equal and inalienable rights? If this question remains unanswered, the implementation of human rights – on a domestic or international level – will be virtually impossible. The following section critically engages some of the popular ethical theories that are used in an attempt to answer the question of foundations.<sup>97</sup> More specifically, it critically explores the theories of utilitarianism, natural rights, and postmodern ethical sentimentalism. This work goes on to argue that each of these ideologies are deeply problematic and vulnerable

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<sup>95</sup> Emphasis added.

<sup>96</sup> MacIntyre, Alasdair. *After Virtue: A Study in Moral Theory*. 3<sup>rd</sup> Ed. Indiana: University of Notre Dame Press, 2007. P. 69.

<sup>97</sup> This section is intended to be precursory and therefore, it leaves out theories that are less common or persuasive. It also momentarily leaves out religion as a source of human rights and returns to the subject in the following chapters.

to objections of relativism. Therefore, the aggressive implementation of human rights based on these theories is arbitrary and therefore, a form of cultural imperialism. Moreover, this section exclusively focuses on ethical theories within the secular-liberal tradition. This is in order to show that there is no good reason that international human rights should be closed off to alternative human rights visions. Thus, this section paves the way for the second section, which attempts to construct a theory of Islamic virtue ethics and thereby, lay out the parameters for a vision of human rights that is grounded in the Islamic intellectual tradition.

### A Critical Exploration of Utilitarianism

Utilitarianism is a consequentialist political and moral philosophy. It argues that actions are morally good or bad depending on the consequences they produce. For act-based utilitarians, this normative moral principle should be applied on a case-by-case basis. For example, an act-based utilitarian would maintain that in some scenarios, taking a person's life is the right course of action, while in other scenarios, taking someone's life is the wrong course of action. For rule-based utilitarians however, this normative principle should be applied to general rules that produce the greatest utility. For example, a rule-based utilitarian would maintain that, taking someone's life generally produces negative consequences, and therefore, as a rule, it is the wrong course of action.<sup>98</sup> Within these two strands utilitarianism, there are many variations; however, they all agree that actions are intrinsically valueless; their morality depends on the consequences they produce. This is in stark contrast to deontological natural rights theory in both its religious

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<sup>98</sup> In general, See: Nathanson, Stephen. "Act and Rule Utilitarianism". iep.utm.edu. Internet Encyclopedia of Philosophy: A Peer-Reviewed Academic Resource. 02 March. 2017.

and secular forms.<sup>99</sup> Many early ideas concerning utilitarianism came from Christian theologians, such as Richard Cumberland (d.1718) and John Gay (d.1745), who believed that promoting happiness was an imperative by God and that morally correct behavior would always achieve this end.<sup>100</sup> However, the classical and formal exposition of Utilitarianism is normally traced back to Jeremy Bentham (d.1832). According to him,

Nature has placed mankind under the governance of two sovereign masters, *pain* and *pleasure*. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it. In words a man may pretend to abjure their empire: but in reality he will remain subject to it all the while. The *principle of utility* recognizes this subjection, and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and of law. Systems which attempt to question it, deal in sounds instead of sense, in caprice instead of reason, in darkness instead of light.<sup>101</sup>

According to Bentham then, individual behavior as well as governmental laws and policies should be based on the attempt to maximize the greatest amount of happiness for the greatest number of people. This view is commonly referred to as hedonistic utilitarianism. John Stuart Mill (d.1873) - following in Bentham's footsteps - refined the theory to address a number of problems.<sup>102</sup> The difference between the two concerned their understanding of the human being

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<sup>99</sup> See the following section on 'natural Rights', Pp. 45-52.

<sup>100</sup> In general, see: Driver, Julia "The History of Utilitarianism". plato.stanford.edu. *The Stanford Encyclopedia of Philosophy*. 21 Jan. 2017.

<sup>101</sup> Bentham, Jeremy. *An Introduction to the Principles and Morals of Legislation*. econlib.org. *Library of Economics and Liberty*. 01 March. 2017.

<sup>102</sup> In general, see: Mill, John Stuart. *Utilitarianism*. Ed. Waldrep. Dover Publications, 2007.

and the nature of pleasure. Mill argued that people intuitively and experientially know that some kinds of acts are more pleasurable and fitting than others. For example, he argued that there was a significant qualitative difference between sensual pleasures and intellectual pleasures. Thus, according to Mill,

It is indisputable that the being whose capacities of enjoyment are low, has the greatest chance of having them fully satisfied; and a highly endowed being will always feel that any happiness which he can look for, as the world is constituted, is imperfect. But he can learn to bear its imperfections...It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied. And if the fool, or the pig, is of a different opinion, it is only because they only know their own side of the question.<sup>103</sup>

Another important distinction between Bentham and Mill was that the latter placed more emphasis on the importance of treating one's 'neighbor' well. Keeping in line with hedonism, Mill argued that harming others causes pain to oneself, and conversely, helping others causes pleasure to oneself. Therefore, Mill's adaptive hedonism opened the door to utilitarianism's subsequent connection to human rights; it argued that it is in our own self-interest to protect and promote the rights of others. Despite Mill's best efforts, hedonistic 'act' and 'rule' based utilitarianism were still heavily criticized. One of the most decisive critiques came from Robert Nozick (d.2002) and his 'experience machine' thought experiment.<sup>104</sup> Nozick asked his readers to think of a machine that could induce the highest feelings of pleasure. If hedonistic utilitarians were correct, then everyone would choose to spend their lives drugged in the machine. However,

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<sup>103</sup> Mill. *Utilitarianism*. P. 8.

<sup>104</sup> This critique was already popular during Mill's time; however, Nozick's 'experience machine' was significant in its powerful imagery and incisive critique.

Nozick argued that most people would not enter the ‘experience machine’ and that they would consider it a waste of life. His point was simple: people value many different types of human experiences.<sup>105</sup> For example, Nozick’s thought experiment suggests that some people may consider the experience of reality more valuable than the experience of happiness. After Bentham and Mill, a number of theorists attempted to expand utilitarianism in order to include a wider range of human experiences. For example, George Edward Moore (d.1958) wrote in favor of an ideal utilitarianism based on intuition.<sup>106</sup> Moore was an ontological realist and argued that we cannot know *how* we know things; however, this does not mean that we cannot know things. His ontological realism extended to his theory of morality. According to Moore, ‘goodness’ is a real property that we can know through our common sense. Moreover, it can be attached to any number of objects or state of affairs and these can be ranked according to their degree of ‘goodness’. Hence, according to Moore, an ideal state is one that is good in itself and good to a high degree. Therefore, ideal utilitarianism is a moral theory in which “actions are to be ordered not to the greatest happiness or pleasure, but to those state of affairs possessing the highest degree of good.”<sup>107</sup> However, as this section later argues, Moore’s theory does not escape the seemingly inherent problems in utilitarianism. The same can be said of contemporary utilitarian theories. According to Will Kymlicka, these contemporary theories can be categorized into four broad groups: hedonistic utility, non-hedonistic mental-state utility, preference satisfaction and informed preferences.<sup>108</sup> To provide one example, R.M. Hare’s (d.2002) theory of ‘universal

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<sup>105</sup> Murray, Dale. “Robert Nozick: Political Philosophy”. *iep.utm.edu*. Internet Encyclopedia of Philosophy: A Peer-Reviewed Academic Resource. 02 March. 2017.

<sup>106</sup> In general, see: Moore, G. E. *G. E. Moore: Selected Writings*. Ed. Baldwin, London: Routledge. 1993.

<sup>107</sup> Preston, Aaron. “George Edward Moore (1873-1958)” *iep.utm.edu*. Internet Encyclopedia of Philosophy: A Peer-Reviewed Academic Resource. 02 Jan. 2017.

<sup>108</sup> An in-depth study of utilitarianism is beyond the scope of this work. See: Kymlicka, Will. *Contemporary Political Philosophy: An Introduction*. 2<sup>nd</sup> Ed. Oxford: Oxford University Press, 2002. P.10-53.

prescriptivism' argues in favor of utilitarianism based on 'informed preferences'.<sup>109</sup> According to him, laws should be created in light of overall human welfare and that the latter should be judged according to the satisfaction of 'informed and rational' human preferences. In explaining Hare's stance, Price Anthony writes:

In their practical force, ideals are equivalent to universal preferences that differ from personal preferences in their content, but owe their moral weight to the prevalence and intensity of whatever preferences their realization would satisfy... The emergent ethical theory is a distinctive variety of utilitarianism, one that identifies the moral good with the maximization not of some subjective state such as happiness, but of the satisfaction of preferences.<sup>110</sup>

Closely related to utilitarianism's 'informed preferences' is Amartya Sen's popular capabilities theory.<sup>111</sup> According to Sen, the problem with utilitarianism is its lack of attention to the 'morality of means'. In other words, the problem is that it doesn't evaluate the morality of the process by which a good or bad consequence is produced. Thus, Sen argues for a kind of 'comprehensive utilitarianism'. For him, a person's capability represents "the effective freedom of an individual to choose between different functioning combinations – between different kinds of life – that she has reason to value."<sup>112</sup> Thus, one of Sen's underlying concerns is not only to evaluate the means that people have access to, but to also evaluate the specific capabilities, that is, 'functioning

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<sup>109</sup> In general, see: Hare, R.M. *Moral Thinking: Its Levels, Method and Point*. Oxford: Oxford University Press, 1993.

<sup>110</sup> Anthony, Price. "Richard Mervyn Hare". plato.stanford.edu. The Stanford Encyclopedia of Philosophy. 11 Sept. 2017.

<sup>111</sup> In general, see: Sen, Amartya. *Commodities and Capabilities*. Oxford: Oxford University Press, 1999.

<sup>112</sup> Wells, Thomas. "Sen's Capability Approach." ep.utm.edu. Internet Encyclopedia of Philosophy: A Peer-Reviewed Academic Resource. 09 March. 2017.

combinations' that people have to use those means. For example, the human right to the 'freedom of movement' is insufficient if a particular person is handicapped and therefore unable to move.

Contemporary utilitarianism is an extremely appealing moral theory because it is consequentialist and therefore, provides moral objectivity through practical calculation. This means that it has the potential to ground rights in absolute values without having to appeal to God or any other transcendent entity. Simply put, something is moral if it provides utility and immoral if it doesn't. However, all forms of utilitarianism – from 'hedonistic' to 'informed preferences' – face at least two seemingly insurmountable problems and it is these two problems that rightly question utilitarianism's ability to 'ground' human rights. First, utilitarianism, by definition, sacrifices the individual – whenever necessary – for the sake of society at large, that is, the 'greater good'. This is obviously antithetical to the concept of individual rights. In this regard, Jermome Shestack writes that

Despite the egalitarian pretensions of utilitarian doctrine, it has a sinister side in which the well-being of the individual may be sacrificed for what are claimed to be aggregate interests, and justice and right have no secure place. Utilitarian philosophy thus leave liberty and rights vulnerable to contingencies, and therefore at risk<sup>113</sup>

However, the argument against 'utilitarian sacrifice' is not very strong and does not unequivocally dismisses the theory as a possible justification for human rights. This is because rights are always clashing in practice and therefore, utilitarian calculations are unavoidable.

Andrew Heard correctly observes that

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<sup>113</sup>Shestack, Jerome J. "The Philosophical Foundations of Human Rights." *Exploring International Human Rights*. Ed. Callaway and Harrelson-Stephens. P. 26.

...Resources are scarce in any society, and especially limited in some. This scarcity inevitably leads to utilitarian calculation to allocate those resources in a way that will maximize the greatest good. In the end, it is argued, all the benefits listed as human rights, even life itself, are subject to the promotion of the greatest good within society. As such an individual's benefits claims as a human right may be compromised, diluted or even completely denied in specific situations where that right has to be weighed against the claim of another individual or society as a whole.<sup>114</sup>

Hence, it is really the second argument that undermines utilitarianism as a 'ground' for human rights. This argument is based on 'the problem of relativity' and can be broken down into three interrelated parts: First, 'utilitarian calculation' assumes that it is possible to know all the different effects that a particular act or rule will produce. However, people's knowledge of effects is limited, and therefore, there is no way to unequivocally justify one choice over another. To provide an obvious example, in some secular societies, one's sexuality falls within the private sphere; a person's sexual actions are a matter of the right to freedom and individual choice. However, these 'private actions' can have great public ramifications. Infidelity often leads to broken homes, and these, in turn, have a strong correlation with drug abuse, criminality, and the like. Second, a single human rights theory based on utilitarianism is forced to make the assumption that human choices are the same across individuals and communities. However, 'human utility' is relative to a person's or community's particular worldview and consequent lifestyle. To provide another clear example, a religious person would undoubtedly understand their highest goal as related to salvation and therefore, would clash with various secular opinions concerning the 'public good.' Finally, putting aside the first two problems, utilitarianism is still

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<sup>114</sup> Heard, Andrew. "The Challenges of Utilitarianism and Relativism". sfu.ca. Simon Fraser University, 1997.



left with the problem of qualitative measurement. Even if a society agreed on the ‘general good’, it would still be impossible to precisely measure and determine what produces more or less utility. Thus, the claim that a universal standard of morality can be known by measuring the consequences of common acts or rules is highly problematic and cannot ground human rights in a way that allows the latter to be universal, equal and inalienable.

### A Critical Exploration of Natural Rights

Natural rights theory is the liberal response to utilitarianism. Its religious version can be traced back to Christian natural law and its classical representative – saint Thomas Aquinas (d.1274). Aquinas argued that God governs the world through Divine Reason and consequently, all creatures obey an ‘Eternal Law’. This is because they are given particular natures that incline them to act in a particular way. However, according to Aquinas, human beings are special because they possess free-will and the choice to follow (or not follow) their God-given essence. In order to guide their free-will, God gave humans a share in his Divine Reason and thereby, the ability to discern between good (legal) from evil (illegal). Aquinas writes:

Among all others, the rational creature is subject to Divine Providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself, and for others. Wherefore, it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end.<sup>115</sup>

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<sup>115</sup> Morris, Clarence, ed. *The Great Legal Philosophers. Selected Readings in Jurisprudence*. Pennsylvania: University of Pennsylvania Press. 1959. P. 61.

Natural rights theory picked up on the concept that human beings are ‘special’ and thereby, ‘naturally’ entitled to individual rights. Grounding these rights in a transcendent God gave the former a universal and ahistorical character; it legitimized the claim that human rights are held by all human beings, irrespective of class, race or gender. However, the traditional concept of God did not sit well with the Enlightenment’s program of secular-liberalism.<sup>116</sup> That is, its program of lifting reason above faith or revelation and constructing a worldview based on science as opposed to tradition. In the words of Kant, the Enlightenment was a process that involved “man’s release from his self-incurred immaturity”.<sup>117</sup> Thus, Christian natural law needed to be modified. Philosophers such as Voltaire (d.1778) and Diderot (d.1784) decided to sever the ‘Church’s God’ from reason and nature. They believed that the latter two could still provide the necessary metaphysical foundation for ethics since they, like God, seemed to operate beyond the confines of space and time. It was this change that gave birth to a number of modern natural right theories within the secular-liberal tradition.<sup>118</sup>

Modern natural rights theory is normally traced back to John Locke and his imaginative state of nature.<sup>119</sup> According to Locke, all people in a state of nature would be considered equal and free; however, they would also lack protection and security from others. Hence, according to Locke’s thought experiment, free and equal people would come together and decide to create a

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<sup>116</sup> The Enlightenment is increasingly seen as a complex historical period that was driven by diverse voices and affected by different geographical locations. In this regard, see: Outram, Dorinda. *The Enlightenment*. 2<sup>nd</sup> ed. Cambridge: Cambridge University Press. 2005. Nevertheless, the Enlightenment’s basic program is generally understood as a movement away from traditional authority and towards individual autonomy.

<sup>117</sup> As quoted in: Outram, Dorinda. *The Enlightenment*. P. 1.

<sup>118</sup> Sachedina argues that this change is largely responsible for the friction between secular-liberal human rights and other religious and philosophic approaches. Thus, he argues for a return to Christian natural rights and claims that the latter can work with Islamic natural law theories to provide the principles necessary for universal human rights. In general, see: Sachedina, Abdulaziz. *Islam and the challenge of Human Rights*; and, Emon, Enver M. *Islamic Natural Law Theories*. Oxford, Oxford University Press. 2010.

<sup>119</sup> In general, see: Tuckness, Alex, "Locke's Political Philosophy". *plato.stanford.edu. The Stanford Encyclopedia of Philosophy*. 11 Sept. 2017

social contract. This contract would establish a government invested with political authority and the responsibility to protect people. More specifically, its responsibility would be to protect what belonged to people by right of birth, namely, their right to life, liberty and property. Furthermore, the same people could rightfully rebel against the government if it failed in fulfilling its existential function. Thus, Locke assumed that human rights were grounded in a universal human nature and that the government acted as a 'Law-Enforcer' to protect those rights. In his second treatise, Locke wrote:

To understand Political Power right... we must consider what State all Men are naturally in, and that is, a *State of perfect Freedom* to order their Actions, and dispose of their Possessions, and Persons as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man.<sup>120</sup>

And

And that all Men may be restrained from invading others Rights, and from doing hurt to one another, and the Law of Nature be observed, which willeth the Peace and *Preservation of all Mankind*, the *Execution* of the Law of Nature is in that State, put into every Mans hands... For the *Law of Nature* would, as all other Laws that concern Men in this World, be in vain, if there were no body that in the State of Nature, had a *Power to Execute* that Law, and thereby preserve the innocent and restrain offenders...<sup>121</sup>

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<sup>120</sup> Laslett, Peter, ed. *Locke's Two Treatises*. P. 91

<sup>121</sup> Laslett, Peter, ed. *Locke's Two Treatises*. P. 92.

Immanuel Kant also developed a highly influential secular natural rights theory. His goal was to discover a ‘metaphysics of morality’ that is, a set of *a priori* moral principles, that could be applied universally. He did this by developing a theory of ‘transcendental idealism’ that distinguished between the world of phenomena (appearances) and noumena (reality).<sup>122</sup> According to Kant, human beings cannot know the world as it is; they can only access it through concepts such as cause and effect. However, according to Kant, these mental concepts are universal and naturally embedded in every rational mind. Hence, Kant restricted his search for a moral imperative to the ‘rational sphere’. He maintained that the principle would have to be an ‘end in and of itself’ and a moral obligation on all rational agents. Kant ‘discovered’ this principle in his famous categorical imperative, namely, “Act only according to that maxim whereby you can at the same time will that it should become a universal law.”<sup>123</sup> This, he believed, provided the litmus test for ethical action and that it could be further developed and applied in all moral contexts.

It was the concept of natural rights based on nature and reason that became the theoretical force behind the French and American revolutions. Locke’s work was widely disseminated among the people; it justified rebellion and the establishment of a government that was ‘of the people, by the people, and for the people’. Eventually, natural law theory, as articulated by philosophers such as Locke and Kant, also became the doctrinal basis for modern societies grounded in some form of secular-liberalism. This was despite the fact that their ideas were never fully developed and, more importantly, that they were widely criticized and opposed in

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<sup>122</sup> In general, see: Kant, Immanuel. *Grounding for the Metaphysics of Morals*. 3<sup>rd</sup> Ed. Trans. Ellington. Indianapolis: Hackett, 1993.

<sup>123</sup> Kant, Immanuel. *Grounding for the Metaphysics of Morals*. P.30.

both in theory and practice.<sup>124</sup> Moreover, the Universal Declaration was drafted within the context of this momentous societal change and hence, it was implicitly underpinned by the same incomplete neo-lockean principles. However, the strengths of natural rights theory could not be ignored; thus, it was picked up by many contemporary human rights theorists such as John Rawls (d.2002), John Finnis (d.1980) and David Gauthier (d.1986). In their own ways, they attempted to use natural rights to ground human rights such that the latter could be considered universal. For example, Rawls also carried out a thought experiment in which people were placed in an ‘original position’ of sorts; however, instead of the classic ‘state of nature’, Rawls used what he referred to as the ‘veil of ignorance’.<sup>125</sup> Behind the veil, people are denied any knowledge of who they are; they have no way of knowing their gender, race, and socio-economic status. It is based on this ignorance, and therefore assumed impartiality, that people must decide what principles constitute a just society. Rawls argued that rational people would choose a ‘politically liberal’ society, one where justice is based on fairness and constitutes two principles:

The first principle states that each person in a society is to have as much basic liberty as possible, as long as everyone is granted the same liberties... The second principle states that while social and economic inequalities can be just, they must be available to everyone equally (that is, no one is to be on principle denied access to greater economic advantage) and such inequalities must be to the advantage of everyone.<sup>126</sup>

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<sup>124</sup> As expected, their ideas were heavily criticized by their contemporaries. However, they were also opposed on a practical level, that is by parts of the population that were witnessing a practical paradigmatic shift within their societies. In this regard and in general, see: Hunt, Lynn. *Inventing Human Rights*.

<sup>125</sup> In general, see: Rawls, John. *A Theory of Justice*.

<sup>126</sup> Friend, Celeste. “Social Contract Theory”. *iep.utm.edu*. Internet Encyclopedia of Philosophy: A Peer-Reviewed Academic Resource. 01 April. 2017.

Finnis, on the other hand, developed a theory of ‘neo-naturalism’ that attempted to move away from the classical appeals to God, reason and nature. Instead, he argued that human rights should be grounded in the concept of objective goods, that is, goods that are necessary for human flourishing. Interestingly however, this change brought Finnis’ ideas closer to utilitarianism than to natural rights. This is because his idea concerning ‘necessary goods’ requires assumptions about what is valuable and moreover, consensus on these assumptions would most likely require (impossible) calculations about the vague concept of ‘human flourishing’. In this way, many neo-natural rights theories have lost their classical appeal, that is, the appeal of a human rights grounded in a transcendent and objective source.

In any case, despite the strengths of natural rights theories, they all seem to face the same two-fold problem of universal consensus and practical application. For example, in terms of universality, Locke’s idea that life, liberty and property are natural, equal and inalienable seems to be heavily influenced by the absolutism of the 17<sup>th</sup> and 18<sup>th</sup> Centuries. Carrying out the same thought experiment in different social contexts would produce different sets of rights, and the latter could just as easily be considered natural, equal and inalienable. Moreover, and in terms of application, the rights to life, liberty and property are general concepts. Even if people agreed on the substance of basic rights, they would undoubtedly disagree on the ways in which these rights should interact with each other, and other rights, when put into practice. Critiques of contemporary natural rights theories point to the same two problems. For example, Alison Rentln argues that ‘natural’ human rights are wrongly considered universal because people have a psychological predisposition to generalize from their own particular perspectives; they have a tendency to project their moral categories onto others. In arguing this point in relation to Rawls, she writes that

It is plausible that individuals from the same culture might agree to the same principles...But if one transposes the scenario of the original position to an international setting, it becomes doubtful whether all the participants will acquiesce. The presupposition is that individuals stripped of their cultural and political heritage would be pure rational being and would thus dutifully elect liberal democratic principles of justice. The premise that individuals could negotiate for fundamental principles in the absence of culture is quite fantastic. And this is precisely the root of the problem: underlying the presumption of universality is the belief that all peoples think in a similar fashion.<sup>127</sup>

Similarly, in the case of Finnis' objective goods theory, Michael Freeman writes, "claims about objective goods are either too vague to be useful or too controversial to be objective. Even those who agree there are objective goods do not agree on what those goods are."<sup>128</sup> Thus, it seems that that the movement away from a transcendent God, was a movement towards relativity and the loss of universality. Despite this however, some human rights theorists, such as Johannes Morsink, argue that the *Universal Declaration* cannot be criticized on the same grounds because it decidedly distanced itself from the secular-liberal conception of natural rights.<sup>129</sup> However, this view is also rightly criticized by theorists such as Prakash Sinha, who argue that the *Universal Declaration's* separation from Western liberal values was incomplete and thus, partial at best. For example, Sinha's study aims to show how the Western concept of social order that underpins human rights is not shared by non-Western civilizations. According to Sinha,

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<sup>127</sup> Renteln, Alison D. "The Concept of Human Rights". *Anthropos Institute*. 83:04 (1988). P. 349.

<sup>128</sup> Freeman, Michael. *Human Rights*. P. 70.

<sup>129</sup> For example, see: Morsink, Johannes. *The Universal Declaration of Human Rights: Origins, Drafting and Intent*. Pennsylvania: University of Pennsylvania Press, 1999.

There are three basic tenets that are inherent in the present formulation of human rights. One, the fundamental unit of society is the individual, not the family. Two, the primary basis for securing human existence in society is through rights, not duties. Three, the primary method of securing these rights is through reconciliation...not legalism.<sup>130</sup>

Sinha argues that these basic tenets are not found in Chinese, Japanese, African, Muslim, and Hindu societies. To provide one example, Sinha describes the process of Japanese law in the following way:

However, in reality, the law made in imitation of the West governs a very small segment of social life which constitutes the presupposition of the Western law, namely, middle class individuals fashioning their relations on the basis of freedom and liberty. *The majority of people still live according to the former ways and follow the Confucian idea based on natural order... since the notion of rights puts all persons on an equal basis, which is contrary to the Confucian hierarchy, it is deemed to depersonalize human relations. In the area of settlement of disputes, it is reconciliation which still enjoys a central place.*<sup>131</sup>

In any case, the inability of nature and reason, or human dignity and needs, to provide a universal foundation for human rights is clear. This leads to one of two possibilities. The first is the acceptance of plural human rights schemes, including those grounded in religion, and the acceptance of the differences this paradigm would entail. The second option, is to embrace the concept of relativity and to argue in favor of a single human rights model based on practical

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<sup>130</sup> Sinha, Prakash. "Human Rights: A Non-Western Viewpoint". *Archives for Philosophy of Law and Social Philosophy archives for Philosophy of Law and Social Philosophy*. 67:01 (1981). July 08. 2017. P. 88.

<sup>131</sup> Sinha. *A Non-Western Viewpoint*. P.84. Emphasis added.



results. The next section looks at this second possibility in the form of the postmodern concept of ethical sentimentalism.

### A Critical Exploration of Postmodern Ethical Sentimentalism

As mentioned, ‘modern’ philosophers, such as Voltaire, Locke and Kant, severed the connection between the traditional understanding of God from human nature and reason. They attempted to demonstrate that the latter two concepts were also transcendent and therefore, universal. However, once human nature and reason were cut off from their ahistorical source in God, their presumed universality was heavily criticized. Following in the footsteps of Nietzsche (d.1900),<sup>132</sup> it did not take long for ‘postmodern’ philosophers, such as Foucault (d.1984) and Derrida (d.2004), to expose nature and reason as human constructs – relative and limited to their socio-historical contexts.<sup>133</sup> Some human rights theorists, such as Jack Donnelley and Richard Rorty, argue that this postmodern shift in epistemology is not problematic in relation to human rights. For Donnelley, this is partly because there is no such thing as an essential human nature. Rather, according to him, human nature is a social project wherein humans construct their essential nature vis-a-vi social action. On this view, human rights is a prescriptive moral account; that is, it is a substantive model which provides a set of practices that allow people to develop their deeper ‘moral nature’.<sup>134</sup> In addition to this, Donnelley also argues that postmodern thought

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<sup>132</sup> For Nietzsche’s socio-historical and relative approach to morality, see: Nietzsche, Friedrich. *On the Genealogy of Morals and Ecce Homo*. Trans and Ed. Kaufmann. New York: Random House, 1989.

<sup>133</sup> In general, see: Foucault, Michael. *Power/Knowledge: Selected Interviews and other Writings 1972-1977*. Trans and Ed. Gordon. New York: Pantheon Books, 1997; and, Derrida, Jacques. *Writing and Difference*. Trans. Bass. Chicago: University of Chicago Press, 1980.

<sup>134</sup> Donnelly, Jack. *Universal Human Rights: In Theory and Practice*. 2<sup>nd</sup> ed. New York: Cornell University Press. 2003. Pp.7-23.

is not problematic for human rights theory because there is no such thing as an objective theoretical foundation for any belief. In this regard, he writes:

Moral and political arguments require a firm place to stand. But that place appears firm largely because we have agreed to treat it as such. ‘Foundations’ ‘ground’ a theory only through an inescapably contentious decision to *define* such foundations as firm ground...There is no strong foundation for human rights – or, what amounts to the same thing, there are multiple, often inconsistent, ‘foundations’...This is less of a problem than one might imagine.<sup>135</sup>

According to Donnelly, “this is less of a problem than one might imagine” for three reasons. First, this is because human rights are already ‘relatively universal’. That is to say, in practice, most nation-states have ratified international human rights law and consider it to be legally binding. However, a central claim of this work is that a lack of theoretical justification makes it impossible, and morally arrogant, to try and implement a single model of human rights on an international level. It is exactly this problem that stops cross cultural communication and incites calls of cultural hegemony and imperialism. Moreover, the problem with Donnelly’s argument is that it ignores the immense political pressure placed on nation-states to accept human rights. In other words, some nation-states, formally endorse human rights in public international discourse because they cannot afford to do otherwise. This ‘insincerity’ is reflected in the countless human rights abuses carried out by countries that purportedly uphold international law. For example, Michael Freeman writes:

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<sup>135</sup> Donnelly, Jack. *Universal Human Rights*. P.21.

The Vienna Conference of 1993 reinforced the commitment of the international community *in principle* to universal human rights. Most governments are *formally* committed to human rights. ... Yet serious violations continue... Human-rights scholars have begun to recognize that the global economy and the global climate may have massive implications for human rights.<sup>136</sup>

Thus, the ‘relative universality’ of human rights is strictly limited to its formal acceptance and not, as Donnelley assumes, to its practical application. Secondly, Donnelley argues that a lack of justification is “less of a problem than one might imagine” because human rights is a prescriptive model that should be judged by practical consequences and not theoretical soundness. Here, Donnelley is combining the deontological nature of human rights with the consequentialist nature of Utilitarianism. The problem with Donnelley’s argument is that there is a lack of tangible proof that human rights produces more positive consequences than negative ones. In fact, in the economic sphere, it can and has been argued that international human rights allow for the exploitation of ‘Southern’ nation-states. In other words, on this account, human rights are an empty bourgeoisie ideology that works to pacify the working class and help international institutions, such as the World Bank, International Monetary Fund, and trans-national corporations, to freely pursue and further their economic growth. Finally, Donnelley argues that a lack of ‘grounding’ is “less of a problem than one might imagine” because it makes human rights adaptable in that sense that it gives it the potential to be grounded in virtually every cultural tradition. This is based on the false assumption that human rights can be ‘minimalist’ and therefore, implemented into different societies without disturbing the latter’s worldview and its consequent structures. However, the problem with this idea is its ‘assumption of

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<sup>136</sup> Freeman, Michael. *Human Rights*. P. 207. Emphasis added.

compartmentalization'. Human rights is a theory of justice, and the latter is an integral part of every tradition. Thus, changing a society's understanding of justice would mean changing, at least to a large extent, that society's cultural institutions and behavior norms. As the next section shows, the African, Chinese and Islamic traditions have vastly different views concerning justice and cannot accept international human rights in their current formulation without displacing their own particular cultural heritages. Hence, their contemporary search for a more organic and integral human rights schemes in line in line with their respective traditions.

Richard Rorty, to a large extent, adopts the same views as Donnelley. He also argues that there is no such thing as an essential human nature and that human rights should not be judged by theory, but rather, by consequence. According to Rorty, postmodernists are made up of two general groups, that is, the cultural left and the progressive left. He criticizes the former for not providing alternatives to the structures they have deconstructed and for denying the possibility of progress.<sup>137</sup> Rorty places himself among the progressive left, or the school of pragmatic postmodernism, and puts forth a theory of human rights based on sentimentality. In discussing Rorty's view, Michael Freeman writes:

Rorty has argued that there is *no* theoretical foundation for human rights, because there is no theoretical *foundation* for any belief. This is not, however, something we should regret because it is a necessary philosophical truth, and because the cause of human rights does not require theory for its success, but, rather sympathy.<sup>138</sup>

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<sup>137</sup> Grippe, Edward. "Richard Rorty (1931-2007)" iep.utm.edu. The Internet Encyclopedia of Philosophy: A Peer Reviewed Academic Resource. 05 August. 2017.

<sup>138</sup> Freeman, Michael. *Human Rights*. P. 62.

Rorty's shift from theory to sympathy is in line with his general philosophical outlook. According to him, science and philosophy simply form a set of 'vocabularies' that change in relation to social convention and practicality; there is no reason to believe that our knowledge accurately represents a world that is independent from it. Defending the view that 'we can't know anything' but 'we should still be moral' is a problem that postmodern philosophy faces in general; this is because the knowledge of 'anything' includes the knowledge of morality. In other words, what authority does morality have if it has no basis in a transcendent and knowable reality and is therefore, is simply a product of changing social conventions? This essentially means that what is 'right' in a particular socio-historical context can also be 'wrong' in another. This view of morality clearly undermines human rights' claims to universality. Rorty's answer to this question is to approach human rights with the postmodern theory of ethical sentimentalism. The latter is the argument that ethics are a product of feeling in general and empathy in particular and have nothing to do with 'knowledge'. Accordingly, Rorty argues that human rights should be established through sentimental education – an education that creates a feeling of empathy for other people's suffering.<sup>139</sup> Interestingly, Lynn Hunt's book *Inventing Human Rights* maps the historical process by which social practices in 17<sup>th</sup> and 18<sup>th</sup> Centuries allowed people to empathize with 'others'. According to Hunt, these changes allowed for the human rights movement and the French and American revolutions. She writes:

Yet the newfound power of empathy could work against even the longest held prejudices...Neither autonomy nor empathy were fixed; they were skills that could be learned, and the 'acceptable' limitations on rights could be - and were - challenged.

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<sup>139</sup> Rorty, Richard. "Human Rights, Rationality, and Sentimentality." Ed Shute and Hurley. *On Human Rights*. New York: Basic Books, 1993.

Rights cannot be defined once and for all because their emotional basis continues to shift...The human rights revolution is by definition ongoing.<sup>140</sup>

She continues,

My argument will make much of the influence of new kinds of experiences, from viewing pictures in public exhibitions to reading the hugely popular epistolary novels about love and marriage. Such experiences helped spread the practices of autonomy and empathy...Each in their way reinforced the notion of a community based on autonomous, empathetic individuals who could related beyond their immediate families, religious affiliations, or even action to greater universal values.<sup>141</sup>

The problem with ethical sentimentalism is its continually shifting point of reference. If human rights depend on what we feel, then it is only natural to ask what our feelings depend on.

Although Hunt seems to ‘celebrate’ the shifting attitudes of the 17<sup>th</sup> and 18<sup>th</sup> Centuries, it is obvious that these changes were, and continue to be, dangerously liable to manipulation by those who have control over public information.<sup>142</sup> For example, the media, whether in the form of an epistolary novel in the 17<sup>th</sup> Century or specific news outlets in the 21<sup>st</sup> Century, can dictate who and what we feel and do not feel empathy towards. According to George Soros:

...social media companies influence how people think and behave without them even being aware of it. This has far-reaching adverse consequences on the functioning of democracy... [In addition, social media companies] deceive their users by manipulating their attention and directing it towards their own commercial purposes [and] deliberately

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<sup>140</sup> Hunt, Lynn. *Inventing Human Rights*: P. 28-29.

<sup>141</sup> Hunt, Lynn: *Inventing Human Rights*. P.32.

<sup>142</sup> For example, see: Mitchell, Peter R., and John Schoeffel, eds. *Understanding Power: The Indispensable Chomsky*. New York: The New Press, 2002.

engineer addiction to the services they provide. The power to shape people's attention is increasingly concentrated in the hands of a few companies. It takes a real effort to assert and defend what John Stuart Mill called 'the freedom of mind'. There is a possibility that once lost, people who grow up in the digital age will have difficulty in regaining it. This may have far-reaching political consequences.<sup>143</sup>

Ethical sentimentalism aside, the greatest obstacle to the 'foundationless foundation' argument – much like utilitarianism and natural rights – is the 'problem of relativity', that is, the notion that the only the relative is absolute. If there is no theoretical foundation for anything then the same argument applies to human rights. Moreover, if human rights are to be judged by their consequences, then it raises the question: 'what particular consequences will be judged and how will those be measured?' According to most postmodern theorists then, there is no good reason to apply the concept of human rights; there is only the seemingly arbitrary decision to apply them. Moreover, the idea that there is no sound basis for any theoretical belief is based on an epistemological reductionism that limits human modes of knowing. It is based on a particular concept of the human mind and reason that developed approximately between the 15<sup>th</sup> and 18<sup>th</sup> Centuries in the West. The second part of this study develops a theory of Islamic ethics and argues that, according to the Islamic intellectual tradition, it is possible to 'know reality' and hence, an 'objective ground' does exist and the latter is independent of the any particular person's decision to treat it as such.

This study carried out a critical exploration of some of the ethical theories that claim the ability to objectively underpin human rights and hence, argue that the latter is applicable to all human beings in all contexts. However, this study argues that these theories do not adequately

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<sup>143</sup> Soros, George. "George Soros: Facebook and Google a menace to society" The Guardian. Business. Jan 25 2018.

respond to the ‘question of foundations’ and the ‘problem of relativity’. Moreover, this work supports the popular argument that international human rights are still a product of the secular-liberal worldview that developed out of the Renaissance and Enlightenment periods in the West. Further testimony about the relative nature of human rights – in its current international formulation – is provided by critics from the African, Chinese and Islamic traditions. The next section briefly looks at these critiques and the alternative visions they provide. It then goes on to the second part of the study that deals with human rights in relation to religion in general, and Islam in particular.

### Human Rights and the ‘Question of Universality’

This study has shown that international human rights are far from universal. It has done this by pointing to the on-going debate from within the secular-liberal tradition concerning the foundations of human rights. This wide spread disagreement is sufficient evidence concerning the latter’s relativity. This evidence is strengthened when it is combined with criticism being produced from outside of the secular-liberal tradition. In particular, the concept that human rights are universal has found opposition from activists and theorists working within the African, Asian and Islamic traditions. Many of these places are part of the ‘global south’ and their arguments are based on both economics and culture. Rhonda Callaway and Julie Harrelson-Stephens sum up their position by writing:

Developing countries are quick to dispute the universality of human rights, arguing three main points. First, developing countries had little input in the drafting of the document



due to their colonial position at the time. Second, these same countries contend that the rights outlined in the declaration are ethnocentric, reflecting Western conceptions and omitting non-Western views on human rights.<sup>144</sup> Last, critics contend that too much emphasis is placed on the rights of the individual often at the expense of the rights of groups and collectivities.<sup>145</sup>

In the case of Asia for example, some critics argue that the liberal emphasis on the primacy of the individual and autonomy runs against the Asian emphasis on the primacy of the family and stability.<sup>146,147</sup> In light of this, they argue in favor of a strong centralized government that establishes order. According to proponents of ‘Asian values’, order is necessary for economic success and the actual freedom and enjoyment of rights. In this regard, Lee Kuan Yew (d.2015), the former prime minister of Singapore, stated:

We used the family to push economic growth, factoring the ambitions of a person and his family into our planning...The government can create a setting in which people can live happily and succeed and express themselves, but finally it is what people do with their lives that determines economic success or failure. Again, we are fortunate we had this cultural backdrop, the belief in thrift, hard work, filial piety, and loyalty in the extended family, and, most of all, respect for scholarship and learning.<sup>148</sup>

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<sup>144</sup> For example, see Appendix A, Articles 17 and 21; These two articles suggest the two Western economic and political institutions of capitalism and democracy respectively.

<sup>145</sup> Callaway, Rhonda and Harrelson-Stephens. “What are human rights? Definitions and typologies of Today’s Human Rights Discourse” *Exploring International Human Rights*. P. 8.

<sup>146</sup> In general, see: De Barry, Theodore and Weiming, Wu. Ed. *Confucianism and Human Rights*. New York: Columbia University Press, 1997.

<sup>147</sup> Of course, this is not the view of all ‘Asian peoples’. The point is that there is an ongoing debate which contests the universality of human rights in their contemporary formulation. The same can be said of the African and Islamic traditions.

<sup>148</sup> As quoted in: Callaway, Rhonda L. “The Rhetoric of Asian Values”. *Exploring International Human Rights*. P. 116.

The values that he mentions are based on Confucianism – a worldview that has dominated much of the Far-East and highly influenced its people and their way of life. Yew, like other proponents of ‘Asian values’, also connects the issue of international human rights with the perceived moral decay of the West. In relation to American society, he said:

As a total system, I find parts of it totally unacceptable: guns, drugs, violent crimes, vagrancy, unbecoming behavior in public – in sum, the breakdown of civil society. The expansion of the right of the individual to behave or misbehave as he pleases has come at the expense of orderly society. In the East the main object is to have a well ordered society so that everybody can have maximum enjoyment of his freedoms.<sup>149</sup>

Therefore, critics of universalism argue that the wholesale implementation of rights, as expressed in the International Bill of Rights, would effectively debase the Asian tradition and its rich cultural history. The same or similar arguments are given by some groups from the African and Islamic traditions. In the case of Africa for example, Shashi Tharoor writes:

...in Africa it is the community that protects and nurtures the individual. One African writer summed up the African philosophy of existence as: "I am because we are, and because we are therefore I am." Some Africans have argued that they have a complex structure of communal entitlements and obligations grouped around what one might call four "r's": not "rights," but respect, restraint, responsibility, and reciprocity. They argue that in most African societies group rights have always taken precedence over individual rights, and political decisions have been made through group consensus, not through individual assertions of rights<sup>150</sup>

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<sup>149</sup> As quoted in Callaway, “The Rhetoric of Asian Values.” *Exploring International Human Rights*. P. 113.

<sup>150</sup> Tharoor, Sashi. “Are Human Rights Universal?” *World Policy Journal*. 16:04 (1999-2000) Sept. 13. 2017.

Thus, the preamble to the African Charter on Human Rights and Peoples Rights states:

“*Taking into consideration* the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples’ rights” and *considering* that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone”<sup>151</sup>

Finally, the same arguments, that is, of economics and cultural values, is made by Middle-Eastern theorists in general, and those influenced by the Islamic tradition in particular. This study provides a more in-depth analysis of the issue of ‘Islam and human rights’ in the following chapters. For the moment, it suffices to point out that many Middle-Eastern societies in the past were based on Islamic principles that were derived from the Quran and generally developed by Muslim scholars (*ulama*).<sup>152</sup> Nasr, writing in light of Islamic Traditionalism, states:

In today’s world everyone speaks of human rights and the sacred character of human life, and many secularists even claim that they are the true champions of human rights...But strangely enough, often those same champions of humanity believe that human beings are nothing more than evolved apes...If the human being is nothing but the result of ‘blind forces’...then is not the very statement of the sacredness of human life intellectually meaningless and nothing but a hollow sentiment of expression?<sup>153</sup>

Thus, the preamble to the *Universal Islamic Declaration of Human Rights* states:

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<sup>151</sup> See Appendix E: *The African Charter*, preamble.

<sup>152</sup> It is true that the Quran was interpreted differently across and within different spacio-temporal boundaries. However, according to Islamic traditionalism, different interpretations emphasize different aspects of the Divine revelation and are integrated into an underlying unity within the ‘heart of Islam’. Thus, these interpretations are valid as different expressions of the Islamic tradition as a whole.

<sup>153</sup> Nasr. S.H. *The Heart of Islam*. P. 275.

“Whereas Allah (God) has given mankind through His revelation in the Holy Quran and the Sunnah of His blessed Prophet Muhammad an abiding legal and moral framework within which to establish and regulate human relationships” and “Whereas by virtue of their divine source and sanction these rights can neither be curtailed, abrogated or disregarded by authorities, assemblies or other institutions, nor can they be surrendered or alienated.”<sup>154</sup>

To reiterate, according to Sinha, all three of these traditions have a worldview with at least three things in common. First, they agree that the fundamental unit of society is the family and not the individual. Second, they believe that the primary basis for securing human existence is through duties and not rights. And finally, they maintain that the primary method of securing rights is through reconciliation, repentance or education, and not procedural legalism.<sup>155</sup> These claims, and their argument that the *Universal Declaration* is Eurocentric, are furthered by the fact that the aforementioned cultural traditions have produced their own human rights treatises: Asian-Pacific regions drafted and adopted *The Bangkok Declaration* in 1993; The Organization of African Unity (now the African Union) drafted and adopted *The African Charter on Human and Peoples' Rights* in 1981; and The Islamic Council drafted *The Universal Islamic Declaration of Human Rights* in 1981. Added to this, is the InterAction Council, which, in response to *The Universal Declaration's* emphasis on rights, drafted *The Universal Declaration of Human Responsibilities* in 1997.<sup>156</sup> As such, it is clear that human rights, in their current formulation, are far from being universal. However, this study's working assumption is that this fact does not negate the concept of universality altogether. Many of these traditions point to the uniqueness of

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<sup>154</sup> See Appendix C: *The Universal Islamic Declaration*, preamble.

<sup>155</sup> Sinha, Prakash. “Human Rights: A Non-Western Viewpoint”. P. 77.

<sup>156</sup> See Appendices.

their own cultures but in doing so, they also mention points of convergence. For example, in addressing the contemporary African approach to human rights, Bonny Ibhawoh writes,

The Africanist approach to the discourse on the cultural relativism of human rights can therefore be broadly divided into two schools. The first of these is the less radical approach...Proponents of this school, while arguing the validity of a uniquely African concept of human rights, also recognize the universality of a basic core of human rights. Kofi Quashigah (1991) for instance, concludes that human rights concepts, which are rooted in certain social facts that are peculiar to particular societies, cannot be expected to be universal. At the same time, he acknowledges that certain basic needs are indisputably ascribable to persons of every...background.<sup>157</sup>

As mentioned, this work belongs to ‘Pluralist-Universal’ School of human rights and attempts to negotiate a ‘middle position’ between Modernism’s universalism and Postmodernism’s relativism. Modernism refers to the ideology that grew out of the Renaissance and Reformation movements in the West; it is generally characterized by a belief in progress, science, and reason. Moreover, Modernism focuses on individual autonomy, and believes in the possibility of universal ethics and a unified global society. Therefore, most advocates of universal human rights belong to the Modern tradition.<sup>158</sup> On the other end of the spectrum is Postmodernism, which is largely a reaction to and dissection of Modernism. It is largely characterized by its emphasis on relativism and its stance against ‘meta-narratives’, that is, theories that claim to give comprehensive accounts based on universal truths. Postmodernism’s

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<sup>157</sup> Ibhawoh, Bonny. “Restraining Universalism: Africanist perspectives on Cultural Relativism in the Human Rights Discourse.” In *Exploring International Human Rights*. P.133-134; also see: An-Na‘im, Abdullahi., ed. *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*. Philadelphia: University of Pennsylvania Press, 1992.

<sup>158</sup> Habermas is arguably the most influential theorist’s belonging to the modern tradition today. For an introduction to his work, see: Finlayson, James G. *Habermas: A Very Short Introduction*. Oxford: Oxford University Press, 2005.

deconstruction of ‘absolute truths’ is in line with one of its central aims, that is, the ‘deconstruction’ of power structures that allow for the marginalization of minorities and colonization of peoples.<sup>159</sup> This, in turn, is also closely related to ‘Saidian Orientalism’ – a post-colonial philosophy that generally rejects Modernism’s approach to and depiction of the ‘Other’. Its criticism is mainly aimed at the ‘West’, and latter’s tendency to essentialize other cultures as static, underdeveloped and primitive. For post-colonial theorists, this false construct is problematic because it implicitly or explicitly argues for the superiority of ‘Western’ cultures and thereby justifies the colonization of other peoples. In Edward Said’s “Islam through Western Eyes”, he writes:

How fundamentally narrow and constricted is the semantic field of Islam was brought home to me after my book *Orientalism* appeared last year. Even though I took great pains in the book to show that current discussions of the Orient or of the Arabs and Islam are fundamentally premised upon a fiction, my book was often interpreted as a defense of the “real” Islam. Whereas what I was trying to show was that any talk about Islam was radically flawed, not only because an unwarranted assumption was being made that a large ideologically freighted generalization could cover all the rich and diverse particularity of Islamic *life* (a very different thing) but also because it would simply be repeating the errors of Orientalism to claim that the correct view of Islam was X or Y or Z.<sup>160</sup>

Thus, advocates of culturally relative rights generally belong to the Postmodern and Post-colonial traditions. This study’s ‘middle position’ challenges both the relativity and universality of human rights. Therefore, it adopts the Rawlsian notion of a ‘minimal overlapping

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<sup>159</sup> For example, see: Foucault, Michael. *Discipline and Punish: The Birth of the Prison*. 2<sup>nd</sup> ed. Trans. Sheridan. New York: Vintage Books, 1995.

<sup>160</sup> Said, Edward W. “Islam Through Western Eyes” (1980). *thenation.com*. The Nation. 12 Oct. 2017.

consensus’.<sup>161</sup> For example, “Rawls...held that only Articles 3-18 represent genuine human rights because the other rights are either liberal, and therefore not universalizable, or presuppose particular institutions.”<sup>162</sup> Therefore, as Grace Kao points out, “Rawls’ toleration of a type of non-liberal society that he calls ‘decent’ leads him to reject an articulation of human rights that would be ‘peculiarly liberal or special to the Western Tradition’.”<sup>163</sup> However, it is important to reiterate that any overlapping consensus between cultural traditions should be accidental and not essential in nature. This would ensure that rights are not forced onto a particular culture and its fundamental worldview. At the same time, any ‘overlapping rights’ would become ‘essential’ in the sense that their general acceptance would make up the core of what could rightly be called ‘universal’ human rights.

In concluding, the first part of this work argues that international human rights are not actually universal – they are underpinned by the secular-liberal principles of universalism, autonomy, secularism and the like. This argument is based on a critical exploration of popular human rights histories; contemporary ethical theories; and human rights’ views from other traditions, namely, those from Africa, Asia and the Islamic Middle East. This general argument is made more specific in the following chapters, which consider the possibility of grounding human rights within a religious framework. Thus, this work breaks off from its current discussion and moves on to critically explore the relationship between human rights and religion in general, and the issue of human rights and Islam in particular.

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<sup>161</sup> This study argues that a ‘minimal overlapping consensus’ is both possible and desirable. However, it does not agree with Rawls’ assumption that all peoples behind a ‘veil of ignorance’ would choose the same (liberal) principles.

<sup>162</sup> Freeman, Michael. *Human Rights*. P. 75.

<sup>163</sup> Grace, Kao Y. *Grounding Human Rights*. P. 58.

## CHAPTER THREE

### Religion, Islam and Human Rights

#### Introduction

What is the relationship between religion and human rights? This question generally has three answers.<sup>164</sup> The first of these is arguably the most common one and it comes from those theorists that argue human rights and religion are diametrically opposed to one another.<sup>165</sup> This view runs parallel to the popular histories describing the rise of international rights: religious societies – particularly before the 15th century – were duty-based, hierarchical, and undemocratic; they maintained a worldview and subsequent social order that was generally elitist and oppressive towards the general public. This is then juxtaposed with modern human rights societies.<sup>166</sup> These societies, despite their admitted shortcomings, are described as humane, progressive, and liberal. Thus, they see the narrative of human rights as “one of traditional religious authority opposed to the secular Enlightenment ideal of ration, autonomous individuals as bearers of universal rights.”<sup>167</sup> Proponents of this view justify their position by pointing to a number of ‘progressive modern developments’ such as those in the fields of health science, technology and economics. Mostly, however, they point to the rise of the concept of human

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<sup>164</sup> Of course, these ‘answers’ tend to overlap, and therefore, this distinction and categorization is a matter of emphasis.

<sup>165</sup> This position is promulgated by figures such as Jack Donnelly, Louis Jenkins and Jacob Burckhardt. On this ‘dominant narrative’, see: Banchoff, Thomas, and Robert Wuthnow. “Introduction” *Religion and the Global Politics*. Pp. 2-4.

<sup>166</sup> Thus, for example, Paul Lauren’s “History of Human Rights” states: “...The overwhelming majority of all human beings who ever lived...did so under some form of...human rights violations... Human bondage was common...Prejudice and discrimination prevailed.” P. 2.

<sup>167</sup> Banchoff, Thomas, and Robert Wuthnow. “Introduction” *Religion and the Global Politics*. P. 4.



rights itself; the increasingly fashionable idea that all human beings are inherently equal and thereby entitled to the same subjective rights. Donnelley, for example, argues that liberal societies and their concomitant human rights norms have superseded religion as the favored structure of society and theory of justice respectively. According to him, there are three stages that a society goes through before becoming a human rights societies proper. They are (1) liberalization: a decrease in human right violations and an inclusion of more minority groups; (2) democratization: the process of establishing electoral democracy; and (3) a Rights-Protective Regime: making the protection of internationally recognized human rights a central concern of that society.<sup>168</sup> For Donnelley, this final society is a liberal democracy. In this regard, many human rights theorists and activists adopt the Frazarian view of ‘progress’ and maintain that religions acted as a ‘stepping stone’ towards the fulfilment of a new international human rights regime; a secular regime based on reason and not a religious regime based on revelation. It is important to note that Donnelly in particular does not trace back human ‘progress’ to religion; rather, he traces it back to the construction of liberal democracies and the *Universal Declaration*. In any case, on this view, the right to ‘freedom of religion’ is reduced to exclude religious actors and forces as a source of public policy. Freedom is only applied to private and non-intrusive, individual faith. If a particular faith does invoke revelation, they are forced to rationalize their invocation and thereby reduce the latter to the rational faculty. In other words, this assumes an epistemological model wherein rationality sits at the apex, and revelation falls somewhere below it. This political setup follows in the footsteps of Rawls who argued that, in liberal democracies,

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<sup>168</sup> Donnelly, Jack. “The Relative Universality of Human Rights.” *Human Rights Quarterly*. 29:2 (2007) Pp. 281-306.

‘reasonable people’ would allow everyone to follow their faith, but would rely only on what was ‘reasonable’ in the public sphere.<sup>169,170</sup>

The second answer about human rights and religion also argues that the two ideologies are opposed to one another. However, this answer comes from those theorists who oppose human rights as a product of the Western Renaissance and Enlightenment, periods of history when organized religion was largely rejected and replaced. For example, Harry Oldmeadow writes:

The Renaissance, the Scientific Revolution, and the Enlightenment were all incubators of ideas and values which first decimated Christendom and then spread throughout the world... Behind the proliferating ideologies of the last few centuries we can discern an ignorance of ultimate realities and an indifference, if not always an overt hostility, to the eternal verities conveyed by Tradition.<sup>171</sup>

It is important to note that these theorists maintain that many of the secular-liberal ideologies underpinning the *Universal Declaration* are anti-religious.<sup>172</sup> This includes, for example, ‘secular-humanism’ and its replacement of faith in God with the autonomous-rational human being. Therefore, these theorists do not reject human rights per se or altogether. Rather, they argue that human rights based on religious principles would be dramatically different than those assumed to be ‘international’ today. This is why proponents of this outlook maintain that human rights, even in its ‘minimalist’ form, trespasses on religion’s territory and the latter’s prerogative

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<sup>169</sup> Kao, Grace Y. *Grounding Human Rights*. Pp. 57-76.

<sup>170</sup> Here, I am referring to Rawls’ ideal public sphere which is characterized by three principal features: liberalism, secularism and rationalism.

<sup>171</sup> Oldmeadow, Harry. *Frithjof Schuon and the Perennial Philosophy*. Bloomington: World Wisdom, 2010. P. 215.

<sup>172</sup> Here I am referring to advocates of the Traditional School that reject the ‘modern mentality’ and its various underlying ideologies. Along with Oldmeadow, this includes figures such as James Cutsinger, William Stoddart, James Upton and Lord Northbourne.

to provide guidance on how to live a moral life and establish a just society.<sup>173</sup> Thus, the answer that human rights and religion are incompatible can be found on both sides of the divide.

Henkins, in agreeing with this division, summarizes the differences by categorizing them into four sections. He writes that the two ideologies differ when it comes to ‘their sources, basis of authority, forms of expression, and substantive norms’. For example, when it comes to their foundations and sources of authority, Henkin writes:

Religion and religions...see their moral code as part of a total cosmic order and as emanating from a Supreme Legislator. The Supreme Legislator, directly or through authorized representatives, has prescribed a moral code of human behaviour in an authoritative text...By contrast, in its contemporary articulation, the human rights ideology, aiming at universality (and developed during years when half the political world was committed to atheism), has eschewed invoking any theistic authority... It has avoided rooting itself in any story of human origins, or even in "natural" law or "natural" rights. The human rights ideology does not see human rights as integral to a cosmic order. It does not derive from any sacred text. Its sources are human, deriving from contemporary human life in human society.<sup>174</sup>

The two aforementioned points of view portray religion and human rights as fixed ideologies and ignore their significant overlap in theory and practice. In part, this is because they assume that religion cannot add anything to forward the cause of human rights or vice versa. The last answer argues that both ideologies are dynamic with boundaries that are constantly being negotiated both across and within traditions. In the same light, this study argues for a ‘middle

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<sup>173</sup> This study agrees that there is a significant divide between traditional religious understandings of justice and contemporary understandings of human rights. Nevertheless, it argues that this divide can be bridged on the condition that international human rights are decentralized and inclusive of alternative models.

<sup>174</sup> Henkin, Louis. “Religion, Religions and Human Rights” *The Journal of Religious Ethics* 26:02 (1998) Pp. 229-239.

ground' and insists that the two ideologies can find spaces of convergence on the condition that they are willing to engage with one another. A dialogical approach is important because, as Irene Oh states, "it aids with understanding persons from different traditions and cultures than one's own because it recognizes those persons as agents" and that "...To understand others as agents requires that we view them as possessing self-understanding rather than unilaterally categorize them as mere objects of study"<sup>175</sup>

Some human rights theorists, such as Ignatieff, argue that any kind of dialogue and compromise is unnecessary because the *Universal Declaration* sufficiently represents the world's religions and cultural traditions. This is because the commission's primary goal was to create a declaration that was global and inclusive in scope. Moreover, the drafters were chosen with this goal in mind and they clearly believed they succeeded. The declaration reads:

Now therefore, the GENERAL ASSEMBLY proclaims this UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, nation and international, to secure their universal and effective recognition and observance, both among the peoples of the Member States themselves and among the peoples of territories under their jurisdiction.

However, this 'representation' was highly suspect, and traditional voices were, and also continue to be, conspicuously absent. For example, Charles Malik – the Christian-Lebanese representative – received his education from a number of Western Universities. He was a philosopher and

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<sup>175</sup> Oh, Irene. *The Rights of God*. P.2.

diplomat that served as the Lebanese minister of Education and Fine Arts and the Minister of Foreign Affairs. Similarly, Peng-Chun Chan – the Chinese-Confucian representative – graduated from Columbia University and taught at the University of Chicago. He was a playwright, philosopher and diplomat. This type of background applies to many of the drafters, who represented a liberal minority within their respective traditions.<sup>176</sup> Of course, the issue does not concern the specific education and/or vocation of the drafters. Rather, as Abdulaziz Sachedina points out,

It is quite revealing that Muslim participation was minimalist in the sense that there was no real effort to expound comprehensive Islamic doctrines to get the sense of the tradition's stance on different articles. Further, as the profile of the different representatives from participating Muslim countries like Saudi Arabia, Pakistan and Syria reveals, *the representative from Muslim countries were peculiarly educated individuals, who had little or no human rights training in the foundational sources of Islamic tradition...*<sup>177</sup>

In addition to this, Ignatieff and Morsink, who are both proponents of the *Universal Declaration's* universality, are forced to admit that its creation was, at least to some extent, a one-sided affair. For example, Morsink writes that “this process [of drafting the declaration] was dominated by nations from around the North Atlantic...and from Latin America, and that large regions of our world, such as Asia and Africa, were grossly underrepresented at the drafting table.”<sup>178</sup> Ignatieff also admits that the process was directed by Western thinkers and norms; however, he argues that this didn't lead to any form of moral imperialism because

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<sup>176</sup> For a background of the drafters, see: Morsink, Johannes. *The Universal Declaration*. Pp. 1-28.

<sup>177</sup> Sachedina, Abdulaziz. *Islam and the Challenge*. Pp. 10-11. (Emphasis added.)

<sup>178</sup> Morsink, Johannes. *The Universal Declaration*. P. 36.

their attitude was “anything but triumphant”<sup>179</sup> in light of the World War. Finally, it is also important to remember that the drafters did not agree on many foundational issues and thus, their ‘consensus’ was strictly limited to the practical plane.

In any case, the view that religion and human rights are completely at odds is losing its dominance. On both sides, there are people attempting to reinterpret and expand their respective ideologies in search for a synthesis of sorts. This movement’s importance cannot be brushed aside. As Irene Oh writes in the case of Islam:

Although the foundations of human rights may be debated, human rights scholars cannot easily dismiss the potential that foundational beliefs, including Islam, hold in advancing human rights agendas. After all, approximately one billion inhabitants of this earth identify themselves as Muslim. To ignore the values of Islam would be to deny the voices of one-fifth of the world’s population in determining what should be “universal” human rights.<sup>180</sup>

This work agrees with the third group of theorists – that is, those that believe to the two camps overlap both in history and practice. It further argues that International human rights cannot afford to ignore religion for two reasons. The first is that, for religious people, the foundational belief in the Absolute is the only thing that can ground and validate human rights. The second reason is the so called ‘religious resurgence’ and its testimony that a large part of the world’s population still wants to live according to their sacred texts and traditional norms.<sup>181</sup> This means that international human rights need to be more flexible and inclusive of different human rights visions. It also means that religious societies should be free to develop their own models that

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<sup>179</sup> Ignatieff, Michael. “The Attack on Human Rights.”

<sup>180</sup> Oh, Irene. *The Rights of God*. P. 1.

<sup>181</sup> See: Sinha, Prakash. “Human Rights: A Non-Western Viewpoint.”

share the goal of curbing excess of power and entitling citizens to pursue their particular conception of ‘the good’. In this regard, this study agrees with the Asean charter, to the extent that it stresses the

urgent need to democratize the United Nations system, eliminate selectivity and improve procedures and mechanisms in order to strengthen international cooperation, based on principles of equality and mutual respect, and ensure a positive, balanced and non-confrontational approach in addressing and realizing all aspects of human rights<sup>182</sup>

To this end, my work is specifically concerned with Islamic intellectual tradition and its fundamental worldview as expressed within the framework the Traditional School of thought. It begins by looking at ‘Islam and the challenge of human rights’ and by critically exploring some contemporary Muslim responses to the issues at hand. It then goes on to develop a theory of virtue ethics that has the potential to ‘ground’ an ‘Islamic’ model of human rights.

### Islam and the Challenge of Human Rights

The 18<sup>th</sup> Century witnessed the beginnings of the end of the Islamic Empire. The Muslim world was colonized and their systems of government were replaced by secular institutions modeled after the West.<sup>183</sup> These models, which remained in place after the ‘independence’ of

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<sup>182</sup> See Appendix D: *The Asean Declaration*. P. 226.

<sup>183</sup> Saudi Arabia, Iran and Turkey, never were, strictly speaking, colonized. Nevertheless, they are not isolated from the phenomenon of globalization and therefore, they currently face many of the same problems as other Muslim-majority nation-states.

Muslim lands, failed to bring the economic prosperity and social stability they promised.<sup>184</sup> This was due to internal corruption and hypocritical foreign policy and it resulted in a growing resentment of the ‘West’ as well as the search for new answers. One of these answers was the return to an Islamic society that was legitimized by the implementation of the shariah. Shariah literally means ‘path to water’ and is commonly translated as Islamic law. However, the shariah doesn’t exclusively deal with the law; it is much broader and provides guidance and governance for every part of a Muslim’s life.<sup>185</sup> In this way, for many Muslims, it transforms the mundane into the sacred and serves as a reminder of God’s near and everlasting presence.<sup>186</sup> Noah Feldman aptly explains the phenomenon of ‘Islamism’ by writing:

In essence, then, the call for an Islamic state is the call for the establishment of Islamic law. Once we take this demand seriously, we can begin to understand why so many people in the Muslim world find themselves attracted to Islamic politics. Looking at their own states, they see that power, not law, is structuring political, economic and social relations. Law sounds as though it might be the solution. What is more, law seems to hold particularly great promise because, in the collective memory of the Muslim world, it is still dimly remembered that the classical state was a state that was governed by law and that governed through law.<sup>187</sup>

Here, a brief summary of the development of Islamic law is necessary in order to provide the context for the following section on ‘contemporary Islamic thought’ in general and the Progressive School’s approach to Islamic law and human rights in particular.

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<sup>184</sup> In general, see: Loomba, Ania. *Colonialism/Postcolonialism*.

<sup>185</sup> For a general overview see: Stewart, Devin J. “Shari’a” *The Princeton Encyclopedia of Islamic Political Thought*. Gerhard Bowering, ed. et al. Princeton: Princeton University Press, 2013. Pp. 497-505.

<sup>186</sup> Nasr, S.H. *Ideals and Realities*. Pp. 85-113.

<sup>187</sup> Feldman, Noah. *The Fall and Rise of the Islamic State*. Princeton: Princeton University Press, 2008. P. 21.



During the lifetime of the Prophet, the Islamic community did not need to develop a legal science; the Prophet's authority as the 'Messenger of God' extended over all areas. He was considered, *the* religious political, and moral authority. In this regard, the Qur'an reads:

*Those are limits set by Allah: those who obey Allah and His Messenger will be admitted to Gardens with rivers flowing beneath, to abide therein (forever) and that will be the supreme achievement. (4:13)*

*The answer of the Believers, when summoned to Allah and His Messenger, in order that He may judge between them, is no other than this: they say, "We hear and we obey": it is such as these that will attain felicity. (24:51)*

*All who obey Allah and the messenger are in the company of those on whom is the Grace of Allah,- of the prophets (who teach), the sincere (lovers of Truth), the witnesses (who testify), and the Righteous (who do good): Ah! what a beautiful fellowship! (4:69)*

Thus, the newly emerging Islamic community generally referred to the Prophet when any issues – religious or otherwise – arose. However, the death of the Prophet and the subsequent spread of the Islamic empire necessitated the development of an Islamic legal system – the Muslim community was looking for answers to questions that were not directly addressed by the Quran or the Prophet.<sup>188</sup> Initially, there was much debate concerning *usul al-fiqh*, that is, the principles

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<sup>188</sup> This study's overview of the development of Islamic law has largely relied on: Hallaq, Wael. *The Origins and Evolution of Islamic Law*. New York: Cambridge University Press, 2005; and, Kamali, Mohammad H. *Shari'ah Law: An Introduction*. Oxford: Oneworld Publications, 2008.

and the sources of law as well as the latter's relationship to one another. For example, the concept of *Sunna* originally extended beyond the Prophet's words and actions as recorded in the *hadith* literature. It included the personal opinions (*ra'y*) and customs (*adat*) of the Caliphs, and the Prophet's companions on the basis that the latter two had intimate knowledge of the Prophet and therefore, could rightly ascertain what he would have done in any given situation.<sup>189</sup> Some legal scholars extended the same idea to the city of Medina; they believed that the city's way of life was modeled after the Prophet and therefore, it could act as general guide and source of law for correct action.<sup>190</sup> Eventually, by the 9<sup>th</sup> and 10<sup>th</sup> Centuries, Islamic law developed into a distinct field; the jurists, for the most part, agreed on the sources of law and consolidated them into a working system. Imam Muhammad al-Shafi (d.820) is normally mentioned as one of the most significant figures in this movement. He argued that the primary sources of law were the Quran and Prophetic Sunna contained within the *hadith* literature.<sup>191</sup> He distinguished and elevated the latter's status by highlighting passages of the Qur'an that placed the Prophet above other people as a source of guidance. For example:

*Whatever the Messenger gives you, take it and whatever he forbids, abstain from it. (59:07)*

*Ye have indeed in the Messenger of Allah a beautiful pattern (of conduct) for any one whose hope is in Allah and the Final Day, and who engages much in the Praise of Allah. (33:21)*

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<sup>189</sup> Hallaq, Wael. *The Origins and Evolution*. Pp. 54-56.

<sup>190</sup> Hallaq, Wael. *The Origins and Evolution*. Pp. 45-46

<sup>191</sup> Hallaq, Wael. *The Origins and Evolution*. Pp. 117-119

*O ye who believe! obey Allah, and obey the Messenger, and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Messenger, if ye do believe in Allah and the Last Day: That is best, and most suitable for final determination. (04:59)*

Al-Shafi's main legal concern was centralizing *Prophetic* hadith as the main source of Sunna, and thereby, limiting, as much as possible, human intervention in mediating Divine injunctions. If the primary sources did not provide an answer then one could turn to the secondary sources. The first of these was the 'consensus of the scholars' (*ijma*) and the second and final source of law was analogical reasoning (*qiyas*) based on the Quran and the hadith. In regard to the typology of sources, Wael Hallaq writes:

... There was no question in the legal theory that emerged during the fourth/tenth century as to the correct hierarchy of legal sources. The Qur'an came first, at least formally and in terms of prestige and sanctity. The Sunna, wholly represented by *hadith*, formed the second material source of the law, followed, in order of importance, by consensus and *qiyas*. The first two may be described as material sources, while the latter two (especially *qiyas*) are procedural, drawing from the former.<sup>192</sup>

Thus, by the 10<sup>th</sup> Century, four schools of law (*madhabs*) crystallized in the Sunni world. Their eponyms were the Imams Abu Hanifa (d.767), Malik b. Anas (d.796), Muhammad al-Shafi (d.820) and Ahmad b. Hanbal (d.855). In addition to this, there was the codification of the Shia or Jaffari school of law that was largely based on the teachings of their sixth Imam, Jaffer as-Sadiq (d.765).<sup>193</sup> The five schools did not place similar emphasis on the legal sources. For

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<sup>192</sup> Hallaq, Wael. *The Origins and Evolution*. P.119.

<sup>193</sup> Kamali, Mohammad H. *Shari'ah Law*. Pp. 246-249.

example, the Hanbali school was more conservative and generally stayed away from independent and analogical reasoning. In any case, the *fuqaha*, that is, the legal scholars, played an extremely significant role in Muslim societies. They provided legitimacy to the ruling power of their time and also functioned as a check and balance to that same power. In this sense, they worked as a living constitution of sorts. Feldman's *The Fall and Rise of the Islamic State* probes into the nature of this development. He asks,

How did this arrangement come about? How did the scholars, men with little direct political power, no armies, and often no government posts, become the sole keepers of the shari'a, and hence the only meaningful check on the power of the ruler? The answer goes back to the way Islamic law itself developed alongside the Islamic state.<sup>194</sup>

Feldman goes on to rightly explain that the Prophet had religious and political power over the community and when he died that power was assumed by the Caliphs. Eventually however, the Caliphs were unable to provide the religious guidance that the community needed.<sup>195</sup> This, in turn, opened the door for the religious scholars - men who were well trained in the study of *hadith*, and could tell the people what the Prophet would have done or ordered in similar circumstances.<sup>196</sup> This system, with its self-balancing structures of power, successfully kept the Islamic world functioning for centuries. It is not a surprise then, that today's Muslims should look to it when facing the crisis within their own Muslim-majority nation-states.<sup>197</sup> However,

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<sup>194</sup> Feldman, Noah. *The Fall and Rise*. P. 22.

<sup>195</sup> This generally refers to the Caliphs of the Umayyad and Abbasid dynasties and not to the first four Caliphs that ruled the Muslim community after the death of the Prophet.

<sup>196</sup> Feldman, Noah. *The Fall and Rise*. P. 23.

<sup>197</sup> According to Majid Khadduri, the system was a Divine Nomocracy. He writes, "It is therefore the Law, embodying the principles of Divine Authority, which indeed rules and therefore the state becomes not, strictly speaking, a theocracy, but a form of nomocracy. The Islamic State, whose constitution and source of authority is Divine Law, might be called a Divine nomocracy." Khadduri, Majid. *The Islamic Conception of Justice*. P. 4.

many people, particularly those from within the secular-liberal tradition, remain suspicious of a legal system based on religion and its socio-legal norms. Echoing popular sentiments, Elizabeth Ann Mayer clearly outlines her assumptions and states:

I believe in the normative character of the human rights principles set forth in international law and their universality... This inclines me to be critical of any actual or proposed governmental rights policies that violate international human rights law, regardless of whether they employ secular rationales or Islamic doctrines as justifications... as a supporter of international human law and an advocate for respect for human rights, I readily concede that I regard liberal reformist trends in Islamic thought as positive developments.<sup>198</sup>

More specifically, there are at least three areas within the field of traditional Islamic jurisprudence that are considered to be antithetical to the concept of contemporary human rights. These are its stance on gender, non-Muslims and its penal code. Before proceeding however, it is important to note that this work is not a study in traditional Islamic law in all of its nuance and complexity.<sup>199</sup> It is primarily concerned with comparative ethics in light of Islamic Traditionalism and the latter's concept of virtue. Therefore, this section's objective is to simply 'points towards' the general areas of friction between traditional Islamic law and contemporary human rights.

In the case of gender, the main issue concerns the relationship between men and women, and their differential treatment before the law. According to Islamic Traditionalism, men and women have different natures and therefore, different God-given roles and duties. On this view, justice necessitates understanding these natural differences and then deriving and applying laws

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<sup>198</sup> Mayer, Ann E. *Islam and Human Rights: Tradition and Politics*. 3<sup>rd</sup> ed. Colorado: Westview Press. 1999. P.xvi.

<sup>199</sup> For a comparative study on Islamic law and Human rights law, see: Mayer's *Islam and Human Rights*.

accordingly. This traditional Islamic understanding is based on the Quran, *hadith* and Islamic intellectual tradition.<sup>200</sup> For example, the Quran reads:

*Divorced women shall wait concerning themselves for three monthly periods. Nor is it lawful for them to hide what Allah Hath created in their wombs, if they have faith in Allah and the Last Day. And their husbands have the better right to take them back in that period, if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree over them. And Allah is Exalted in Power, Wise. (2:228)*

*Men are the protectors and maintainers of women, because Allah has given the one more than the other, and because they support them from their means. Therefore, the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next), refuse to share their beds, (And last) beat them (lightly); but if they return to obedience, seek not against them Means (of annoyance): For Allah is Most High, great (above you all). (04:34)*

Many traditional commentaries maintain that these types of verses point to contextual and ontological differences between genders. For example, in relation to verse 4:34, *The Study Quran* refers to the commentaries of ibn Kathir, Husayn Tabataba'i and al-Qurtubi and in doing so, states:

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<sup>200</sup> In terms of Islamic Traditionalism, see chapter five, "The Divine Feminine" in: Laude, Patrick: *Pathways to an Inner Islam: Massignon, Corbin, Guenon and Schuon*. Albany: State University of New York Press. 2010.

Many commentaries also claimed...that the [“more”] that God has given to men includes spiritual and worldly distinctions not necessarily related to financial matters. Among the distinctions they consider to have been given, if not exclusively, at least in many cases in greater measure to men are...authority, strength and the responsibility of *jihad*; some also assert that all prophets and most scholars...were men.<sup>201</sup>

Of course, as the following section on ‘contemporary Islamic Thought’ demonstrates that it can and has been argued that these verses are conditional and no longer apply today. However, to reiterate, this section is strictly concerned with drawing out the general friction between human rights and the traditional Islamic law’s approach to gender, as well as religious minorities, and the penal law. Hence, the point remains: Islamic law reflects Islamic traditionalism’s understanding of gender difference and this law is in friction with current international human rights norms.<sup>202</sup>

The second space of friction between human rights and Islamic law concern’s the latter’s marginalization and oppression of non-Muslims and religious minorities. Islamic history is full of instances where Muslims peacefully coexisted with people of other faiths, and conversely, it is also full of instances where Muslims oppressed and subjugated people of other faiths. The Quran, due to the fact that it was revealed in different contexts, can be used to justify both positions. In terms of differential treatment, for example, verse 9:29 reads:

*Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the religion of Truth, (even if they are)*

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<sup>201</sup> Nasr, S.H., ed. et al. *The Study Quran*. Pp. 206-207.

<sup>202</sup> For an example of this friction, see: Appendix A, articles 2 and 8.

*of the People of the Book, until they pay the jizya with willing submission, and feel themselves subdued. (9:29)*

*Jizyah* was an indemnity or financial tribute that non-Muslims paid to the Islamic state based on a mutual contract. Thus, the religious groups that paid the *jizyah* were also referred to as the ‘people of the contract’ (*ahl al-Dhimmi*).<sup>203</sup> These groups, which included the Christians and Jews, were, in many cases, treated as second-class members of the state. According to Caner Dagali’s commentary of 9:29,

the phrase [“feel themselves subdued”] ...has been interpreted and applied in more than one way... most jurists have interpreted it to apply to the People of the Book generally, when they enter into a treaty relationship with a Muslim state. *In Islamic history, some rulers have enforced a kind of humiliation to accompany the paying of the jizyah by the dhimmi communities...*<sup>204,205</sup>

Mayer makes three points about the status of *dhimmis* in the Islamic state. First, that they were tolerated as long as they submitted to Muslim rule and accepted a number of conditions concerning their conduct. Second, although *dhimmis* were generally allowed to follow their own religious law, discriminatory practices existed in cases involving interactions between Muslims and *dhimmis*. Finally, Mayer notes that Muslims could not enter into treaties with polytheists and idolaters. This is because the latter two groups, at least in theory, were expected to embrace Islam

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<sup>203</sup> Nasr. S.H., ed. et al. *The Study Quran*. P. 514.

<sup>204</sup> Dagali, Caner K. “Conquest and Conversion, War and Peace in the Quran”. *The Study Quran*. Nasr, S.H., ed. et al. P. 1811. Emphasis Added.

<sup>205</sup> It is important to note that Dagali goes on to write writes that the payment of *jizyah* with the additional feeling of humiliation “has generally gone against most established Islamic precedent and legal opinion”.



or face death.<sup>206</sup> Again, verses such as 9:29 and the rulings derived therefrom, can and have been interpreted differently. For example, Islamic Traditionalism sees different religious forms as both necessary and providential. Therefore, it emphasizes the Quranic principles of pluralism, inclusivity and free-will. Nevertheless, the issue of *dhimmi*s in traditional Islamic law is clearly in conflict with modern human rights standards that maintain

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.<sup>207</sup>

Finally, in the case of penal code, the main concern from a human rights perspective is Islamic law's use of physical punishment. For example, Katerina Dalacoura notes that many people would argue that the Quran's authoritative status "implies that, for example, ...the *hadd* punishments can never be abandoned thereby creating a serious tension with international human rights principles"<sup>208</sup> Here, the term '*hadd*' refers to the concept of '*hudud Allah*', that is, the 'limits of God'. These limits are referred to throughout the Quran and most Muslims generally consider them to be non-negotiable. In terms of physical punishment, six crimes fall under the rubric of the 'limits of God': theft, highway robbery, fornication, false

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<sup>206</sup> Mayer, Ann E. *Islam and Human Rights*. P. 135.

<sup>207</sup> Appendix A, article 2.

<sup>208</sup> Dalacoura, Katerina. "Islam and Human Rights" Ed. Smith and Anker. *The Essentials of Human Rights*. New York: Oxford University Press, 2005. P.208. Cross Ref.

accusations of fornication, intoxication and apostasy.<sup>209</sup> The following two verses address the crimes of theft and adultery respectively:

*As to the thief, Male or female, cut off his or her hands: a punishment by way of example, from Allah, for their crime: and Allah is Exalted in power. But if the thief repents after his crime, and amends his conduct, Allah turneth to him in forgiveness; for Allah is Oft-forgiving, Most Merciful. (5:38-39)*

*The woman and the man guilty of adultery or fornication,- flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the Last Day: and let a party of the Believers witness their punishment (24:2)*

According to An-Naimi, “there is...no Quranic authority for abolishing the *hadud* in principle.

What can be done from the Islamic point of view, is to restrict their application in practice”<sup>210</sup>

Thus, the Quran’s prescription of physical punishment seems to violate a number of international human rights laws. In particular, it seems to violate article five of the *Universal Declaration*, which declares, “No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment”<sup>211</sup>

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<sup>209</sup> Intoxication and apostasy are problematic insofar as the Quran does not provide a specific worldly punishment for them. For example, An-Naimi points out that “...The Quran does not prescribe any punishment for apostasy in this life. Nevertheless, the majority of Muslim jurists have classified apostasy as a *hadd* punishment punishable by death...” See: An-Na‘im, Abdullahi A. *Toward an Islamic Reformation*. P.109. Moreover, according to the Islamic intellectual tradition, ‘apostasy’ cannot be a crime because free-will and the choice to follow (or not follow) the truth is what makes one quintessentially human.

<sup>210</sup> An-Na‘im, Abdullahi A. *Towards an Islamic Reformation*. P.108.

<sup>211</sup> See Appendix A, article 5.

How have Muslims responded to the existing tensions between Islamic law and international human rights law? The next section looks at contemporary Islamic thought and modern Muslim attempts at scriptural interpretation and legal reform in relation to human rights.

### Understanding Contemporary Islamic Thought

The Muslim responses to the challenge of modernity and human rights is varied. They can be generally categorized into four broad groups: fundamentalist, traditional, progressive, and liberal.<sup>212</sup> The so-called fundamentalist Muslims lie on one end of the spectrum. Their ideology is rooted in Salafism, which is derived from the word *salaf*, meaning the ‘pious ancestors’. Thus, they generally call for a return to an earlier and supposedly pristine form of Islam and reject the modern world as anti-religious, immoral and imperialistic.<sup>213</sup> Most neo-Salafis do not get involved in politics; however, a minority believe in an offensive war against perceived threats to Islam.<sup>214</sup> The ‘fundamentalist mentality’, that is the basic and shared intellectual orientation of *Salafis*, follows in the footsteps of former modern revivalists such as Abu al-A‘la Mawdudi (d.1979), founder of Jamaat e-Islami, and Sayyed Qutb (d.1966), member of the Muslim Brotherhood. Mawdudi and Qutb generally believed that Islam was a political force with the ability to govern a nation-state through the use of Islamic law or Shariah. They insisted that all

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<sup>212</sup> This section mainly focuses on the ‘Traditional’ and ‘Progressive’ Schools of Thought for several reasons. First, an in-depth analysis of all major trends is beyond the scope of this work. Second, the Traditional and Progressive Schools are the most nuanced and thorough in their respective approaches. Lastly, they also seem to be the most popular ideologies in the ‘Western academic world’ concerning the subject of ‘Islam and Modernity’.

<sup>213</sup> In general, see: Haykel, Bernard. “Salafis”. *Princeton Encyclopedia*. Bowering ed. et al. Pp. 483-484

<sup>214</sup> Haykel, Bernard. “Salafis” *Princeton Encyclopedia*. Bowering ed. et al. P. 484.

people had to make a fundamental choice between two competing and incompatible ideologies: (a revived) Islam and ‘the West’. In this regard, for example, Sayyid Qutb maintained that

...Sovereignty rests with God alone and...He is the Lord and Cherisher of the entire universe. This means that religion is an all-embracing and total revolution against the sovereignty of man in all its types, shapes, systems and states, and completely revolts against every system in which authority may be in the hands of man in any form or in other words, where he may have usurped sovereignty under any shape. Any system of governance in which the final decision is referred to human beings and they happen to be the source of all authority, in fact defies them by designating “others than God,” as lords over men.<sup>215</sup>

On the other end of the spectrum are the so called liberal Muslims. This work distinguishes them from Progressive Muslims in so far as the former believe that Western civilization is always developing and Muslims need to ‘catch up’. This group gives little to no significance to their traditional heritage and advocates for a wholesale adoption of the modern mentality. Some of its members include populist authors such as Ayaan Ali Hirsi and Irshaad Manji, who generally have little to no formal education in traditional Islam. Hirsi, in her book, *Heretic: Why Islam Needs a Reformation Now*, makes her stance clear. She writes:

We must acknowledge that they [that is, radical Islamists], are driven by a political ideology, an ideology embedded in Islam itself, in the holy book of the Qur’an as well as the life and teaching of the Prophet Muhammad contained in the hadith. Let me make my point in the simplest of terms: *Islam is not a religion of peace.*<sup>216</sup>

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<sup>215</sup> Qutb, Sayyid. “War, Peace and Islamic Jihad” *Modernist and Fundamentalist Debates in Islam: A Reader*. Ed. Moaddel, Mansoor and Kamran Talattof. New York: Palgrave, 2000. P.228.

<sup>216</sup> Hirsi, Ayaan Ali. *Heretic: Why Islam Needs a Reformation Now*. New York: HarperCollins, 2015. Pp. 2-3.

Omid Safi, a self-declared progressive Muslim, separates Liberal and Progressive Muslims by writing that, "...In our view, 'liberal Muslims' have been too eager to identify themselves wholeheartedly with European and American structures of power" ... Thus, "they have proven unable and unwilling to adopt a critical stance against the injustices of *both* Muslims societies *and* Western hegemony".<sup>217</sup> Therefore, Progressive Muslims, on the other hand, define themselves as those united in the goal of establishing the concept that all human life has the same intrinsic worth and challenging oppressive practices in Western and Muslim societies – as well as those connected to globalization. In 1998, a number of progressive activists and scholars came together and created a declaration called 'Progressive Islam - A Definition and Declaration'. In the declaration, they provided the following definition:

Progressive Islam is that understanding of Islam and its sources which comes from and is shaped within a commitment to transform society from an unjust one where people are mere objects of exploitation by governments, socio-economic institutions and unequal relationships. The new society will be a just one where people are the subjects of history, the shapers of their own destiny in the full awareness that all of humankind is in a state of returning to God and that the universe was created as a sign of God's presence.<sup>218</sup>

Progressive Muslims adopt a number of methodologies in their attempts at reform; however, these methodologies are almost always fundamentally based on the twin concepts of contextuality and subjectivity. In terms of contextuality, they point out that all developments in the Muslim world, including the revelation of the Quran, occurred at a particular time and place;

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<sup>217</sup> Safi, Omid. "Introduction: The Times are A-Changin' – A Muslim Quest for Justice, Gender Equality and Pluralism." Ed. Safi. *Progressive Muslims: On Justice, Gender and Pluralism*. Oxford: Oneworld Pub., 2003. P. 17.

<sup>218</sup> Esack, Farid. "In Search of Progressive Islam Beyond 9/11" *Progressive Muslims*. Ed. Safi. P. 80.

therefore, some of these developments are absolute and universal and others are relative and contextual. Thus, Progressive Muslims insist on reforming the Islamic tradition through contextual interpretation in line with the spirit of the Qur'an as a whole.<sup>219</sup> The crux of the problem is deciding the standard by which to separate the absolute from the relative or the spirit from the letter.<sup>220</sup> For example, Abdullahi An-Na'im, following in the footsteps of his teacher, Mahmoud Mohamed Taha, argues that the verses revealed in Medina were specifically intended for the Muslims at that time.<sup>221</sup> They provided guidance on how to construct a new community within the context of 7<sup>th</sup> Century Arabia. Thus, for An-Na'im, verses about inheritance, divorce and the like are no longer relevant today. It is only the verses in Mecca that are universal and therefore, apply to all Muslims regardless of their particular contexts. Thus, An-Na'im attempts to create a new foundation for Islamic law based on the legal concept of *naskh*, that is, abrogation. In this regard, he writes:

The basic premise of *Ustadh* Mahmoud is that a close examination of the content of the Quran and Sunna reveals two levels or stages of the message of Islam, one of the earlier Mecca period and the other of the subsequent Medina stage. Furthermore, he maintained that the earlier message of Mecca is in fact the eternal and fundamental message of Islam... [Therefore, when the Meccan message] was violently and irrationally rejected...the more realistic message of the Medina stage was provided... [Hence,] aspects of the Mecca message...were postponed for implementation under appropriate circumstances in the future.<sup>222</sup>

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<sup>219</sup> In doing so, the Progressive School generally argues in favor of constitutional democracy and contemporary human rights and argues against hierarchical structures and hegemonic interpretations of Islam.

<sup>220</sup> This is where the Progressive and Traditional Schools differ. The latter, as this study goes on to argue, does not emphasize the socio-historical approach and does not base its interpretations on any assumption of 'human progress'.

<sup>221</sup> In general, See: An-Na'im, Abdullahi A. *Toward an Islamic Reformation*.

<sup>222</sup> An-Na'im, Abdullahi A. *Toward an Islamic Reformation*. Pp. 52-53.

Along with context, many progressive Muslims also insist on the concept of subjectivity, that is, the idea that all reality is filtered through a knowing subject, and therefore, all ‘understanding’ is colored by that subject’s particularities. For example, Abdolkarim Soroush argues that it is an epistemological truth that texts cannot stand alone; this is because texts are understood by humans and the latter are conditioned by their own personal experiences and societies. Thus, the understandings of texts are framed, and to an extent, determined, by human subjectivity. In this regard, Soroush writes:

...one can say that the text does not stand alone, it does not carry its own meaning on its shoulders, it needs to be situated in a context, it is theory-laden, its interpretation is in flux, and presumptions are at work here as elsewhere in the field of understanding. Religious texts are no exception. Therefore, their interpretation is subject to expansion and contraction according to the assumptions preceding them and/or the questions enquiring them.<sup>223</sup>

For Soroush, this means that religious knowledge is strictly a human science and as such, its ‘prior text’ should be based on substantiated theories of the present time. According to him, it is only when this happens that Muslims can embrace democracy and the plurality of religions.<sup>224</sup> Thus, Soroush’s litmus test for separating the ‘relative from the absolute’ is ‘substantiated (but relative) theories of the time’ and An-Nai‘mi’s test is the distinction between Meccan and Medinian verses of the Quran. The twin concepts of contextuality and subjectivity are highlighted by the progressive Muslim’s emphasis on the importance of separating shariah from

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<sup>223</sup> Soroush, Abdolkarim. “The Evolution and Devolution of Religious Knowledge” *Liberal Islam: A Sourcebook*. Ed. Kruzman. New York: Oxford University Press, 1998, P. 245.

<sup>224</sup> See: Soroush, Abdolkarim. “The Evolution and Devolution of Religious Knowledge” *Liberal Islam*; and, Mahmoud and Ahmad Sadri, ed. *Reason, Freedom and Democracy in Islam: The Essential Writing of Abdolkarim Soroush*. Oxford: Oxford University Press, 2000.

*fiqh*, that is, separating Divine law from Islamic jurisprudence respectively. In doing so, they emphasize the difference between sacred law revealed by God, and the understanding and development of that law constructed by humans. This idea opens the door to new and different interpretations and thereby, the possibility of legal reform. The considerations of contextuality and subjectivity are not alien to the Islamic intellectual tradition. For example, in terms of contextuality, Islamic scholars have written extensively on the subject of *asbaab al-nazul*, that is, the reasons or occasions for any given revelation. However, according to Islamic Traditionalism, the context of a verse, however important, can never exhaust its meaning. Moreover, the idea of human subjectivity is always balanced by the Islamic concept of transcendence and hence, the possibility of human objectivity.<sup>225</sup> For example, in terms of objectivity and knowledge, Schuon writes that “Man is intelligence, and intelligence is the transcending of forms and the realization of the invisible Essence; to say human intelligence is to say absoluteness and transcendence.”<sup>226</sup> In short, one of the major problems with the Progressive School is its almost exclusive reliance on the socio-historical method and its tendency to dismiss or negate what many Muslims consider sacred, such as the *hadith* literature or shariah as a whole. For example, An-Nai‘mi’s suggestion of abrogating verses revealed in Medina seems untenable and fantastical since Muslims consider the entirety of the Quran as the verbatim speech of God and therefore, divine, absolute and inviolable.<sup>227</sup>

In any case, the current climate of islamophobia and globalization seem to be pushing Muslims towards the extremes of liberalism or fundamentalism. This is because an aggressive

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<sup>225</sup> For a thorough treatment of Traditionalism’s perspective on transcendence, knowledge and objectivity, see: Schuon Frithjof. *Logic and Transcendence*.

<sup>226</sup> Schuon, Frithjof. *The Transfiguration of Man*. Bloomington: World Wisdom, 1995. P.24

<sup>227</sup> In other words, Progressive Muslims have a tendency to reduce Islam to an ideology concerned with social justice, and in doing so, bypass questions of truth and spirituality



attitude towards any single group of people will always force the latter to either ‘give in’ or ‘dig in’. Nevertheless, these two groups make up a small minority of the Muslim population. Most Muslims place themselves somewhere in-between these two extremes. It seems that the progressive approach to Islam is the most popular among Muslim working in Western academic institutions.<sup>228</sup> Nevertheless, as mentioned, this study’s working assumption is that many Muslims continue to understand their religion through traditional forms and therefore, are most closely ‘represented’ by Islamic Traditionalism.<sup>229</sup> As mentioned, this is one of the reasons why this study uses the Traditional School as its framework for developing a theory of Islamic virtue ethics. This is because in doing so, it approaches Muslims as agents that possess self-understanding and have the right to self-determination. In any case, in order to provide the necessary context, the next section situates the Traditional School of thought – both historically and thematically – within the larger field of religious studies.

### Situating the Traditional School of Thought

By the 20<sup>th</sup> Century, Western peoples found themselves living in a new world that was increasingly based on the ideals of secular-liberalism and functioned within the societal institutions of democracy, capitalism, standardized public education and the like.<sup>230</sup> A number of

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<sup>228</sup> This includes academics such as, Abdullahi An-Nai’em, Sadiyya Shaikh, Amina Wadud, Abdulaziz Sachedina and Khalid Abou El Fadl.

<sup>229</sup> The question of ‘representation’ as problematized by Postmodern and Post-colonial theory is beyond the scope of this work. It is important to note however, that Traditionalists generally identify with a single religion and therefore, speak as ‘insiders’ from their respective religions.

<sup>230</sup> Huston Smith divides the history of Western peoples into four major periods that are differentiated by their basic assumptions and ways of ‘understanding the world’. These are: the Graeco-Roman or Classical age, European Christendom, the Scientific or Modern period, and lastly, the Postmodern age. See: Smith, Huston. *Beyond the Postmodern Mind: The Place of Meaning in a Global Civilization*. 3<sup>rd</sup> ed. Illinois: Quest Books, 2003. Pp. 3-16.

changes, beginning with the Renaissance, coalesced to produce this transition. These included European Colonialism; the Scientific and Industrial Revolutions; American and French Independence; the Age of Enlightenment; and the rise of Protestantism.<sup>231</sup> These were revolutionary developments that transformed the human being's understanding of the self and the world. For example, the Scientific and Industrial Revolutions were largely responsible for the popular belief in human progress independent of revelation and religion. In this regard, Huston Smith writes:

...Progress [is] the hope that has powered the modern world... To set that hope in perspective we need only go back to Revolution of Rising Expectations that the Scientific and Industrial Revolutions gave rise to. Hegel cashed in on the forward-looking stance of those revolutions and fashioned from it a worldview. From the seeming fact that things *were* getting better and stood a good chance of continuing to doing so, Hegel extrapolated backward to infer that they had *always* been improving...Support for this heady scenario was welcomed from every quarter...<sup>232,233</sup>

In any case, these changes and their underlying ideologies, caused friction with the existing society and a reaction from some of its members. In the 20<sup>th</sup> Century, a particularly strong reaction came from what would become known as the Traditional School of thought. For members of this school, the deterioration of older institutions was simply the symptom of a much larger problem: the new modern mentality and its virtual dismissal of eternal truths expressed in all traditional civilizations. In other words, they argued that the new ways in which we

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<sup>231</sup> More specifically, within these defining periods, we find monumental changes such as the invention of the printing press and growth of popular literacy.

<sup>232</sup> Smith, Huston. *Why Religion Matters: The Fate of The Human Spirit in an Age of Disbelief*. New York: HarperOne, 2001. P.150.

<sup>233</sup> It is important to note that Traditionalists object to scientism and not science as such. The former includes the belief that science is the best method for obtaining objective truth and also, that science deals with the most fundamental things that exist. See Smith, Huston. *Why Religion Matters*. P.59-60.

understood ourselves and the world was fundamentally flawed and opposed the perennial wisdom of the ages. For example, its founding figures, such as Rene Guenon, took a stance against the new modern mentality and its various manifestations. He wrote:

... We find it impossible to consider political contingencies, even in the widest sense of the term, as being more than outward signs of the mentality of a period; but even though we regard them in this light, we cannot altogether overlook the manifestations of the modern confusion as they affect the social sphere.<sup>234</sup>

In writing about the social sphere, Guenon continued,

... Under the present state of affairs in the Western world, nobody any longer occupies the place that he should normally occupy by virtue of his own nature; this is what is meant by saying that castes no longer exist, for caste, in its traditional meaning, is nothing other than individual nature, with the whole array of special aptitudes that this carries with it and that predisposes each man to the fulfilment of one or another particular function... It is the negation of these differences, bringing with it the negation of all social hierarchy, that is the cause of the whole disorder<sup>235</sup>

Thus, Traditionalists today, oppose almost all modern ideologies, including, but not limited to, liberalism, individualism, historicism and scientism.<sup>236</sup> However, for Traditionalists, the 'Modern age' is also an inevitable period in world history. This is because modernity is the period that every major religion has foreseen and warned against, that is, the 'latter days' that precede the

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<sup>234</sup> Guenon, Rene. *The Crisis of the Modern World*. Trans. Pallis and Nicholson. Bloomington: Sophia Perennis, 2001. P. 69.

<sup>235</sup> Guenon, Rene. *The Crisis*. Pp. 69-70.

<sup>236</sup> Smith describes the present condition as a dark tunnel made up of scientism, higher education, the media and the law. See: Smith, Huston. *Why Religion Matters*.

‘end of world.’<sup>237</sup> In this regard, Martin Lings – another significant member of the Traditionalist School – wrote:

...The tradition of the four ages of the cycle of time which the Greeks and Romans named the Golden, Silver, Bronze and Iron Ages, is not merely European but is also to be found in Asia, among the Hindus, and in America among the Red Indians. According to Hinduism, which has the most explicit doctrine on the subject, the Golden Age was by far the longest; the ages became increasingly shorter as they were less good, the shortest and worst being the dark age, which corresponds to the Iron Age... The same truth, clothed in many different imageries, has come down to us out of the prehistoric past in all parts of the world. Religions are in fact unanimous in teaching not evolution but devolution.<sup>238</sup>

Thus, in light of religious eschatological doctrines, Traditionalists do not perceive themselves as socio-political reformers.<sup>239,240</sup> Rather, they are primarily concerned with metaphysical Truth and the way it expresses itself across and within traditional religions. Charles Upton uses Guenon’s definition of Tradition and states that the latter is

The transmission of a perennial wisdom, unanimous in essence, from the beginnings of the human race to this present moment, a transmission punctuated and channeled by

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<sup>237</sup> In general, see: Upton, Charles. *Legends of the End: Prophecies of the End Times, Antichrist, Apocalypse, and Messiah from Eight Religious Traditions*. New York: Sophia Perennis, 2005.

<sup>238</sup> Lings, Martin. “The Past in the Light of the Present and The Rhythms of Time.” *The Underlying Religion*. Ed. Lings and Minnaar. Pp. 36-37.

<sup>239</sup> There are a few minority groups that understand and use Traditionalism as part of a socio-political movement. For a socio-historical treatment of Traditionalism and its minority factions see: Sedgwick, Mark. *Against the Modern World: Traditionalism and the Secret Intellectual History of the Twentieth Century*. Oxford: Oxford University Press, 2004.

<sup>240</sup> In line with the Traditionalist School, this work is not an attempt to facilitate any type of socio-political reform. Rather, it is an attempt to critically explore human rights and its concomitant theories from the point of view of Islamic Traditionalism. Of course, citizens of Muslim-majority nation-states are free to draw on the ideas presented as they see fit in their attempts at reform.

Divine revelations and continually renewed by the “supernaturally natural” human capacity (the phrase is Frithjof Schuon’s) for the intellectual intuition of spiritual Truth.<sup>241</sup>

Hence, Traditionalism is a school of comparative religion that ‘studies’ religions in order to (1) disclose their common essential truths, (2) study the different expressions of those truths in traditional societies<sup>242</sup> and (3) to use those truths to judge and critique the modern world’s ideologies and general worldview. This unique approach to religion found its most thorough expression in Frithjof Schuon’s work, *The Transcendent Unity of Religions*.<sup>243</sup> In order to understand his work, it is important to put it in context with other approaches to the study of religion.

Premodern education was generally interactive, oral, religious and transformative. It also had a common ideal: maintaining a structured society based on the ‘nature of things’.<sup>244</sup> The idea was simple: living according to the ‘laws of heaven’ would ensure a happy, peaceful and orderly individual, family and society. Therefore, the teachers or ‘elders’ were responsible for passing down ‘Divine laws’ and the latter were generally enshrined within a particular tradition’s folklore.<sup>245</sup> The intimacy between the student and their object of study was most apparent in ‘the field’ of religion. That is to say, students of religion were also religious students and a large part of their learning included the practice of sacred rites and rituals.<sup>246</sup> They did not ‘objectively’

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<sup>241</sup> Upton, Charles. “What is a ‘Traditionalist’? – Some Clarifications”. Online Articles. Sacred Web: A Journal of Tradition and Modernity. 12 July 2017. This work is significant in that it is a thoughtful response to common criticisms aimed at the Traditional School, such as that of, ‘nostalgia’ and ‘elitism’.

<sup>242</sup> This includes everything from metaphysical and cosmological doctrines to sacred mythology and art.

<sup>243</sup> In general, see: Schuon, Frithjof. *The Transcendent Unity of Religions*. 2<sup>nd</sup> ed. Illinois: Quest Books, 1993.

<sup>244</sup> Of course, this is an overgeneralization. For a more nuanced approach, see, Hinnells, John Ed. *The Routledge Companion to The Study of Religion*. New York: Routledge, 2010. Also see, Casewit, Jane, ed. *Education in the Light of Tradition: Studies in Comparative Religion*. Bloomington: World Wisdom Inc., 2011.

<sup>245</sup> Sharpe, Eric J. “The Study of Religion in Historical Perspective.” Ed. Hinnells. *The Routledge Companion*. P.22-23.

<sup>246</sup> Sharpe, Eric J. “The Study of Religion in Historical Perspective.” Ed. Hinnells. *The Routledge Companion*. P.24.

study religion from a ‘detached’ sociological, psychological or historical perspective. They were primarily interested in the truth and a student’s level of knowledge (or stage of education) was largely determined by their spiritual state and moral character. In this sense, it can be argued that every member of society was a student of religion.<sup>247</sup> Moreover, in traditional societies, it would be misleading to separate religion from ‘other’ disciplines of study. This is because, in one sense, it was the only subject; it unified and directed all ‘other’ disciplines and in doing so, it made them religious and thereby gave them their significance. However, education underwent a drastic change and by the 20th Century, the subject of religion, like all others, was cut off from any overarching sacred principle. Across universities in North America and Europe, the theological study of religion transformed into the academic study of religion or what is normally referred to as religious studies.<sup>248</sup> This is commonly associated with Max Muller (d.1900) who believed that religion had governing principles, and that these principles could be discovered through the objective and methodic collection of data. This was a direct consequence of the influence of scientific Positivism over the epistemological field in general. The goal was to seek “out those elements, patterns, and principles that could be found uniformly in the religions of all times and places.”<sup>249</sup> The discipline sought to answer two main questions: the origin and function of religion. Here, the ‘origin’ didn’t refer to a transcendental and primordial moment of creation; rather, it referred to the human origin in so far as humans organized into religious groups to a number of social ends.<sup>250</sup> In attempting to answer these two questions, the field of religious studies became highly interdisciplinary; instead of one religious studies field there was a number

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<sup>247</sup> In other words, societies had a spiritual function, namely, to act as an immanent ‘reminder’ of the transcendent Reality and thereby, aid people in realizing, in so far as it was possible for each individual, their true natures as theomorphic beings.

<sup>248</sup> In general, see: Pals, Daniel L. *Nine Theories of Religion*. 3<sup>rd</sup> Ed. Oxford: Oxford University Press, 2015.

<sup>249</sup> Pals, Daniel L. *Nine Theories of Religion*. Pp. 1-2.

<sup>250</sup> Segal, Robert A. “Theories of Religion” Ed. Hinnells. *The Routledge Companion*. Pp. 75-76.

of fields that included the study of religion. This meant a number of different approaches with their own prior assumptions.

The modern approaches to religion can be divided and categorized in many ways.<sup>251</sup> As mentioned, the first and initial division was between the theological study of religion and the academic school of religion. The former preserved the concept of objective truth – a concept central to every religious tradition. However, in doing so it abandoned the ‘impartial’ stance that had become necessary for scholarly research. Thus, within universities, the academic group dominated the study of religion. Within this second group there was another division between the nominalists and the essentialists. The latter, who are more central to the aims of this work, can be divided again into two subgroups, that is, the reductionists and the phenomenologists.<sup>252</sup> The reductionists were those who maintained that the origin and function of religion can be reduced to a non-religious and worldly phenomenon. Most famously, Freud situated religion within psychology, Marx examined it through economics and Durkheim explored it through sociology. For example, Freud argued that God was nothing but an ‘exalted father.’ In other words, God and by extension religion, originated and functioned to fill the psychological need that humans have for explanation and comfort - a need that a father would normally provide for their child. In this light, he wrote:

If one wishes to form a true estimate of the full grandeur of religion, one must keep in mind what it undertakes to do for men. It gives them information about the source and origin of the universe, it assures them of protection and final happiness amid the

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<sup>251</sup> This work has relied on two sources for its particular categorization of the approaches to religion. See, Sharpe, Eric J. “The Study of Religion in Historical Perspective.” Ed. Hinnells. *The Routledge Companion*. Pp. 21-36. And also, Huston Smith’s “Introduction to the Revised Edition”. Schuon, Frithjof. *The Transcendent Unity*. Pp. ix-xxxvii.

<sup>252</sup>

changing vicissitudes of life, and it guides their thoughts and emotions by means of precepts which are backed by the whole force of its authority.<sup>253</sup>

The phenomenologists, on the other hand, argued humans were religious by nature and they wanted to ‘let religion speak for itself’. For them, arguing that religion was something other than religion was explaining away the phenomena they were trying to explain.<sup>254</sup> In order to keep the religious nature of religion intact, phenomenologists searched for a common origin and function of religions that was also religious in nature. Thus, for example, Rudolph Otto (d.1937) argued that the heart of religion was an experience of the numinous;<sup>255</sup> Friedrich Schleiermacher (d.1834) argued that it was an intuition or feeling of dependence;<sup>256</sup> and Mircea Eliade (d.1986) argued that it was in the dichotomy that humans create between the sacred and the profane. Eliade readily admitted religion involves "the social man, the economic man, and so forth", however he insisted that “all these conditioning factors together do not, of themselves, add up to the life of the spirit”.<sup>257</sup> However, for the phenomenologists, the essence of religion always fell on the human side of the God/human divide because studying phenomena meant putting aside metaphysical considerations. According to Huston Smith, both approaches to religion, that is, the phenomenological and theological, are problematic. This is because the phenomenological approach is unbiased, however it is unable to escape the subject’s relative experiences. On the

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<sup>253</sup> Freud, Sigmund. *New Introductory Lectures on Psycho-analysis*. (1933) Marxists.org. Marxist Internet Archive. 04 June. 2017.

<sup>254</sup> Pals, Daniel L. *Nine Theories of Religion*. Pp. 230-231.

<sup>255</sup> In general, see: Otto, Rudolph. *The idea of the Holy: An Inquiry into the Non-Rational Factor in the Idea of the Divine and its Relation to the Rational*. (1923) *archive.org*. The Internet Archive. 04 June. 2017.

<sup>256</sup> In general, see: Barth, Karl. *The Theology of Schleiermacher*. Trans. Geoffrey Bromiley. Michigan: Eerdmans, 1982.

<sup>257</sup> Eliade, Mircea. *Images and Symbols: Studies in Religious Symbolism*. Trans. Mairet. New Jersey: Princeton University Press, 1991. P. 32.

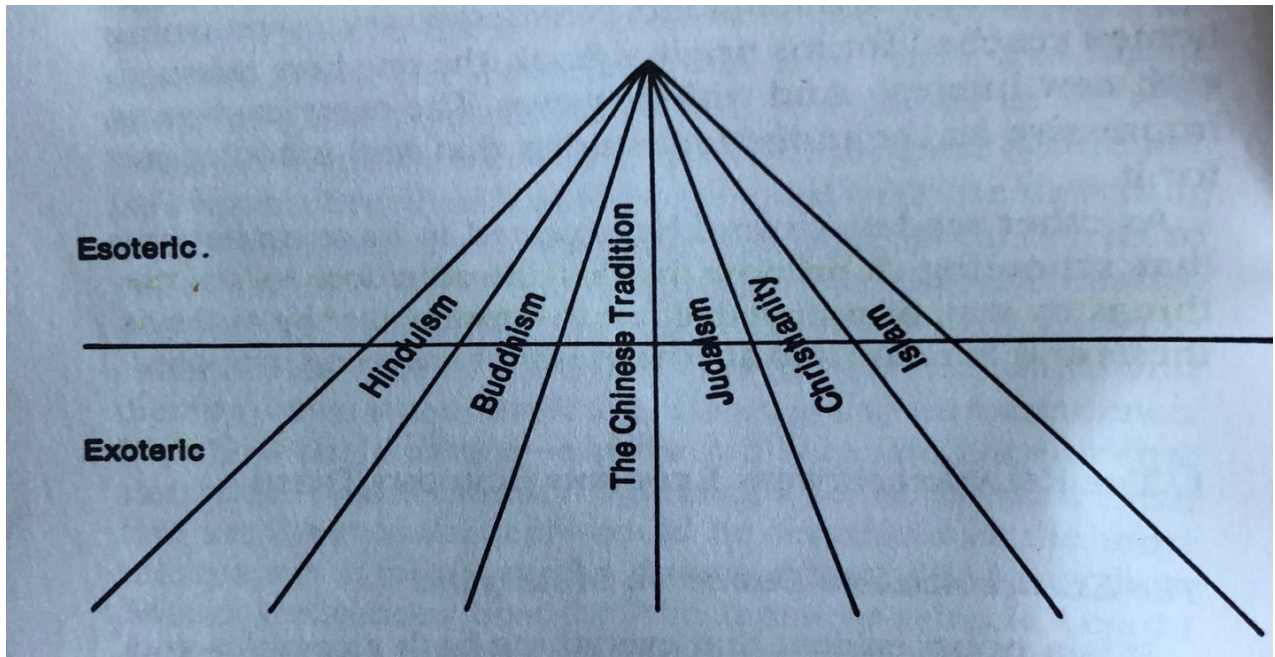


other hand, the theological approach is absolute, however, it is forced to favor one religion over another and is therefore biased. In this regard, Huston Smith succinctly explains the problem:

The two positions, theological and phenomenological, pull in opposite directions... So one could predict even before looking that efforts would be made to close the gap, to contrive a *via media* that retains the virtues of both positions (commitment and fair play) while eliminating their defects (prejudice and relativism). One can also see a priori the formal conditions a middle way must satisfy. First, it must center in something the great traditions have in common. But second, this something must be God-ward of the God/man divide, for attitudes, sentiments, and experiences, however lofty, are only human states and do not elicit worship.<sup>258</sup>

Enter Schuon, and the Traditional School's approach to the 'unity of religions'.

#### The Transcendent Unity of Religions <sup>259</sup>



<sup>258</sup> Smith, Huston. Introduction to Schuon's *The Transcendent Unity*. P. xxii.

<sup>259</sup> Schuon, Frithjof. *The Transcendent Unity*. P.xii.

For Schuon, the essence of religion is metaphysical and transcendent. It lies beyond the exoteric and at the apex of the esoteric, that is, the First Principle or the Divine Absolute. This means that all religions are ‘paths that lead to the same summit’, however, the ‘lower’ one goes on the exoteric plane the more different religions seem.<sup>260</sup> This is because, on the exoteric plane, metaphysical Truth is expressed by way of forms and latter are, by definition, exclusive to one another. Thus, the issue that Schuon’s approach presents is that it is supra-formal and therefore, cannot be explained by way of discursive reason. Hence, the ‘essence of religions’, or the ‘knowledge of the Absolute’, must be directly perceived by the intellect and explained by way of sacred symbols and mythology. Here, we come to an important point in Traditional epistemology. For Schuon and his ‘followers’, this type of knowledge proceeds from the Intellect – that is, the part of the human being that understands reality intuitively, certainly and holistically. In terms of the Intellect, Lings wrote:

The meeting point of the two natures [that is, the Divine and human], the summit of the soul which is also its center...is what most religions name the Heart...and the Heart is the throne of the Intellect in the sense in which *Intellectus* was used throughout the middle ages, that is, the “solar” faculty which perceives spiritual truths directly unlike the “lunar” faculties of reason, memory and imagination, which are the differentiated reflections of the Intellect.<sup>261</sup>

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<sup>260</sup> According to the Traditional School, the transcendent unity of religions does not lead to the negation of different religious forms on the terrestrial plane. On the contrary, religious pluralism is understood as necessary and providential.

<sup>261</sup> Lings, Martin. “The Past in Light of the Present”. *The Underlying Religion*. Ed. Lings and Minaar. P. 51.

Thus, the Intellect, by way of ‘intellection’ or ‘Intellectual intuition’, is the faculty that is able to know Reality and distinguish the Absolute and eternal from the relative and temporary.

According to Nasr:

*Scientia sacra* is none other than that sacred knowledge which lies at the heart of every revelation and is the center of that circle which encompasses and defines tradition. The first question... [is] how is the attainment of such a knowledge possible? The answer of tradition is that the twin source of this knowledge is revelation and intellection, or intellectual intuition which involves the illumination of the heart and the mind of man and the presence in him of knowledge of an immediate and direct nature which is tasted and experienced...<sup>262</sup>

On the other hand, the mind is the faculty that is responsible for ratiocinating, classifying, explaining, and the like. On this view, the Traditional School maintains that reason can be tied to the higher, that is, the Intellect, and therefore be rooted in the transcendent, or it can be tied to the lower, that is, the passions, and be rooted in the relative.<sup>263</sup> Moreover, Intellectual knowledge has two principal sources: The already mentioned Intellect and second, the different forms of divine revelation found within the worlds religious traditions, such as the Hindu Vedas, Christian Bible and the Islamic Quran. For this reason, Traditionalists generally takes a stand against ideologies that overemphasize the concepts of ‘contextuality’ and ‘subjectivity’ in order to reform religion. It is not because these existential limitations do not exist but rather, that they exist on some levels and to some degrees.<sup>264</sup> In

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<sup>262</sup> Nasr, S.H. “Scientia Sacra”. *The Underlying Religion*. Ed. Lings and Minnaar. P.114.

<sup>263</sup> In general, see: Schuon, Frithjof. “The Primacy of Intellection” worldwisdom.com. World Wisdom Library of Articles. 01 April 2017. Also see, Guenon, Rene. “Oriental Metaphysics” *The Sword of Gnosis: Metaphysics, Cosmology, Tradition, Symbolism*. Ed. Needleman. Baltimore: Penguin Books, 1974. Pp. 40-57.

<sup>264</sup> Chapter four elaborates on the Islamic concept of the Absolute and the ‘Intellect’, that is, the ‘inner Heart’, and its critique of the ‘Progressive School’.

any case, it is in light of the Intellect's direct perception of 'Divine Unity', that Traditionalism explains the ways in which the Divine reveals or expresses itself – through different religions – in the formal realm. Schuon illustrates his approach by invoking the symbolism of light. It is worth quoting him at length. He writes:

If an example may be drawn from the sensory sphere to illustrate the difference between metaphysical and theological knowledge, it may be said that the former, which can be called 'esoteric' when it is manifested through a religious symbolism, is conscious of the colourless essence of light and of its character of pure luminosity; a given religious belief, on the other hand, will assert that light is red and not green, whereas another belief will assert the opposite; both will be right insofar as they distinguish light from darkness but not insofar as they identify it with a particular colour. This very rudimentary example is designed to show that the theological point of view, because it is based in the mind of believers on a Revelation and not on a knowledge that is accessible to each one of them...will of necessity confuse the symbol or form with the names and supra formal Truth, while the metaphysic, ...will be able to make use of the same symbol or form as a means of expression while at the same time being aware of its relativity. That is why each of the great and intrinsically orthodox religions can...serve as a means of expression for every truth known directly by the eye of the Intellect ...<sup>265</sup>

To provide a more concrete example, according to Traditionalists, the Christian doctrine that 'God became man, so that man could become God' can be found – on an esoteric level – in both Christianity and Islam.<sup>266</sup> In Christianity, God uses the pure vessel of the 'virgin' Mary to reveal the Word, that is, Christ, and in doing so, gives the faithful a path to return back to God. In the

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<sup>265</sup> Schuon, Frithjof, *The Transcendent Unity*. P. xxx-xxxi

<sup>266</sup> This fundamental concept of the 'human return' is also seen in Hinduism where Krishna uses the pure vessel of the 'flute', to play 'music' and cause his followers to leave the world 'dancing'. In this regard, see: Kinsley, David R. *The Sword and the Flute: Kali and Krishna: Dark Visions of the Terrible and the Sublime in Hindu Mythology*. California: University of California Press, 1975.

Bible, Christ is reported as saying, “none shall arrive at the Father, except through me.”<sup>267,268</sup>

Similarly, in Islam, God uses the pure vessel of the ‘unlettered’ Prophet to reveal the Word, that is, the Quran, and in doing so, gives the faithful a different but equally Divine path to return to God. It is reported that the Prophet said, “Truly, I am leaving behind amongst you two weighty things...The book of God and my Ahl al-Bayt, they will not be parted from each other until they return to me at...*al-hawd*”<sup>269,270</sup> Thus, on the esoteric level, Christ and the Quran are two forms for the same essence, that is, the ‘The Word’, and it is through the latter, that human can ‘return to God’.

Islamic Traditionalism is the Traditional School’s particular explanation of the Islamic intellectual tradition as a whole in light of the perennial truths found in almost all religions. More specifically, Muslim Traditionalists are concerned with the perennial truths contained in the Quran and the different ways that they have been understood and expressed by Muslims throughout Islamic history. In other words, they are concerned with “...the ways of thinking about God, the world, and the human being established by the Quran and the Prophet and elaborated upon generations of practicing Muslims”<sup>271</sup> According to Islamic Traditionalism, this involves a remarkable plurality that is held together by an underlying unity. In this regard, Nasr writes:

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<sup>267</sup> Stoddart, William. “Mysticism” *The Underlying Religion*. Ed. Lings and Minnaar. P. 237.

<sup>268</sup> On the exoteric plane, ‘me’ refers to the figure of Christ; however, on the esoteric plane, ‘me’ refers to the *logos*, that is, ‘the Word of God’.

<sup>269</sup> Justice and Remembrance. P. 17. The Sunni version of the same hadith reads: I have left among you two weighty things, The Book of God and my *sunnah*”

<sup>270</sup> For an explanation of the function of the *Logos* in religion, see: Stoddart, William. “Mysticism”. *The Underlying Religion*. Ed. Lings and Minnaar. Pp. 230-242.

<sup>271</sup> Chittick, William. “Can the Islamic Intellectual Heritage be Recovered?” Iqbal Academy Pakistan. allamaiqbal.com. 03 Dec. 2017.

In the vast world of Islam also, one can gain a better grasp of the whole by separating the patterns and seeing how each is related to vertical and horizontal dimensions of Islam itself as well as to cultural, ethnic, and linguistic factors. Then reuniting the patterns and seeing how they all fit together yields a vision of the total spectrum of Islam, in which unity leads to diversity and diversity is integrated into unity.<sup>272</sup>

He goes on to mention that some of the general “factors that create unity” between Muslims across spacio-temporal boundaries are the Quran, *sunnah* and *hadith* in general, and the belief in Divine unity, prophecy and eschatology in particular.<sup>273</sup> Moreover, on the human plane, Nasr points to the remarkable integration of plurality into unity when it comes to the *shariah*’s religious rites, the Islamic mystical tradition, that is, *sufism* and Islamic art in all of its forms, ranging from architecture to calligraphy.<sup>274,275</sup>

This study argues that the ‘perennial standard’ serves as an adequate litmus test by which to separate the Quran’s absolute principals from their relative applications and expressions. This standard’s basic assumption is that any idea that is found in all religious traditions, which have existed for centuries across different spacio-temporal contexts, is ahistorical and therefore, absolute and eternal. Moreover, the ‘perennial standard’ has its basis in the Quran and latter’s conception of religious pluralism (*ahl al-kitab*), Absolute Truth (*al-Haqq*), the primordial religion (*din al-qayyim*), and the primordial human (*fitrah*). To provide one example, in the case of religious pluralism, the Quran reads:

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<sup>272</sup> Nasr, S.H. *The Heart of Islam*. P. 57.

<sup>273</sup> Of course, these sources have given rise to different schools of thought and have been interpreted differently by Muslims over the centuries. Nevertheless, these interpretations spring from the essence of the Quran and *hadith* and for that reason, are accepted as part and parcel of the plural but unified Islamic civilization.

<sup>274</sup> Nasr, S.H. *The Heart of Islam*. Pp. 58-59.

<sup>275</sup> For example, in terms of the underlying unity of Islamic art, see: Burckhardt, Titus. *Art of Islam: Language and Meaning*. Bloomington: World Wisdom, 2009.

*...To each among you have we prescribed a law and an open way. 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 (5:48)*

*Those who believe (in the Qur'an), and those who follow the Jewish (scriptures), and the Christians and the Sabians,- any who believe in Allah and the Last Day, and work righteousness, shall have their reward with their Lord; on them shall be no fear, nor shall they grieve. (2:62)*

*O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise (each other)). Verily the most honored of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things) (49:13)*

In addition to having its basis in the Quran, Islamic Traditionalism has the advantage of approaching Islam holistically, working from within the Islamic tradition and accepting Muslims as agents with self-understanding and the right to determine and pursue their own vision of 'the Good'. Thus, the 'perennial standard' is the interpretive methodology that is used in in the following chapters – it informs the choices and interpretation of the sources employed. Here, it is important to note that the Quran was revealed in a specific context and many of its verses were 'sent down' in response to particular situations. However, any objection to this work based on the 'occasions of revelation' (*asbaab al-nuzul*) misses the point. This is because this work is concerned with the ways in which Quranic verses and

*hadith* contributed to the creation of a general Islamic worldview and Muslim intellectual orientation that is still very much alive today. It is with this in mind then, that this work draws on its two principal sources – the Quran and Ali<sup>276</sup> – in formulating its theory of virtue ethics.

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<sup>276</sup> It is important to note that using Ali as a principal source does not make this study ‘Shi’ite’ in any way. In this regard, see the Introduction, Pp. 14-15.



## CHAPTER FOUR

### Traditional Islamic Ethics and the Concept of Virtue

#### Introduction

Elizabeth Ann Mayer prefaces her book on Islam and human rights by writing:

This study focuses on the legal dimensions of human rights problems, examining the questions within the framework of comparative law and comparative legal history. Given the centrality of law in the Islamic tradition, the legal emphasis is warranted. However, there is no intention to imply that Islam is exclusively a legal tradition or that comparative legal history is the only legitimate way to approach the topic. In a more comprehensive study on the relationship of Islamic to human rights, one would ideally want to include analysis of how principles of Islamic theology, philosophy and ethics tie in with the treatment of human rights... This would carry one into areas beyond the comparative legal analysis of civil and political rights that is the sole concern of this study.<sup>277</sup>

However, these types of works, which solely focus on Islamic law, are deeply problematic. This is because the Islamic legal tradition is grounded in the general Islamic worldview which is most clearly articulated by the Islamic intellectual tradition as a whole.<sup>278</sup> According to Smith:

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<sup>277</sup> Mayer, Ann E. *Islam and Human Rights*. P. xvii.

<sup>278</sup> To reiterate, the 'Islamic intellectual tradition' refers to the Traditional School's synthesis of approximately 1400-years of Islamic philosophical, mystical and theological thought. The following sections explain and draw on this unified synthesis in order to develop an Islamic theory of virtue ethics.

The dominant assumptions of an age color the thoughts, beliefs, expectations, and images of the men and women who live within it. Being always with us, these assumptions usually pass unnoticed... But this doesn't mean they have no effect. Ultimately, assumptions which underlie our outlooks on life refract the world in ways that condition our art and our institutions...our sense of right and wrong, our criteria of success, what we conceive our duty to be [and so on.]<sup>279</sup>

Thus, it is not simply enough to mention that Islam is more than a legal tradition and then exclude the 'more' from one's analysis. If the basic Islamic worldview isn't taken into consideration, then Islamic law is judged within an alien paradigm and therefore, it is ipso facto nonsensical. This puts many Muslims in an impossible position where they find themselves trying to justify laws rooted in completely different underlying assumptions. This often results in apologetic, alienating and unproductive dialogue. Sherman Jackson points out the mental struggle that Muslims go through in many secular-liberal societies. He writes:

And here we come to "the Muslim predicament," especially in the West. Because liberals have largely succeeded in monopolizing the meaning of the fundamental principles through which we negotiate modern life (freedom, equality, tolerance, rationality, etc.), Muslims find themselves only able to claim these when their claims comport with liberal definitions thereof. And when their scriptural sources or traditional authorities appear to be out of sync with these definitions, Muslims find themselves in the position of George Orwell's Winston: "How many fingers am I holding up, Winston?" From here they proceed, often on painfully tortuous logic, to try to reconcile every aspect of Islam with the reigning liberal paradigm. In this context, Muslims — and especially Muslim children — can never simply be themselves.<sup>280</sup>

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<sup>279</sup> Smith, Huston. *Beyond the Postmodern*. P. 3.

<sup>280</sup> Jackson, Sherman. "Liberalism and the American Muslim Predicament." *The Islamic Monthly* (TIM). [theislamicmonthly.com](http://theislamicmonthly.com). 03 June 2015.

Moreover, in an increasingly globalized world, this predicament affects Muslims locally and globally. Sayyed Hossein Nasr points out that “In many parts of the Islamic world, particularly in those countries where modern education is more prevalent, the younger generation has no knowledge of the intellectual and spiritual aspects of Islam and is completely defenseless against the onslaught of modernism”.<sup>281</sup> The traditional Islamic penal code and its use of corporeal punishment provides a concrete example of the problem of cross-cultural understanding. According to the Qur’an, the punishment for theft is to ‘cut the hands of the thief’. In this regard, the Quran reads:

*As to the thief, Male or female, cut off his or her hands: a punishment by way of example, from Allah, for their crime: and Allah is Exalted in power. (5:38)*

When Muslims are questioned about their belief in this ‘barbaric practice’ many of them are apologetic and start a process of mental rationalization. However, this punishment can never be justified in a secular-liberal worldview wherein the individual and their body is considered autonomous and sacred. Lynn Hunt’s *Inventing Human Rights* describes the different practices in the 17<sup>th</sup> and 18<sup>th</sup> centuries that worked towards changing the public conception of the body and the meaning of cruel and degrading punishment. This included “changes in musical and theatrical performances, domestic architecture and portraiture...”<sup>282</sup> Thus, Hunt writes that

Once Enlightenment writers and legal reformers began to question torture and cruel punishment, an almost complete turnabout...took place... What was need in addition to

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<sup>281</sup> Nasr, S.H. *Ideals and Realities of Islam*. P. xxii.

<sup>282</sup> Hunt, Lynn. *Inventing Human Rights*. P. 83.

empathy...was a new concern for the human body. Once sacred in only a religiously defined order...the body became sacred on its own in a secular order that rested in the autonomy and inviolability of humans.<sup>283</sup>

However, in terms of the general Islamic worldview, the same punishment, that is, ‘cutting the hands of the thief’, *can* be justified based on the four essential premises of (1) the primacy of revelation, (2) pain as purification, (3) the body as God’s property and (4) the family as a single unit. Before, proceeding however, it is extremely important to emphasize that this is not an argument for or against the ‘reformation’ of the Islamic penal code and its use of physical punishment. It is an argument for the importance of understanding worldviews, that is, the basic assumptions that determine peoples’ ways of understanding the world, and their direct influence over a society’s institutions and norms.<sup>284</sup> In any case, the first principle is the primacy of Revelation. For many Muslims, revelation is a form of Divine knowledge and therefore, it is the Quran – and not (liberal) reason – that should guide and govern the public sphere.<sup>285</sup> This is most clearly expressed in the verses that invoke the concept of the ‘the limits of God’ (*hadud Allah*). The latter, are generally considered God’s rights over His creatures and are non-negotiable.<sup>286</sup> For example, the Qur’an reads:

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<sup>283</sup> Hunt, Lynn. *Inventing Human Rights*. P. 81-82.

<sup>284</sup> It should be noted that these principles, in light of contextual differences, can be expressed in many different ways. Therefore, to reiterate, my point is that Islamic law cannot be understood or ‘reformed’ without taking into account its basic underlying principles and worldview.

<sup>285</sup> This doesn’t mean that the Islamic law was strictly applied in premodern Islamic societies; rather, it means that the basic Quranic worldview – in all of its expressions – largely determined, or at least guided, Muslim thought, norms and institutions. Even if *hadd* punishments were simply accepted by Muslims because they were the pre-Islamic norm, the argument still stands: One’s sense of right and wrong is largely determined by the worldview that he or she lives in.

<sup>286</sup> Kamali, Mohammad H. *Shariah Law*. P. 22.

*Those are limits set by Allah: those who obey Allah and His Messenger will be admitted to Gardens with rivers flowing beneath, to abide therein (forever) and that will be the supreme achievement. But those who disobey Allah and His Messenger and transgress His limits will be admitted to a Fire, to abide therein: And they shall have a humiliating punishment. (04:13-14)*

*Permitted to you, on the night of the fasts, is the approach to your wives. They are your garments and ye are their garments. Allah knoweth what ye used to do secretly among yourselves; but He turned to you and forgave you; so now associate with them, and seek what Allah Hath ordained for you, and eat and drink, until the white thread of dawn appear to you distinct from its black thread; then complete your fast till the night appears; but do not associate with your wives while ye are in retreat in the mosques. **Those are limits (set by) Allah: Approach not nigh thereto. Thus doth Allah make clear His Signs to men: that they may learn self-restraint. (2:187)***<sup>287</sup>

*A divorce is only permissible twice: after that, the parties should either hold Together on equitable terms, or separate with kindness. It is not lawful for you, (Men), to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by Allah. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she give something for her freedom. **These are the limits ordained by Allah; so, do not transgress them if any do transgress the limits ordained by Allah, such persons wrong (themselves as well as others).***

(2:229)<sup>288</sup>

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<sup>287</sup> Emphasis added.

<sup>288</sup> Emphasis added.

Again, the point is that many Muslims generally consider revelation – despite its varied interpretations – a sacred source of knowledge and therefore, a divine source of human guidance and governance on both, an individual and collective level. Thus, the ‘primacy of revelation’ is the first of the four principles that allowed premodern Muslims to understand the ‘cutting of the hands’ as a Divinely ordained punishment, and not a ‘barbaric practice’.<sup>289</sup> The second principle, in accordance with Islamic Traditionalism, is that pain in almost any form, including physical punishment, is a mode of spiritual purification.<sup>290</sup> It is important to note that this does not include any self-inflicted physical pain, which is generally alien to the tradition’s understanding of purification. In any case, according to Islamic Traditionalists, life is a test that aims to ‘cleanse’ human beings so that they can return to their ‘pure’ origin. On the subject of purification, Rafik Berjak notes, “Self-purity is...a major subject in Islam. The Prophet has said: ‘Allah is pure and He shall not accept anything but purity’”<sup>291</sup> Thus, in this regard, the Quran reads:

*... Say: "Even if you had remained in your homes, those for whom death was decreed would certainly have gone forth to the place of their death"; but (all this was) that Allah might test what is in your breasts and purge what is in your hearts. For Allah knoweth well the secrets of your hearts. (3:154)*

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<sup>289</sup> The Qur’an invokes the ‘limits of God’ regularly. However, in relation to legal punishments, these ‘limits’ are contained to the six crimes of theft, adultery, false accusation of adultery, highway robbery, consumption of alcohol and apostasy. The last two are problematic insofar as the Quran doesn’t not prescribe any sort of worldly punishment for them.

<sup>290</sup> Pain can be understood as ‘negative’ purification in that it is passive and comes directly or indirectly from God. ‘Positive’ purification, on the other hand, can be understood as active and involving religious practices such as praying and fasting.

<sup>291</sup> Berajak, Rafik. “Purify”. *The Quran: An Encyclopedia*. P. 514.

*Be sure we shall test you with something of fear and hunger, some loss in goods or lives or the fruits (of your toil), but give glad tidings to those who patiently persevere (2:155)*

According to *The Study Quran*, “Several *ahadith* indicate that the Prophet assured repentant thieves that had undergone the *hadd* punishment that they were forgiven by God and had been purified of their sin as a result of their punishment.<sup>292</sup> In the same light, there are also many *hadith* that explain pain as purification without reference to punishment. For example, Ibn Mas’ud is to have reported the following:

I visited the Prophet when he was suffering fever. I said, “You seem to be suffering greatly, O Messenger of Allah.” The Prophet replied, “Yes, I suffer as much as two persons.” I said, “Is that because you have a double reward?” He replied that that was so and then said, “*No Muslim is afflicted by a harm, be it the pricking of a thorn or something more (painful than that), but Allah thereby causes his sins to fall away just as a tree sheds its leaves.*”<sup>293</sup>

Similarly, the Prophet is also reported to have said, “A believer’s suffering removes his sins just as a blacksmith’s fire removes slag from iron.”<sup>294</sup> Thus, ‘pain as purification’ is the second of the four principles that allowed many Muslims in traditional Islamic societies to understand the ‘cutting of the hands’ as a punishment with a higher purpose, and not a ‘primitive practice’.<sup>295</sup> The third principle, found in the Islamic intellectual tradition, is that

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<sup>292</sup> Nasr, S.H., ed. et al. *The Study Quran*. P. 296.

<sup>293</sup> Sahih Bukhari. Book 70; hadith 551. Emphasis added.

<sup>294</sup> Qutbuddin, Tahera, ed and trans. *Light in the Heavens: Sayings of the Prophet Muhammad*. New York: New York University Press, Chapter 12 (12.7).

<sup>295</sup> For a more detailed analysis of pain, punishment and purification in the Quran and Islamic history, see chapter four of: Sherwani, Ali A.K. *Impact of Islamic Penal Laws on the Traditional Arab Society*. New Delhi: M.D. Publications, 1993.

the body, in a very real sense, belongs to God. According to the Quran, on the day of judgment, the body will ‘abandon’ the human being by testifying against the latter in service to God. The verse reads:

*At length, when they reach the (Fire), their hearing, their sight, and their skins will bear witness against them, as to (all) their deeds. They will say to their skins: "Why bear ye witness against us?" They will say: "Allah hath given us speech,- (He) Who giveth speech to everything: He created you for the first time, and unto Him were ye to return." Ye did not seek to hide yourselves, lest your hearing, your sight, and your skins should bear witness against you! But ye did think that Allah knew not many of the things that ye used to do! (41:20-22)*

Thus, the idea that ‘individuals have the right to do what they please with their own bodies’ is alien Islamic Traditionalism’s perspective. Many Muslims generally understand that God has given people bodies so that they can use them to achieve success in this world and the hereafter. In the same light then, if a person uses ‘their’ body in defiance of Divine laws and norms, then it is within God’s right to do what He wills with the body, and the person in question. Again, I am not arguing for or against the traditional Islamic penal code and its use of corporeal punishment. However, I am arguing that Islamic law can only be judged according to the Quran’s fundamental principles and consequent worldview. The ‘primacy of revelation’, ‘pain as purification’ and the ‘body belonging to God’ all combine to produce a mentality in the premodern world, in which corporeal punishments, such as ‘cutting of the hands’, are not ‘backward’ practices, but rather, ‘make sense’. This is strengthened by the fourth and last principle, that is, the family as a single unit and basic building block of society. According to



Islamic Traditionalists, the act of sex symbolizes the complete human being and moreover, the ideal and ‘natural’ family structure reflects the harmony of the cosmos. Thus, Sachiko Murata, drawing on the work of ibn al-Arabi and his students, writes:

Having explained why gnostic experiences the sexual act as the supreme instance of witnessing God in the full splendor of His self-disclosure, Ibn al-Arabi turns to the metaphysical and cosmological dimensions of marriage. The marriage act gains its nobility from the fact that its archetype is God’s creative act itself... [According to Jandi,] Ibn al-Arabi is alluding to the five universal divine marriages that give rise to the production of the five worlds: The World of Meanings, [Spirits, Souls, Images and Sensory Objects.]<sup>296</sup>

In more practical terms, and in relation to the importance of the family unit, Nasr argues that

The basic unit of Islamic society is the family, which as a result of the Quranic revelation came to replace the Arab tribe as the immediate social reality for the individual. One of the most important social reforms carried out by Islam was the strengthening of the family and the bonds of marriage.<sup>297</sup>

This importance of the familial bonds and unity is based on numerous Quranic passages. For example:

*Permitted to you, on the night of the fasts, is the approach to your wives. They are your garments and ye are their garments. Allah knoweth what ye used to do secretly among yourselves; but He*

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<sup>296</sup> Murata, Sachiko. *The Tao of Islam: A Sourcebook on Gender Relationships in Islamic Thought*. Albany: State University of New York Press, 1992. Pp. 193-194.

<sup>297</sup> Nasr, S.H. *The Heart of Islam*. P. 183.

*turned to you and forgave you; so now associate with them, and seek what Allah Hath ordained for you... (2:187)*

*And those who accept Faith subsequently, and adopt exile, and fight for the Faith in your company,- they are of you. But kindred by blood have prior rights against each other in the Book of Allah. Verily Allah is well-acquainted with all thing (8:75)*

*It is He Who has created man from water: then has He established relationships of lineage and marriage: for thy Lord has power (over all things). (25:54)*

Interestingly, the idea that the family is the basic unit of society, renders the current secular-liberal institution of incarceration incompatible with the Islamic paradigm. This is because it would be considered ‘inhumane’ or ‘barbaric’ to separate family members from each other when they are a single unit and integral to the proper functioning of society. Therefore, this example shows that ‘worldviews’ have serious implications for human rights. The connection between the two is more specifically drawn out throughout chapter. All of this is to say that it is not the history and science of Islamic jurisprudence that needs to be studied in relation to human rights theory, but rather, the deeper metaphysical, ontological and epistemological principles that inform Islamic intellectual thought in general and Islamic law in particular. This is why this work uses the framework of Traditionalism to explicate Islamic religious doctrine and rituals. In doing so, it addresses the foundational questions that need to be answered in order to create any human rights model. Undoubtedly, the rights of a human being depend on a tradition’s understanding of ‘human’, ‘right’ and the ‘good life’. It is only on this level that constructive dialogue can take

place, and therefore, it is only on this level that effective and organic reform can take place. This point is highlighted by Shackle's work on gender in Islam when she writes:

The ultimate problem, when we speak of cross-cultural differences in the question of relationships among men and women, is that in a very real sense we have been living in different worlds. The cultural presuppositions of Westerners about what is important in life are profoundly different from the traditional views of Muslims or Japanese... I offer no answers as to whether or not Muslim women are any more oppressed than women elsewhere. *What I do maintain, however, is that generally the role of women in traditional Islam - not in any given Islamic society today - is consistent with the Islamic worldview.*<sup>298</sup>

Before proceeding to explore Traditionalist's synthesis of the Islamic intellectual tradition and its concept of ethics and virtue, it is important to reiterate and clarify what this tradition is. In its simplest formulation, it is a particular synthesis of fourteen-hundred years of Islamic intellectual thought. By 'intellectual thought', I am referring to Muslim philosophers, mystics, and theologians that asked the question 'why' about the nature of things in an attempt to understand and explain the deepest levels of reality and the human condition. Within the Islamic tradition, this includes figures such as al-Farabi, al-Arabi, and Mulla Sadra. As mentioned, this study operates within the framework of Traditionalism and its understanding of the 'underlying unity of religions' – both across and within religious traditions. Thus, its particular synthesis is based on the work of Traditionalists such as Rene Guenon, Ananda Coomarswamy and Frithjof Schuon. One of this study's working assumptions is that the Traditional School of thought represents an important and substantial 'Muslim voice' on the issue of Islam and modernity. This

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<sup>298</sup> Murata, Sachiko. *The Tao of Islam* P.1. (Emphasis Added)

‘voice’ is based on different ‘traditional understandings’ of Islam that are nevertheless unified in terms of their basic intellectual and cultural orientation.<sup>299</sup>

The next section attempts to answer some of the fundamental questions posed by virtue theory – questions regarding the nature of reality, truth and justice. In turn, the answers to these questions are used to construct a theory of virtue ethics that is in line with the basic ‘Islamic worldview’ and therefore, can ground an organic vision of human rights in Islam. Although today’s Islamic societies are no longer traditional, this approach is advantageous because most Muslims are more amenable to concepts based on their own intellectual heritage and traditional norms. Thus, they are less likely to understand human rights as a tool for imperialism and instead, understand them as integral to furthering the cause of justice and peace within their own societies.<sup>300</sup>

### Ethics and Virtue in the Quran and Islamic Tradition

Since the 20<sup>th</sup> Century, consequentialism, deontology and virtue theory have dominated the field of moral philosophy. Consequentialism is based on the concept that ‘what is right’ is determined by the consequence of our actions. It argues that deciding how to act should not be determined by a rule or set of rules that may or may not lead to positive or beneficial consequences. In chapter two, this study critically explored the secular-liberal tradition’s concept

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<sup>299</sup> In this regard, see the Introduction, Pp. 6-8.

<sup>300</sup> Nevertheless, it is important to reiterate that this work is primarily concerned with (1) drawing out the friction between Traditional Islam and contemporary human rights and (2) constructing a traditional theory of virtue ethics that has the ability to ‘ground’ an ‘Islamic’ vision of human rights. Therefore, this work, despite any appearances to the contrary, is not *directly* concerned with facilitating socio-political reform in Muslim-majority nation-states today.

of consequentialism in the form of utilitarianism. In some instances, the Qur'an is also consequentialist in that it beseeches the believer to act in a way that promotes well-being and helps people and their societies to flourish. For example, *surah al-Baqarah* reads:

*They ask you concerning wine and gambling. Say: "In them is great harm, and some benefit for men; but the harm is greater than the benefit." They ask you how much they should spend. Say: "Whatever is beyond your needs." Thus does Allah make His signs clear to you all: In order that you may consider (2:219) <sup>301</sup>*

Al-Qurtubi's commentary on this verse mentions both the good and the harm of drinking wine and gambling, and, in line with consequentialism, he explains why the two activities lead to more negative consequences than positive ones. Later legal philosophy banned all intoxicants in light of one of the purposes of the shariah (*maqasid al-shariah*), namely, to 'protect human intelligence.'<sup>302</sup>

Despite verses such 2:219 however, the Quranic injunction to do good is not generally rooted in utilitarian calculations. This is because the Quran repeatedly informs its readers that the value of action is wedded to faith. This is clearly expressed, for example, by the numerous verses that describe the righteous as people who both believe *and* do good works. For example:

*But give glad tidings to those who believe and work righteousness, that their portion is Gardens, beneath which rivers flow.... (2:25)*

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<sup>301</sup> My translation.

<sup>302</sup> Nasr, S.H., ed. et al. *The Study Quran*. P. 95.

*Those who believe (in the Qur'an), and those who follow the Jewish (scriptures), and the Christians and the Sabians,- any who believe in Allah and the Last Day, and work righteousness, shall have their reward with their Lord; on them shall be no fear, nor shall they grieve. (2:62)*

*As to those who believe and work righteousness, Allah will pay them (in full) their reward; but Allah loveth not those who do wrong. (3:57)*

The idea that the value of action is related to faith is also seen in Quranic verses that speak to the works of 'unbelievers'.<sup>303</sup> These verses imply that good action coupled with bad intention is, at least in the final determination, wasted and futile.

*The parable of those who reject their Lord is that their works are as ashes, on which the wind blows furiously on a tempestuous day: No power have they over aught that they have earned: that is the straying far, far (from the goal). (14:18)*

*But the Unbelievers,- their deeds are like a mirage in sandy deserts, which the man parched with thirst mistakes for water; until when he comes up to it, he finds it to be nothing: But he finds Allah (ever) with him, and Allah will pay him his account: and Allah is swift in taking account. (24:39)*

*Covetous over you. Then when fear comes, thou wilt see them looking to thee, their eyes revolving, like (those of) one over whom hovers death: but when the fear is past, they will smite*

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<sup>303</sup> 'Unbeliever' is an inaccurate translation of the term 'kafir'. In this regard please see Chapter five, Pp. 187-188.

*you with sharp tongues, covetous of goods. Such men have no faith, and so Allah has made their deeds of none effect: and that is easy for Allah. (33:19)*

Thus, the Quranic understanding of morality is not based on any form of consequentialism. A person can act, but ultimately, it is the intention behind the act that is of utmost importance. The Quranic story of Prophet Abraham provides a further example of this principle. It describes Abraham as young boy who snuck into the Kaaba in order to break the idols that were housed there. As a punishment, the people of Canaan decided to burn Abraham; however, according to the Qur'an, the young boy was saved when God issued a command to the fire and said, "O fire! be thou cool, and (a means of) safety for Abraham!"<sup>304</sup> Thus, the evil intention of the people subverted the effects of their actions. Of course, the subject of God and his relationship to the world has been debated in the Islamic world for centuries.<sup>305</sup> Some maintain that verses such as 21:69 are metaphorical or symbolic, while others maintain they are literal and miraculous. Exploring this debate is beyond the scope of this work, however, it is sufficient to note that Muslims believe that – in one way or another – 'God has power over all things'. According to Islamic Traditionalists, faith and action are hierarchical, but at the same time, they are self-reflexive. This because faith or 'being' results in good action and good action, in turn, strengthens faith. Thus, on the highest level, faith encompasses action and the two cannot be separated. In *Understanding Islam*, Schuon writes:

In the case of Islam, where man is considered as intelligence and where intelligence comes "before" will, it is the content or direction of the intelligence which has

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<sup>304</sup> *The Quran*. Trans. Yusuf Ali. 21:69.

<sup>305</sup> In general, see: Blankinship, Khalid. "The Early Creed". *The Cambridge Companion*. Ed. Winter. Also see: Watt, Montgomery. *Philosophy and Theology*. London: Aldine, 1962.

sacramental efficacy: Whoever accepts that the transcendent Absolute alone is absolute and transcendent, and draws from this the consequences for the will, is saved.<sup>306</sup>

More concretely, Nasr critiques Renaissance humanism and states that

According to traditional doctrines our actions depend upon our mode of being [that is, faith] or, as the scholastics put it, *operari sequitur esse*. Pico, reversed this relationship and claimed that the “being of man follows from his doing.” He thus stated...the primacy of action over contemplation and doing over being, which characterizes modern man and which has been of the greatest consequence for the destruction of the world of nature”<sup>307</sup>

The second theory of morality, that is, deontology, is based on the concept that it is one’s duty to act rightly and ‘what is right’ is normally determined by a rule or set of rules such as the ‘golden rule’ or Kant’s categorical imperative. As this study has argued, it is an incomplete form deontology - that is, natural law - that underpins the *Universal Declaration*. The Qur’an takes this position to the extent that it sets down the limits of God’s law (*hudud Allah*). Thus, in this case, deontology is a form of Divine command theory because it is God and His will that determines the criterion for right and wrong action. This is illustrated by the following Quranic verses:

*Those are limits set by Allah: those who obey Allah and His Messenger will be admitted to Gardens with rivers flowing beneath, to abide therein (forever) and that will be the supreme*

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<sup>306</sup> Schuon, Frithjof. *Understanding Islam: A New Translation with Selected Letters*. Ed. Laude Bloomington: World Wisdom, 2011. P. 2.

<sup>307</sup> Chittick, William, ed. *The Essential Seyyed Hossein Nasr*. Indiana: World Wisdom, 2007. Pp.144-145.



*achievement. But those who disobey Allah and His Messenger and transgress His limits will be admitted to a Fire, to abide therein: And they shall have a humiliating punishment. (04:13-14)*

*Fighting is prescribed for you, and ye dislike it. But it is possible that ye dislike a thing which is good for you, and that ye love a thing which is bad for you. But Allah knoweth, and ye know not.*

(2:216)

*The Messenger believeth in what hath been revealed to him from his Lord, as do the men of faith. Each one (of them) believeth in Allah, His angels, His books, and His messengers. "We make no distinction (they say) between one and another of His messengers." And they say: "We hear, and we obey: (We seek) Thy forgiveness, our Lord, and to Thee is the end of all journeys. (2:285)*

Thus, these verses seem to point to the fact that an action is good because God wills it and not vice versa. However, this position was contested and the question of ‘what makes an action good?’ was one of the first debates between the different schools of Islamic theology.<sup>308</sup>

Nevertheless, after the death of the Prophet, deontology, or divine command theory, virtually dominated the field of Islamic ethics. This is particularly true when it comes to the Islamic legal tradition and the jurists (*fuqaha*) who presided over it. This is because Islamic societies, at least in principle, are nomocracies. In this regard, Majjid Khadduri’s (d.2007) *The Islamic Conception of Justice* reads:

In a society which presupposes that man is essential weak and therefore incapable of rising above personal failings...a superhuman or divine authority is invoked to provide

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<sup>308</sup> In general, see: Stelzer, Steffen. “Ethics”. *The Cambridge Companion*. Ed. Winter. Pp. 161-179.

either the sources or the basic principles of the public order under which a certain standard of justice is established... The justice which flows from such a high divine source is considered applicable to all men and forms another category of justice. In contrast with positive justice, it may be called Divine or revelational justice... It is therefore the Law, embodying the principles of Divine authority, which indeed rules and wherefore the state becomes not, strictly speaking, a theocracy, but...might be called a Divine nomocracy.<sup>309</sup>

The centrality of Islamic law, expressed in the form of ‘God’s will’, was also caused by a number of contextual factors; arguably, the most important of these was the rapid growth of the Islamic empire and the concomitant need to provide order for the growing population. Despite this focus on divine command theory however, there are many verses in the Qur’an seem to oppose the view that ethics is exclusively restricted to acting in accordance with God’s will as expressed in the Quran. As the following verses indicate, the Quran is also concerned with something above and beyond outward obedience to the Divine law:

*The desert Arabs say, "We believe." Say, "Ye have no faith; but ye (only) say, 'We have submitted our wills to Allah,' For not yet has faith entered your hearts. But if ye obey Allah and His Messenger, He will not belittle aught of your deeds: for Allah is Oft-Forgiving, Most Merciful.*

(49:14)

*Call them by (the names of) their fathers: that is juster in the sight of Allah. But if ye know not their father's (names, call them) your Brothers in faith, or your maulas. But there is no blame on*

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<sup>309</sup> Khadduri, Majid. *The Islamic Conception of Justice*. Pp. 3-4. Khadduri contrasts this view with what he calls ‘Positive justice’, that is, justice based on the assumption that people are capable of determining their own interests and needs based on their experience and reasoning.

*you if ye make a mistake therein: (what counts is) the intention of your hearts: and Allah is Oft-Returning, Most merciful. (33:5)*

*The Day whereon neither wealth nor sons will avail, but only he (will prosper) that brings to Allah a sound heart (26:88-89)*

According to ibn Kathir's commentary on verse 49:14, "belief is of a higher rank than submission" and that the 'desert Arabs' in this verse, "had simply not yet attained faith" through submission.<sup>310</sup> Similarly, according to al-Qurtubi's commentary on verse 26:29, a 'sound heart' refers to the heart's knowledge that "God is real, that the Hereafter will come, and that God will resurrect what is in the Graves."<sup>311</sup> Other commentators take the concept of a 'sound heart' further, and maintain that it refers to spiritual healthiness; a heart emptied of the world and filled with the love of God.<sup>312</sup> Thus, according to these verses, it can be argued that the Quran places more importance on 'being' than on 'doing'. In other words, the Quran seems to imply that the most important aspect of good action is that it is transformative. That is, it transforms human into virtuous and intellectual beings who use their Intellect/'inner Heart' in conjunction with any expression of God's will. An interesting example of 'transformative ethics' can be found in the Quran's narrative relating the meeting between Moses and Khidr. According to this narrative, Khidr was a chosen servant of God who was blessed with 'knowledge of the heart'. Wanting to learn from him, Moses asked: "May I follow thee, on the footing that thou teach me something of the (Higher) Truth which thou hast been taught?"<sup>313</sup> Khidr was hesitant and responded:

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<sup>310</sup> Nasr, S.H., ed. et al. *The Study Quran*. P. 1262.

<sup>311</sup> Nasr, S.H., ed. et al. *The Study Quran*. P. 915.

<sup>312</sup> Nasr, S.H., ed. et al. *The Study Quran*. P. 915.

<sup>313</sup> *The Quran*. Trans. Yusuf Ali. 18:66.

“Verily thou wilt not be able to have patience with me! And how canst thou have patience about things about which thy understanding is not complete?”<sup>314</sup> Upon hearing this, Moses promised to be patient, obedient and accept Khidhr’s actions without question or objection. Nevertheless, on three different occasions, Moses – by virtue of his ethical character – was unable to stay silent. Hence, Khidhr told his companion: “This is the parting between me and thee: now will I tell thee the interpretation of (those things) over which thou wasn’t unable to hold patience.”<sup>315</sup> Khidhr explained that - despite outward appearances – the inward or unseen reality of his actions were good and therefore, in accordance with God’s will. In the context of this narrative then, Moses represents the tradition of deontological ethics and Khidr represents the tradition of virtue ethics. Khidr – a transformed soul – was able to discern right from wrong using his inward and microcosmic divine guide. This view is confirmed by the Islamic intellectual tradition. For example, in *Nahj al-Balaghah*, Ali continuously highlights the importance of inner transformation and not only outward action. He says:

*A virtuous person is better than virtue and a vicious person is worse than vice.*<sup>316</sup>

*The sin which makes you sad and repentant is more liked by Allah than the good deed which turns you arrogant.*<sup>317</sup>

*Understand information you hear with the reasoning of responsibility  
not the reasoning of the reporter,*

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<sup>314</sup> *The Quran*. Trans. Yusuf Ali. 18:67-68.

<sup>315</sup> *The Quran*. Trans. Yusuf Ali. 18:78.

<sup>316</sup> *The Nahj*. Saying number 32.

<sup>317</sup> *The Nahj*. Saying number 46.

*for there are many reports of knowledge but few are responsible.*<sup>318</sup>

Thus, one can see the primary importance that Islamic Traditional thought in general, and the Quran and Ali in particular, place on the state of a person's soul or 'inner Heart'. Therefore, from this point of view, it is clear that any Islamic theory of ethics and human flourishing must be grounded in the concept of virtue and transformation. Virtue theory moves away from the preoccupation of determining the right course of action in any given situation and instead, situates ethics within a broader framework concerning the nature of reality. It maintains that the actions of a 'good person' are good actions and the actions of a 'bad person' are bad. In other words, right action is derived from virtue and not vice versa.<sup>319</sup> Thus, virtue theory asks the fundamental questions of human existence that need to be answered in order to construct any theory of human rights. In the Islamic context then, this study argues that a human rights society is one that is organized in a way that allows people to achieve their primary purpose in life – a virtuous soul in this world and felicity in the hereafter.

In concluding this section, it is important to reiterate that contemporary Islamic thought is largely devoted to the concept of reform. Its primary goal is to establish a standard of judgment that can be applied to the religion's normative texts and traditional practices in order to separate universal religious concepts from their relative and conditional expressions. This, in turn, creates a space for reform in light of the changing circumstances of any given society. The following section constructs such a standard; namely, a virtue theory based on Muslim Traditionalist's

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<sup>318</sup> Cleary, Thomas. *Living and Dying with Grace. Counsels of Hadrat Ali*. Boston: Shambhala Publications, 1996. P. 14. In other words, Ali is saying that knowledge is about understanding and transformation as opposed to memorization and regurgitation.

<sup>319</sup> Although virtue is primary in principle, the two, that is virtue and virtuous action, are also self-reflexive, that is, they each function to develop and reinforce the other.

articulation of the basic Islamic worldview and its specific understanding of reality, truth, and justice. This study argues that any method that dismisses or reduces these essential principles of Islamic thought is bound to fail insofar as it will be alien to the Islamic intellectual tradition as a whole and the basic ‘Muslim mentality’ that this tradition represents.

### Traditional Islamic Virtue Theory

The idea that human rights are informed by a particular society’s understanding of life cannot be overstated. Thus, it is only on this ‘underlying level of thought’ that genuine discourse and reform can take place – including reform in the area of Islamic jurisprudence. As Sa’diyya Shaikh points out in her attempt to negotiate gender understandings:

Traditional Muslim personal law is constrained by its own underlying notion of human nature. From a contemporary Islamic feminist perspective, the limited gender understandings of human nature, as developed in different sociohistorical contexts, serves as central deficits in various iterations of classical Islamic law. The problematic may be called a short-coming in gendered ‘religious anthropology’, a term that addresses questions of what it means to be a human being from a religious perspective... In the Muslim tradition, Sufi thinkers in particular have provided detailed discussions on the human condition... and the ways in which the fundamental theological imperative of submission provides the ontological basis for the juridic-ethical legacy and related norms of sociability<sup>320</sup>

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<sup>320</sup> Shaikh, Sa’diyya. “Islamic Law, Sufism and Gender: Rethinking the Terms of the Debate” *Men in Charge? Rethinking Authority in Muslim Legal Tradition*. Ed. Mir-Hosseini, Al-Sharmani and Rumminger. London: Oneworld Pub., 2015. Pp. 106-107. This study does not necessarily agree that Islamic ‘religious anthropology’ is problematic. However, it does agree that ‘religious anthropology’ is the foundation of Islamic law and needs to be explored in any fruitful discussion of Islamic ethics and its relationship to modernity and human rights.

Islamic Traditionalists understand Islam as the final expression of the primordial religion (*din al-qayyim*) intended for humanity. Its primordiality is attested to by Quranic passages that apply the word Muslim to people who came before the Prophet's time. In this case, the word 'Muslim' can be understood as a verbal noun that refers to the act of submitting to God. For example, the Quran reads:

*When Jesus found Unbelief on their part He said: "Who will be My helpers to (the work of) Allah?" Said the disciples: "We are Allah's helpers: We believe in Allah, and do thou bear witness that we are Muslims. (3:52)*

*And strive in His cause as ye ought to strive, (with sincerity and under discipline). He has chosen you, and has imposed no difficulties on you in religion; it is the cult of your father Abraham. It is He Who has named you Muslims, both before and in this (Revelation); that the Messenger may be a witness for you, and ye be witnesses for mankind! ... (22:78)*

On the other hand, Islam's 'finality' is based on the Quranic verses that refers to the Prophet as the seal of the Prophets (*khatim an-nabiyyin*). The Quran reads:

*Muhammad is not the father of any of your men, but (he is) the Messenger of Allah, and the Seal of the Prophets: and Allah has full knowledge of all things. (33:40)*

These verses are further strengthened by the *hadith* literature. For example, in a well-known saying, the Prophet describes himself as the final brick completing the building of a beautiful house. He is reported to have said:

“My similitude in comparison with the prophets before me is that of a man who has built a house nicely and beautifully, except for a place of one brick in a corner. The people go about it and wonder at its beauty, but say: 'Would that this brick be put in its place!' So I am that brick, and I am the seal of the prophets”<sup>321</sup>

Thus, according to the Islamic traditionalist's, guidance from God, in the form of prophecy and revelation, ended with the Prophet. In this light, Nasr describes three ways in which Islam can be understood by writing:

In its universal sense, Islam may be said to have three levels of meaning. All beings in the universe, to begin with, are Muslim, i.e., "surrendered to the Divine Will." (A flower cannot help being a flower; a diamond cannot do other than sparkle. God has made them so; it is theirs to obey.) Secondly, all men who accept with their will the sacred law of the revelation are Muslim in that they surrender their will to that law... Finally, we have the level of pure knowledge and understanding. It is that of the contemplative, the gnostic ('arif), the level that has been recognized throughout Islamic history as the highest and most comprehensive. The gnostic is Muslim in that his whole being is surrendered to God; he has no separate individual existence of his own. He is like the birds and the flowers in his yielding to the Creator; like them, like all the other elements of the cosmos, he reflects the Divine Intellect to his own degree. He reflects it actively, however, they passively; his participation is a conscious one.<sup>322</sup>

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<sup>321</sup> *Sahih Bukhari. Book 56; hadith 735.*

<sup>322</sup> Nasr, S.H. *Science and Civilization in Islam*. Illinois: ABC International Group, 2001. P.23.



In any case, Islam – like the religions that preceded it – provides its followers with both a doctrine of Reality and a method of transformation to that Reality. The Quran’s central doctrine is the existence and oneness of God (*tawhid*). In this regard, Hussein Abdul-Raof writes:

*Tawhid* (monotheism) is the cornerstone of Islam. As it is their fundamental doctrine, the Muslims are described as the ‘nation of *Tawhid*’ ... The doctrine of *tawhid* signifies total obedience and submission to God in worship in deed. *Tawhid* designates the oneness of God (divine unicity), his absolute existence and that He has no equal.<sup>323</sup>

In terms of the Quran and the ‘concept’ of *tawhid*, the following verses read:

*Say: He is God the one the only, the absolute the eternal. He begets not nor is he begotten and there is nothing like him (112:1-4)*

*All that is on earth will perish: But will abide (for ever) the Face of thy Lord,- full of Majesty, Bounty and Honour (55:26-27)*

*Do they not observe the birds above them, spreading their wings and folding them in? None can uphold them except (Allah) Most Gracious: Truly (Allah) Most Gracious: Truly it is He that watches over all things. (67:19)*

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<sup>323</sup> Abdul-Raof, Hussein “Tawhid” *The Quran: An Encyclopedia*. Ed. Leaman P. 651

According to Chittick, the concept of *tawhid* and its consequences have always functioned as a principle instrument of unification within Islamic societies and between Muslims of different schools of thought. In this light, he writes:

The intellectual tradition was robust and lively, so disagreements...were common. Nonetheless, in all the different schools of thought that have appeared over Islamic history...one principle has always been agreed upon: God is one, and he is the only source of Truth and Reality: He is the origin of all things, and all things return to him<sup>324</sup>

According to Islamic Traditionalists, the Qur'anic message of *tawhid* is an understanding of the fact that God is both absolute and infinite. Here, the quality of absoluteness refers to God's unity and the quality of infinity refers to the God's creation.<sup>325</sup> In other words, Islam's principal doctrine is that there is nothing real except the Real (absolute) and all 'other things' issue from that Reality (infinity). This means that multiplicity, or in other words, creation, is an illusion on the level of metaphysical Truth. Thus, the Traditional School explains the 'inner dimension' of Islam as directly related to the oneness of Reality and hence, the illusionary or temporary nature of the world. For example, Coomaraswamy draws on the symbolism of the sun and writes, "From the spiritual perspective what we call the world-process and a creation is ... a game that the Spirit plays with itself, as sunlight 'plays' upon whatever it illuminates and quickens, although unaffected by its apparent contacts."<sup>326</sup> Ali also echoes the same understanding of reality. When it comes to the absolute unity and dependence of all on things on God, he states:

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<sup>324</sup> Chittick, William C. *Science of the Cosmos, Science of the Soul: The Pertinence of Islamic Cosmology in the Modern World*. Oxford: Oneworld Publication, 2007. P.7.

<sup>325</sup> Nasr, S.H. *The Heart of Islam*. P. 9-10.

<sup>326</sup> As quoted in: Whitall, Perry N., ed. *A Treasury of Traditional Wisdom*. Louisville: Fons Vitae, 2000. P. 23.

*The foremost in religion is the acknowledgement of Him, the perfection of acknowledging Him is to testify Him, the perfection of testifying Him is to believe in His Oneness, the perfection of believing in His Oneness is to regard Him Pure, and the perfection of His purity is to deny Him attributes, because every attribute is a proof that it is different from that to which it is attributed and everything to which something is attributed is different from the attribute. Thus whoever attaches attributes to Allah recognizes His like, and whoever recognizes His like regards Him two; and whoever regards Him as two recognizes parts for Him; and whoever recognizes parts for Him mistook Him; and whoever mistook Him pointed at Him; and whoever pointed at Him admitted limitations for Him; and whoever admitted limitations for Him numbered Him. Whoever said: "In what is He?", held that He is contained; and whoever said: "On what is He?", held He is not on something else.<sup>327</sup>*

And in relation to creation and the world, Ali says:

*Remember that this world which you covet so ardently and attempt to acquire so earnestly, and which sometimes annoys you and sometimes pleases you so much, is neither your home nor a permanent destination. You have not been created for it, nor invited to it as your resting-place. It shall neither remain with you forever, nor will you remain in it eternally. If it has enticed you away with its charms, it has also warned and cautioned you of real dangers lurking in its folds.*

*Take account of the warnings it has given you and do not be seduced or deceived by its allurements. Let these warnings frighten you from being too greedy to possess it. Try to advance*

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<sup>327</sup> *The Nahj*. Sermon 1.

*towards the place where you are invited for eternal bliss and turn your face away from the vicious world.*<sup>328</sup>

It is important to note that this is not a pantheistic worldview but rather, it is a mystery in the sense that it is a ‘transcendent truth’ that cannot be grasped by an ‘immanent mind’. According to Schuon, a mystery is

the essence of truth which cannot be adequately conveyed through language – the vehicle of discursive thought – but which may suddenly be made plain in an illuminating flash through a symbol, such as a key word, a mystic sound, or an image whose suggestive action may be scarcely graspable.<sup>329</sup>

Thus, he separates the ‘*tawhidi*’ worldview from pantheism by writing that the world is not God but instead, that the former is “mysteriously plunged into God”.<sup>330</sup> In any case, a corollary to creation or the God’s Quality of infinity, is Islamic Traditionalism’s doctrine of the degrees of Reality. From this point of view, a person that reflects Reality (*al-Haqq*) is more real than a person that does not. This is because Reality is absolute and eternal while all else is relative and temporary. This means that one’s degree of existence ‘grows’ in relation to their conformity with the Real. This is why, in reflecting on Schuon’s teachings, James Cutsinger writes, “...The infinitude of the Supreme Reality results inevitably in an irresistible radiation by which it lends degrees of its Being to all things”<sup>331</sup> An example of the degrees of reality on the ‘terrestrial plane’

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<sup>328</sup> *The Nahj*. Sermon 173.

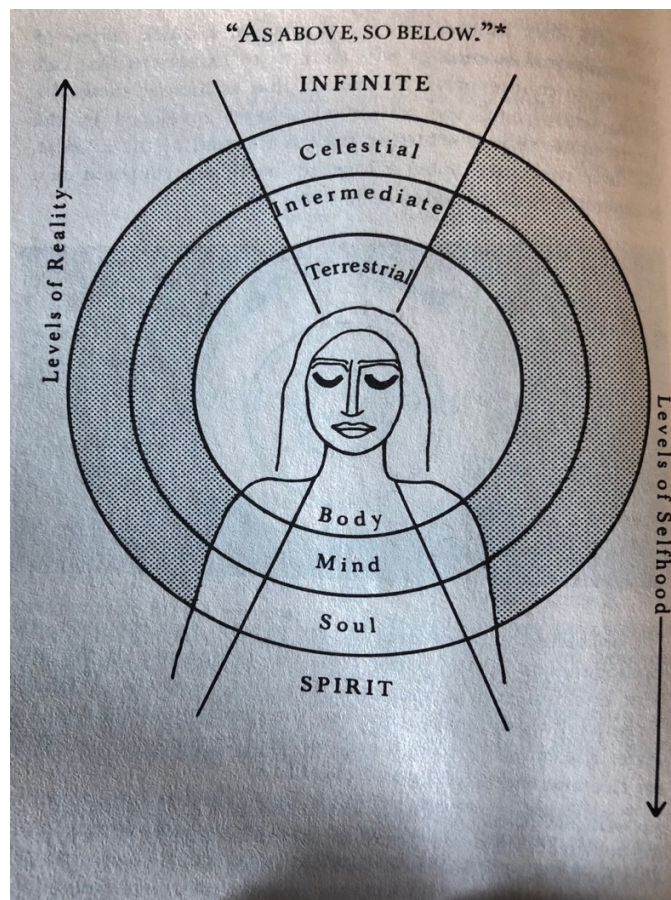
<sup>329</sup> Oldmeadow, Harry. *Frithjof Schuon and the Perennial Philosophy*. Bloomington: World Wisdom, 2010. P.112.

<sup>330</sup> Oldmeadow, Harry. *Frithjof Schuon*. P. 177.

<sup>331</sup> Cutsinger, James. *Advice to the Serious Seeker: Meditations on the Teaching of Frithjof Schuon*. Albany: State University of New York Press, 1997. P. 36

can be seen in the difference between dreaming and wakefulness or in the difference between drug induced states and sobriety. In any case, it would not be an overgeneralization to say that the loss of the concept of degrees of reality or the concomitant notion of transcendence is one of the central distinguishing features of the modern and postmodern periods. Today, people generally seem to understand quantitative comparisons as objective and factual and qualitative comparisons as subjective and aesthetic. This is not surprising since, science, which is primarily concerned with matter and therefore quantity, has established itself as the academic field dedicated to the ‘objective study of reality’.<sup>332</sup>

### Degrees of Reality<sup>333</sup>



<sup>332</sup> In this regard, see P. 95, footnote 221.

<sup>333</sup> Graphic from: Smith, Huston. *Forgotten Truth: The Common Vision of the World's Religions*. New York: HarperOne, 1992. P.62.

The doctrine of the degrees of reality begs the questions, ‘can humans know reality’? And if so, ‘how can they conform themselves to it’? This brings this study to Islamic Traditionalism’s understanding of human nature and the human-Divine relationship. This in turn, raises the issue of the ontological reality of God’s Names and Qualities and their role in transformation and virtue. Again, this is extremely important in terms of understanding the overlap and friction between Islam and contemporary secular-liberal human rights. This is because, as this study has continuously emphasized, rights are derived from a particular people’s understanding of reality and their orientation towards it.

The Quran describes the human condition in terms of a polarity. On the one hand, humans are the noblest of creatures (*ashraf al-makhluqaat*) that dwell on Earth with the ‘Spirit of God’ within them. In this regard, the Quran reads:

*Behold, thy Lord said to the angels: "I am about to create man from clay: "When I have fashioned him (in due proportion) and breathed into him of My spirit, fall ye down in obeisance unto him." (38:71-72)*

*We have honoured the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours, above a great part of our creation. (15:29)*

On the other hand however, The Qur’an also describes human as created from dust and inclined towards ingratitude, heedlessness and ignorance. In this regard, the Quran states:

*Among His Signs in this, that He created you from dust; and then,- behold, ye are men scattered  
(far and wide)! (30:20)*

*(It is) the promise of Allah. Never does Allah depart from His promise: but most men understand  
not. They know but the outer (things) in the life of this world: but of the End of things they are  
heedless. (30:6-7)*

*It is He Who has created for you (the faculties of) hearing, sight, feeling and understanding:  
little thanks it is ye give! And He has multiplied you through the earth, and to Him shall ye be  
gathered back. It is He Who gives life and death, and to Him (is due) the alternation of Night and  
Day: will ye not then understand? (23:78-80)*

Oliver Leaman argues that the concept of redemption has its basis in the Quran and is not, as some may argue, a ‘Christian reading’ of Islamic doctrines. In the regard, he writes:

It is often said that Islam believes that humankind is basically good and so there is no need for God to redeem us... However, the angels suggest that if humans were given their head, they would succumb to corruption and shed blood (2.30) ...[Moreover,] The Quran notes that Satan tempts the ‘Children of Adam’ (7.26-27), and describes us as feeble (4.28), despairing (11.9), unjust (14.34), quarrelsome (16.4) tyrannical (96.6) and lost (105.2)...The rather pessimistic conclusion to all this is that ‘Most men are not believers’ (12.103) ... [and] ‘If God were to punish humans for their wrongdoing, He would not leave a single creature’(16.61).<sup>334</sup>

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<sup>334</sup> Leaman, Oliver. “Sin” *The Quran: An Encyclopedia*. Ed. Leaman. New York: Routledge, 2006. P. 593.

In any case, this duality is captured by the general the Islamic intellectual tradition's view that humans have the potential to be better than angels or worse than animals. This is possible because God gave humans the gift of free will and therefore, they are the only creatures that can choose to obey or disobey God.<sup>335</sup> Schuon's poetry refers to these two human poles:

Most animals are horizontal, since  
Their homeland is not other than this Earth;  
But man's essential stance is vertical;  
Free will to choose Salvation proves his worth.<sup>336</sup>

Ali's constant admonitions also generally presuppose that duality and thus, free-will, are inherent to the human state. More specifically, however, a report attributed to the Imam reads:

*...Somebody asked Imam Ali whether they had been destined to fight... Imam Ali replied if by destiny you mean a compulsion through which we are forced to do a thing then it is not so. Had it been an obligation of that kind there would have been no question of reward for doing it and punishment for not doing it...then the promised blessings and punishments in life after death will have no meaning. The Merciful Lord has given his creatures (human beings) complete freedom to do as they like, and then prohibited them from certain actions and warned them of the consequences of such actions. These orders of Allah carry in them the least trouble and lead us towards the most convenient ways of life and the rewards which He has promised for good deeds are many times more than the actions actually deserve. He sees people disobeying Him and*

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<sup>335</sup> On the early debates concerning freewill and predestination, see chapter 8 in: Denny, Frederick M. *An Introduction to Islam*. 4<sup>th</sup> Ed. Routledge, 2016.

<sup>336</sup> Schuon, Frithjof. *Road to the Heart: Poems*. Bloomington: World Wisdom, 2003. P. 62.



*tolerates them not because He can be overruled or be compelled to accept human supremacy over Him. He did not send His prophets to amuse Himself or provide amusement for them. He did not reveal His orders without any genuine reason nor has He created the galaxies and the earth without any purpose... Hearing this the man asked Imam Ali, "Then what kind of destiny was it that we had?" Imam Ali replied: "It was an order of Allah to do it like the order He has given in His Holy Book: You are destined by Allah to worship none but Him, here 'destined' means 'ordered' it does not mean physical compulsion.*<sup>337</sup>

In terms of the two human poles, the Qur'an continuously instructs, warns and encourages humans to achieve their higher nature. In fact, *being* one's highest self is the purpose of life; it is the intended 'destination' for humanity. Hence, the doctrine of human duality and its consequences must be at the core of any Islamic concept of human rights and 'human flourishing'. Moreover, and therefore, concepts such as justice, freedom and equality must be understood, first and foremost, in relation to the Islamic goal of spiritual perfection.

The Quran also speaks about the relationship between God and humans in two ways. First and foremost, the human being is the servant of God (*abd-Allah*). According to the Quran, God assembled the children of Adam and asked them: 'Am I not your Lord?'. They testified in the affirmative and it is because of this testimony that human beings cannot plead ignorance on the Day of Judgment (*yawm al-qiyamah*). Of course, many people would generally question this perspective and claim that they do not remember anything of the sort. In response, Islamic Traditionalism, drawing on the Quran, places particular emphasis on the connection between

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<sup>337</sup> *The Nahj*. Saying number 78.

forgetfulness and evil and maintains that the Prophets, Scriptures and other signs of God (*ayat-Allah*) only operate to remind us of what we already know.<sup>338</sup> For example, the Quran says,

*Almost bursting with fury: Every time a Group is cast therein, its Keepers will ask, "Did no Warner come to you?" They will say: "Yes indeed; a Warner did come to us, but we rejected him and said, 'Allah never sent down any (Message): ye are nothing but an egregious delusion!'" They will further say: "Had we but listened or used our intelligence, we should not (now) be among the Companions of the Blazing Fire!" (67:8-10)<sup>339</sup>*

*And is it not enough for them that we have sent down to thee the Book which is rehearsed to them? Verily, in it is Mercy and a reminder to those who believe (29:51)*

*And who doth more wrong than one who is reminded of the Signs of his Lord, but turns away from them, forgetting the (deeds) which his hands have sent forth? Verily We have set veils over their hearts lest they should understand this, and over their ears, deafness, if thou callest them to guidance, even then will they never accept guidance. (18:57)*

This is why, throughout Islamic history, many Muslims have paid particular attention to the significance of the remembrance of God (*dhikr-Allah*). In this regard, Ali tells his listeners:

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<sup>338</sup> Shah-Kazemi, Reza. *Justice and Remembrance*. Pp. 150-151.

<sup>339</sup> Here, in line with Traditionalism, 'used our intelligence' refers to the human heart and its realization by way of remembrance.

*Increase your remembrance of Allah, for it is the best of remembrances, and desire what has been promised to those who live their lives fearing Him - for his Promise is the truest of promises...*<sup>340</sup>

*Perpetuate the dhikr, for truly it illumines the heart and it is the most excellent form of worship*<sup>341</sup>

This remembrance is at the center of all Islamic rituals from the five daily prayers to the yearly pilgrimage to Mecca. In any case, according to the Quranic narrative, humanity not only testified to the existence of God but also willingly accepted the ‘station of servanthood’. The verse of ‘The Trust’ reads:

*We did indeed offer the Trust to the Heavens and the Earth and the Mountains; but they refused to undertake it, being afraid thereof: but man undertook it;- He was indeed unjust and foolish; (With the result) that Allah has to punish the Hypocrites, men and women, and the Unbelievers, men and women, and Allah turns in Mercy to the Believers, men and women: for Allah is Oft-Forgiving, Most Merciful. (33:72-73)*

Although humans were ‘unjust and foolish’, God provided them with the ability to fulfill their trust and this leads us to the second relationship between God and humans; namely, that the latter are God’s representatives on earth (*khalifat-Allah*). The Quran explains this relationship through its narrative of the Prophet Adam, who is considered to be the prototype for humanity. According to the narrative, God breathed His Spirit into Adam and taught him the ‘name of things’:

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<sup>340</sup> As quoted in: Helminski, Camille, ed. *The Book of Character*. P. 9.

<sup>341</sup> Shah-Kazemi, Reza. *Justice and Remembrance*. P. 138.

*Behold, thy Lord said to the angels: "I am about to create man from clay:  
"When I have fashioned him (in due proportion) and breathed into him of My spirit, fall ye down  
in obeisance unto him." So the angels prostrated themselves, all of them together: Not so Iblis:  
he was haughty, and became one of those who reject Faith.*

(38:71-74)

In terms of 38:27, al-Tabari understands "My Spirit" as God's power, while others, such as al-Razi, maintain that the 'Spirit' refers to the creation of the human soul and moreover, since the 'Spirit' is 'of God', then the human soul is a heavenly, noble and holy faculty.<sup>342</sup> In terms of the 'name of things', the Quran reads:

*And He taught Adam the names of all things; then He placed them before the angels, and said:  
"Tell me the names of these if ye are right." They said: "Glory to Thee, of knowledge We have  
none, save what Thou Hast taught us: In truth it is Thou Who art perfect in knowledge and  
wisdom." He said: "O Adam! Tell them their names." When he had told them, Allah said: "Did I  
not tell you that I know the secrets of heaven and earth, and I know what ye reveal and what ye  
conceal?" (2:31-33)*

According to ibn al-Arabi:

Adam was capable of knowing all the Divine Names, unlike the angels who "did not possess the synthesis possessed by Adam and were not aware of the Divine Names by

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<sup>342</sup> Nasr, S.H., ed. *The Study Quran*. P. 1114.

which it [namely, Adam's synthetic reality] is set apart such that they could glorify the Real and proclaim him holy through them. Nor did they know that God possess names to whose knowledge they did not attain, not glorifying Him with them no proclaiming them Holy as did Adam". Thus, Adam could know God in ways that the angels could not.<sup>343</sup>

The narrative goes on to say that Iblis, that is, Satan, tempted Adam and Eve to eat from the 'forbidden tree' and in doing so, they were banished from heaven and sent down to Earth:

*In the result, they both ate of the tree, and so their nakedness appeared to them: they began to sew together, for their covering, leaves from the Garden: thus did Adam disobey his Lord, and allow himself to be seduced. But his Lord chose him (for His Grace): He turned to him, and gave him Guidance. He said: "Get ye down, both of you,- all together, from the Garden, with enmity one to another: but if, as is sure, there comes to you Guidance from Me, whosoever follows My Guidance, will not lose his way, nor fall into misery. (20:121-123)*

In the end, God forgave Adam and Eve, and assured them that he would send guidance to their 'children' and help whomsoever followed that guidance. Thus, human beings have the responsibility to follow God's guidance and fulfill their trust to represent God on Earth by living in submission to the Divine will. They are able to do this because of the 'Divine Breath' and their knowledge of Reality, that is, the 'Name of things.' In other words, humans have the responsibility to live in this world in accordance with truth and justice, and in doing so, live in peace and harmony. In this regard, the Quran reads:

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<sup>343</sup> Nasr, S.H., ed. et al. *The Study Quran*. P. 22.

*The word of thy Lord doth find its fulfilment in truth and in justice: None can change His words:  
for He is the one who heareth and knoweth all. (6:115)*

*The most beautiful names belong to Allah: so call on him by them; but shun such men as use  
profanity in his names: for what they do, they will soon be requited. Of those We have created are  
people who direct (others) with truth. And dispense justice therewith. Those who reject Our  
signs, We shall gradually visit with punishment, in ways they perceive not (7:180-182)*

Islamic Traditional thought generally maintains that the imperative to carry out the Divine will, that is, establish truth and justice, begins with one's self. This is because the human being is made of many parts – physical, psychological and spiritual – that need to be put in order. In this regard, Ali states:

*The intellect is a king and characteristics are its subjects, so if it is weak in governing them,  
disorder takes place.<sup>344</sup>*

*For those who put in order what is between them and God, God will put in order what is between  
them and other people.<sup>345</sup>*

The Divine imperative subsequently moves on to the basic family unit and then finally, to society at large. In this light, Nasr writes:

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<sup>344</sup> Haeri, Fadhlalla. *The Sayings and Wisdom of Imam Ali*. Chapter 6.

<sup>345</sup> Cleary, Thomas. *Living and Dying*. P. 71.

This trust from whose acceptance all of creation shied away, is precisely the burden of vicegerency of God on earth, of faith itself in its profoundest sense. To have accepted this trust means to have accepted freedom and also responsibility toward both God and all creatures. It means the freedom to transcend all degrees of existence and reach the Divine Presence even above the state of the angels, as Islamic texts assert.<sup>346</sup>

It is because of this two-fold relationship of servanthood and vice-regency that humans have control and power over their surroundings. From the Traditional School's point of view, many modern problems such as the large-scale destruction of the environment, stems from humanity's 'forgetfulness' of their duty to represent God on earth.<sup>347</sup> On the basis of this view, it can be argued that human responsibilities stem from the first and primary relationship, that is, servanthood, and rights stem from the second and corollary relationship, that is, vice-regency. The first principle, that is the 'principle of servanthood' is essential to the basic 'Muslim mentality' and the Muslims' understanding and orientation towards life. It is also this principle, as this study argues, that is one of the main causes for friction between Islam and the secular-liberal tradition in general, and Islam and international human rights in particular.<sup>348</sup>

Thus far, this chapter has pointed to the fact that Islamic Traditionalism understands God as the sole reality and the world as an illusionary and temporary place. For this reason, then, the Traditional School in general, and the Quran and Ali in particular, place primary importance on the concept of virtue and the 'transformation of the soul' in preparation for the hereafter. Thus, as this paper has argued, an Islamic human rights society is one that functions to allow Muslims to

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<sup>346</sup> Nasr, S.H. "Who is Man? The Perennial Answer of Islam" *The Sword of Gnosis*. Ed. Needleman. P. 209.

<sup>347</sup> In general, see: Nasr, S.H. *Man and Nature: The Spiritual Crisis in Modern Man*. Illinois: ABC International Group, 1997.

<sup>348</sup> Although Islamic Traditionalism tends to approach these issues from an 'esoteric' point of view, it also explains how these ideas are 'translated' into the common 'Muslim mentality'. For example, this study argues that many traditional Muslims – despite their varied understandings of Islam – believe in the Truth of revelation and prophecy, and ultimately see themselves as responsible to God for their beliefs and actions in this world.

achieve their purpose in life – to serve and represent God on Earth – and thereby, climb, in degrees, the ‘ladder of reality’.<sup>349</sup> This chapter now proceeds to look at these fundamental concepts in more detail. More specifically, it explores and elaborates on Traditionalism’s metaphysics of truth and justice and their implications in relation to freedom and equality.

Human beings play a central role in the cosmic drama precisely because of their ability to know reality and their duty to conform themselves as well as society to it. According to the Quran, objective Truth exists in the first place, because God refers to Himself as the Truth or Reality as such. For example:

*This is so, because Allah is the Reality: it is He Who gives life to the dead, and it is He Who has power over all things. (22:6)*

*Therefore exalted be Allah, the King, the Reality: there is no god but He, the Lord of the Throne of Honour! (23:116)*

*That is because God, He is the Truth, and whatsoever they call upon other than Him is false, and God is the Exalted, the Great (31:30)*

According to Husayn Tabatabai’s commentary on 31:30:

This verse is thus understood as an affirmation that God is the Ultimate Reality beyond and behind all of creation and that all of the things to which anyone ascribes ultimate

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<sup>349</sup> That is, to the extent that it is possible for each individual. As the Quran asserts: “On no soul doth Allah Place a burden greater than it can bear... (2:286)



power...are entirely dependent upon God, possessing no reality in and of themselves. God is the only reality or being that is necessary, while all other things are contingent.<sup>350</sup>

This view that God is Truth or Reality itself is further supported by Ali, and his answer to questions concerning the nature of God. He states:

*He is Allah, the Clear Truth, truer and clearer than the eyes perceive. The intellects cannot reach Him by any definition...and the imagination cannot reach Him by any evaluation. There is no beginning to His primacy and there is no end to His eternity. He is the First and the Eternal, and He is the Everlasting without end... He have all things limitations when He created them, so as to make it clear that He is not like them<sup>351</sup>*

In addition to the fact that that there is objective Truth, Islamic Traditionalists also maintain that it is possible for humans to know the Truth. This is seen, for example, in the following Quranic verses:

*And that those on whom knowledge has been bestowed may learn that the (Qur'an) is the truth from thy Lord, and that they may believe therein, and their hearts may be made humbly (open) to it: for verily Allah is the Guide of those who believe, to the Straight Way. (22:54)*

*And He taught Adam the names of all things; then He placed them before the angels, and said: "Tell me the names of these if ye are right." They said: "Glory to Thee, of knowledge We have*

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<sup>350</sup> Nasr, S.H., ed. et al. *The Study Quran*. P. 1007.

<sup>351</sup> Haeri, Fadhlalla. *The Sayings and Wisdom of Imam Ali*. Chapter one.

*none, save what Thou Hast taught us: In truth it is Thou Who art perfect in knowledge and wisdom." He said: "O Adam! Tell them their names." When he had told them, Allah said: "Did I not tell you that I know the secrets of heaven and earth, and I know what ye reveal and what ye conceal?" (2:31-33)<sup>352</sup>*

*In the Law of Equality there is (saving of) Life to you, o ye men of understanding; that ye may restrain yourselves. (2:179)*

According to *The Study Quran*'s commentary on verse 2:179, "men of understanding" literally translates into "possessors of the kernel", and thus, this verse uses symbolism in order to allude to the fact that true knowledge penetrates beyond outward forms and into the heart or inward reality of things.<sup>353</sup> Similarly, Ali, in his collection of sermons and sayings, also maintains that humans have the ability to possess objective knowledge, and moreover, that this knowledge comes by way of Divine grace and inspiration. He states:

*There are three sorts of people...A divinely inspired Knower; the person who is seeking...knowing along the path of salvation; and the riffraff and rabble, the followers of every screaming voice, those who bend with every wind, who have not sought to be illuminated by the Light of ...Knowing and who have not had recourse to a solid support.<sup>354</sup>*

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<sup>352</sup> For Ibn-Arabi's commentary on verse 2:31-33, see Pp. 146-147.

<sup>353</sup> Nasr, S.H., ed. et al. *The Study Quran*. P. 78.

<sup>354</sup> *The Nahj*. Saying number 147.

Thus, these verses and *hadith* clearly show that Truth or Reality exists and that humans have the ability to discern the Real from the relative. Moreover, it clearly shows that many Muslims place a great deal of importance on the Truth and cannot accept a theory of justice, that is, human rights, unless it is rooted in the Real.<sup>355</sup> In the modern world, the ability to know the truth is generally attributed to the mind and the human ability to reason and experience. This understanding gained prominence with the rise of modern movements, such as the Reformation and Enlightenment, and modern philosophies, such as Descartes' dualism and Spinoza's axioms. However, this point of view is alien to the Islamic intellectual tradition. According to the latter, the human ability to know the Truth is located at the 'center' of human being and needs to be 'awakened' by the theurgic power of religious acts and by the descent of Divine grace. The Qur'an refers to the 'center' of the human being and seat of Absolute knowledge as the 'Heart'.<sup>356</sup> For example:

*Do they not travel through the land, so that their hearts (and minds) may thus learn wisdom and their ears may thus learn to hear? Truly it is not their eyes that are blind, but their hearts which are in their breasts. (22:46)*<sup>357</sup>

*Nay, here are Signs self-evident in the hearts of those endowed with knowledge: and none but the unjust reject Our Signs. (29:49)*

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<sup>355</sup> In other words, in the Muslim world, there seems to be popular support for human rights in general; however, it also seems that specific human rights articles will continue to be problematic unless they are grounded in the Islamic Tradition and some of its truth claims. This argument is supported by the fact that alternative Islamic human rights models are always qualified by the condition that they do not violate the *shariah*. For example, see appendix C.

<sup>356</sup> According to Islamic Traditionalism, the ability to use one's reason is extremely important. Nevertheless, reason is understood as a 'secondary', 'derivative' or 'supportive' mode of knowing that needs to be 'grounded' in revelation and virtue. On this view, without this 'grounding', reason quickly descends into rationalization based on changing circumstances and sentimentalities.

<sup>357</sup> The translator's inclusion of the word 'mind' seems to be influenced by modern epistemological assumptions.

Imam Ali's words mirror the Quranic understanding of the 'knowing heart'. He states:

*Righteous struggle is of three types: the first thing to be overcome in this struggle is the hand, then the tongue, then the heart, Once the heart cannot recognize good or decry evil, it is upended and turned topsy-turvey.*<sup>358</sup>

*The eyes cannot perceive Him with the sense of sight, but the heart can perceive Him through the realities of trust...*<sup>359</sup>

According to Shiah's, Dua Kumayl is a supplication that Ali personally taught to his disciple, Kumayl ibn Ziyad Nakha'i. Here, while imploring God for forgiveness, the supplicant refers to the heart's 'knowledge of God' and its 'verification of Divinity'. The passage reads:

*...Can You see Yourself tormenting me with Your fire after I have professed Your Unity. And after the knowledge of You my heart has embraced, And the remembrance of You my tongue has constantly mentioned...Would that I knew, my Master; My God and my Protector. Whether You will give the Fire dominion over faces fallen down prostrate before Your tremendousness, ...And over hearts acknowledging Your Divinity through verification...*<sup>360</sup>

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<sup>358</sup> As Quoted in: Qutbuddin, Tahera. Ed and Trans. *A Treasury of Virtues and One Hundred Proverbs*. New York: New York University Press, 2013. P. 29.

<sup>359</sup> Haeri, Fadhlalla. *The Sayings and Wisdom of Imam Ali*. Chapter one.

<sup>360</sup> "Complete text of Du'a' Kumayl in Arabic with Transliteration and English Translation." Ahlul Bayt Digital Islamic Library Project. al-islam.org. 02 Sept. 2017.

According to Islamic Traditionalism the locus of the human being is the ‘inner Heart’. It is the ‘part’ of the human that knows wholly, certainly and intuitively. Thus, the inner Heart, functions to distinguish Reality from illusion, and therefore, it is a salvific ‘organ’. In other words, the Heart, being of a higher order than discursive reason and bodily senses, has the ability to comprehend the Divine Absolute. It allows humans to orient themselves in accordance with the Truth and the latter’s manifestation throughout different levels of creation. Writing from this perspective, Lakhani points out that

... Truth, being of a universal order, is inscribed within our deepest selves - that within us which is transcendent and universal, our primordial nature, the core of our very being.... The faculty which is capable of discerning reality in its more subtle nature... [is] the transcendent faculty of the supra-rational Intellect, the core of our discerning self...<sup>361</sup>

And in the same light, Guenon connects the intellect with metaphysics and writes:

Metaphysic is a supra-rational, intuitive and immediate knowledge... There is an intellectual intuition and a sensory intuition; one is above reason, but the other is below it; this latter can only grasp the world of change and becoming, namely, nature, or rather an inappreciable part of nature. The domain of intellectual intuition, by contrast is the world of eternal and immutable principles, to is the domain of the metaphysic<sup>362</sup>

As mentioned, this type of knowledge – which is the duty and right of every human – is a product of religious acts and Divine grace. In the Islamic tradition, this includes both acts of worship (*ibadaat*) and interactions with others (*muamulaat*). Islamic rituals and laws of conduct

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<sup>361</sup> Lakhani, Ali M. “The Metaphysics of Human Governance” *The Sacred Foundations*. Ed. Lakhani. P. 6.

<sup>362</sup> Perry, Whitall N. A *Treasury of Traditional Wisdom*. P. 733.

are especially ‘valid’ to the extent they are transformative and able to re-awaken the human heart and its ‘memory’. This awakened state, in turn, allows humans to return to their primordial, virtuous and theomorphic selves (*insaan al-kamil*). This is possible because the inner Heart is essentially human and Divine in essence; therefore, it is the place where the knower and the known converge. In other words, knowledge of the heart is inseparable from being itself; one cannot know God without knowing and therefore, being one’s divine self. Chittick distinguishes between outward and inward knowledge by writing:

...Intellectual knowledge...is achieved by *tahqiq*, which is to know things by verifying and realizing their truth and reality for oneself. One cannot verify the...reality of things without knowing them...in one’s own soul. ...If knowledge is based on the words of the “authorities” or “experts,” it is not realized knowledge, but imitative knowledge [that is, *taqlid*].<sup>363</sup>

On this journey of realization or *tahqiq*, Ali provides much counsel:

*Whoever remembers Allah, glory be to Him, Allah enlivens his heart and illuminates his intellect and the innermost core of his heart.*<sup>364</sup>

*Perpetuate the dhikr; for truly it illuminates the heart and is the most excellent form of worship.*<sup>365</sup>

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<sup>363</sup> Chittick, William C. *Science of the Cosmos*. P. 22.

<sup>364</sup> Rayshahri, Muhammadi M. *The Scale of Wisdom: A Compendium of Shi’a Hadith*. Ed. Bilingual. London: ICAS Press. P. 412.

<sup>365</sup> As quoted in: Shah-Kazemi, Reza. *Justice and Remembrance* P.138.

*Everyone who lacks self-restraint and piety will have a dead heart; whoever have a dead heart will enter inside the Hell.*<sup>366</sup>

Thus, Islamic Traditionalists, based on their spiritual epistemology, maintain that there is objective knowledge; God's names and qualities, such as the Truth, are not mental concepts but rather, they are knowable and therefore, realizable, ontological realities. For example, *The Study Quran's* commentary on verse 7:180, which encourages the faithful to call on God by His most beautiful names, states:

...Each Name is understood to possess a real Divine Presence or Quality, for as al-Tabrisi notes there are no empty titles for God. In fact, in Islamic metaphysics, the whole of the cosmos is considered to be in reality nothing but reflection or theophanies (*tajalliyat*) of the Divine Names and Qualities... [Moreover] in Islamic esoterism, God and His Names are considered one. God is understood to be present in His sanctified Names, each of which is a ladder leading to Him.<sup>367</sup>

The discussion of Truth inevitably brings up the question of justice. *The Universal Declaration* was largely constructed by circumscribing questions concerning the fundamental nature of reality. However, according to the Quran and Ali, the twin realities of truth and justice are inseparable from one another. This is because justice is derived from truth and therefore, the former draws its justification and authority from the latter. For example, verses 7:159 and 7:181 describe groups of people who carry out justice on the basis of truth. The verses read:

*Of the people of Moses there is a section who guide and do justice in the light of truth (7:159)*

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<sup>366</sup> *The Nahj*. Number 324.

<sup>367</sup> Nasr, S.H., ed. et al. *The Study Quran*. P.472.

*Of those We have created are people who direct (others) with truth. And dispense justice therewith. (7:181)*

Similarly, Ali explains justice as based on, and derived from, knowledge. He states,

*Justice is also based on four disciplines: immersion in understanding, penetration of knowledge, brightness in judgment, and firm establishment of thoughtfulness. For one who understands knows with penetrating knowledge, and one who knows with penetrating knowledge proceeds judiciously from the start. And one who is thoughtful has not been negligent of his trust and lives a benign life among the people.* <sup>368</sup>

According to Islamic Traditionalism, justice is an act of the human will; it is the act of conforming – in perfect equilibrium – to Reality. In other words, it is realizing one’s primordial state (*fitrah*) and therefore, mirroring the rest of creation in its total submission. Shah-Kazemi connects human intellect/knowledge with the human will/justice by writing:

Being true to one’s intellect...is tantamount to being ‘spiritual’. For Imam Ali, the ‘true intellectual’...is one who not only *thinks* correctly but also *acts* ethically, and, at the deepest level, one who seeks to *realize* the ultimate Reality. The intellectual is defined by one who ‘puts all things in their proper place.’... Only the true intellectual can, therefore, be fully just, for only one who sees things as they truly are is able to put them in their right place. Thought, action and realization are all the concern of the true intellectual.<sup>369</sup>

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<sup>368</sup> *The Nahj*. Saying number 31.

<sup>369</sup> Kazemi. *Justice and Remembrance*. P. 35.



According to the Quran, God's creation is manifested in complete balance on the different existential planes of the cosmos. For example, the following verses state:

*And the earth We have spread out (like a carpet); set thereon mountains firm and immovable; and produced therein all kinds of things in due balance. (15:19)*

*And the Firmament has He raised high, and He has set up the balance (of Justice). In order that ye may not transgress (due) balance. So establish weight with justice and fall not short in the balance. (55:07-09)*

*Allah is He Who raised the heavens without any pillars that ye can see; is firmly established on the throne (of authority); He has subjected the sun and the moon (to his Law)! Each one runs (its course) for a term appointed. He doth regulate all affairs, explaining the signs in detail, that ye may believe with certainty in the meeting with your Lord (13:02)*

*He Who created the seven heavens one above another: No want of proportion wilt thou see in the Creation of (allah) Most Gracious. So turn thy vision again: seest thou any flaw? again turn thy vision a second time: (thy) vision will come back to thee dull and discomfited, in a state worn out. (67:03-04)*

According to the Traditional School, harmony or balance is the imprint of God's absolute unity on His infinite exteriorization.<sup>370</sup> In relation to individuals then, the purpose of existence is to know the truth (intellect) and to conform to the latter (will) by way of establishing the Divine order within one's self. In relation to human collectivities, this goal is extended, and includes the imperative to establish harmonious societies based on the 'nature of things'. According to the Quran, Moses speaks to Pharaoh and explains God as 'the Truth leading to justice':

*...(Pharaoh) said: "Who, then, O Moses, is the Lord of you two?" He said: "Our Lord is He Who gave to each (created) thing its form and nature, and further, gave (it) guidance." (20:49-50)*

In a similar light, the following verses read:

*So set thou thy face steadily and truly to the Faith: (establish) Allah's handiwork according to the pattern on which He has made mankind: no change (let there be) in the work (wrought) by Allah: that is the standard Religion: but most among mankind understand not. (30:30)*

*And there is not a thing but its (sources and) treasures (inexhaustible) are with Us; but We only send down thereof in due and ascertainable measures. And We have provided therein means of subsistence, - for you and for those for whose sustenance ye are not responsible. (15:20-21)*

*The Study Quran's* commentary on 15:21, states "Many Islamic thinkers...have conceived of the *treasuries* metaphysically as the archetypes or unmanifested essences of all things in God's

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<sup>370</sup> Nasr, S.H. *The Heart of Islam*. P. 243.

Knowledge”<sup>371</sup> In line with the Quran, Ali also describes justice in terms of knowledge, nature and harmony. He says:

*Justice puts things in their places.*<sup>372</sup>

*As soon as things came into existence, every one of them was allotted properties and their place in nature...Thus every creature and very object had a place permanently fixed, was assigned position in nature which none can change.*<sup>373</sup>

*Be informed that people consist of classes who prosper only with the help of one another and they are not independent of one another...Allah has fixed the share of each one of them and laid down His precepts about the limits of each in His Book (Holy Quran) and in the Sunnah of His Prophet by way of a settlement which is preserved with us.*<sup>374</sup>

The school of Islamic Traditionalism envisions God and the world as a synthesis of polarities.<sup>375</sup> In relation to God, these polarities are captured in the traditional categorization of the Divine names. That is, the names of Immanence and Transcendence or, in a different formulation, the names of Beauty and Majesty. Of course, it is important to note that this ‘polarity’ only exists in God at the level of being – that is, at the level of human knowledge of

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<sup>371</sup> Nasr, S.H., ed et al. *The Study Quran*. P. 645. Also see *The Study Quran* and its commentary on the verse, “Truly we have created everything according to measure” (54:49) P.1307.

<sup>372</sup> Cleary, Thomas. *Living and Dying*. P.64.

<sup>373</sup> As quoted in: Lakhani, Ali M. *The Sacred Foundations*. P.18.

<sup>374</sup> *The Nahj*. P. 795.

<sup>375</sup> Chittick, William C. *The Sufi Path of Knowledge: Ibn Al-Arabi's Metaphysics of Imagination*. State University of New York press, 1989. Pp. 286-288.

God. At the level of beyond-being, God's is complete and absolute unity. In this regard, Nasr writes:

From the metaphysical point of view it can be said that the Divine Nature is one and completely itself. It has in fact no parts that need to be put in their appropriate place though justice. If justice means to place everything in its place according to its nature and in following Divine cosmic and human laws, the Divine Nature is pure justice in the highest sense, being the One without any parts which could be out of place and needing justice according to their nature to return to their appropriate state.<sup>376</sup>

On the level of being, God is understood as both merciful and just, apparent and hidden, beautiful and majestic etc. Humans – created as theomorphic beings – also ‘put things in their right place’ by ‘being’ a synthesis of *both* sets of Divine names.<sup>377</sup> A virtuous heart then, is a heart that knows God, and thereby, reflects His Names and Qualities in proper measure. Of course, there are many virtues, however, Islamic Traditionalists separate them into three overarching categories from which all other virtues can be derived. These are the three virtues of humility, charity and veracity.<sup>378</sup> Humility means to know oneself as a created being that is nothing before God; charity means to love one's neighbor and transcend the dichotomy of self and other; and finally, truthfulness means to love the Truth to the extent that the former two virtues are based in objective reality and don't trespass into subjective excessiveness. According to Schuon's explanation of the three spiritual virtues:

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<sup>376</sup> Nasr, S.H. “Introduction” *The Sacred Foundations*. Ed. Lakhani. P.1.

<sup>377</sup> Traditional Islamic thought emphasizes that some Names of God, such as the Holy (*al-Quddus*) are restricted to God alone.

<sup>378</sup> Schuon, Frithjof. *Spiritual Perspectives and Human Facts: A New Translation with Selected Letters*. Ed. Cutsinger. Bloomington: World Wisdom, 2007. Pp. 181-228

Humility means looking at oneself in the limiting state of individuation; it means turning one's gaze on the ego, limitation, nothingness. Charity means looking around oneself: it means seeing God in one's neighbor and also seeing oneself there, though this time not as pure limitation but as a creature of God made in His image. Veracity means looking toward Truth, submitting and attaching oneself to it, and becoming penetrated by its implacable light. Each of the three virtues must be found again in the others; they are the criteria of one another.<sup>379</sup>

According to the Quran, God manifests different Names and Qualities depending on His absolute knowledge as well as the particular circumstances of any given situation. For example, at times, God turns towards His creatures in mercy and at other times, He turns towards them in judgement:

*But ye turned back thereafter: Had it not been for the Grace and mercy of Allah to you, ye had surely been among the lost. (2:64)*

*(their plight will be) no better than that of the people of Pharaoh, and their predecessors: They denied our Signs, and Allah called them to account for their sins. for Allah is strict in punishment. (3:11)*

These differences are the result of the fact that morality operates on the terrestrial plane and thus, it must take into account the latter's relative and ephemeral nature. Similarly, a virtuous heart functions as a microcosmic Divine guide that allows one to act in truth and justice in a world of

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<sup>379</sup> Schuon, Frithjof. *Spiritual Perspectives*. Ed. Cutsinger. P.184.

change and becoming. In other words, it is virtue that gives morality its transcendent authority and its ability to correctly judge between right and wrong. If there is no virtue, then morals are cut from their heavenly source and laws simply become constructed moralities based on sentiment with no ground in objective truth. This is why Leaman states that, “Character pertains...to the innate motivation and virtues of the soul and is a guide to moral conduct.”<sup>380</sup> It is also why Tage Lindbom states:

Virtue stands thus “midway” between God and moral imperatives. It is virtue...that gives men their scale of moral values and their standards of behavior, and virtue must take precedence over morality, defining and determining it. But it is not...an outward ordinance of acts and attitudes. Its life is an inward one... In this sense, virtue is ontological reintegration, not the product of subjective aspirations.<sup>381</sup>

Thus, according to the Islamic intellectual thought, *both* virtue and revelation, work together to decide the right course of action in any particular situation.<sup>382</sup> In the words of Schuon:

...there are two poles for the manifestation of Divine Wisdom and they are: firstly, the Revelation “above us” and secondly, the Intellect “within us”; the Revelation provides the symbols while the Intellect deciphers them and “recollects” their content... Revelation is an unfolding and Intellect a concentration; the descent coincides with the ascent.<sup>383</sup>

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<sup>380</sup> Leaman, Oliver. “Character” *The Quran: An Encyclopedia*. Ed. Leaman. P.139.

<sup>381</sup> Lindbom, Tage. “Virtue and Morality” *The Underlying Religion*. Ed. Lings and Minnaar. P. 286.

<sup>382</sup> According to Islamic Traditionalists, virtue is not a substitution for Revelation in general and Islamic law in particular. Rather, Islamic law and virtue are self-reflexive, that is, they reinforce and orient each other.

<sup>383</sup> Schuon, Frithjof. *Understanding Islam*. P.48.

According to this perspective then, today's 'religious moralities' generally make the error of assuming moral laws are absolute and universal. On the other hand, today's 'secular moralities' generally make the error of ignoring the Absolute principles behind laws.<sup>384</sup> The former leads to religious dogmatism and the latter leads to secular relativity. Schuon's poetry reads:

One Should not confuse true virtue  
With morality —purely outward acts  
That change with land and custom,  
And do not transform the substance of the soul.

Virtue is inward — it resides in the nature  
Of things; its values are the same  
From people to people, and in every religion;  
Humility magnanimity and devotion are the paths

That lead from the earthly world to heaven<sup>385</sup>

In conclusion, the traditional Islamic intellectual tradition maintains that God and His Divine names are not theoretical abstractions, but rather, they are objective realities. Moreover, it argues that the goal of human existence is the attainment of a virtuous heart, that is, a heart that knows and therefore embodies and reflects the Divine Names in due measure. On this account, justice is the application of truth – known by revelation and virtue – in light of the 'nature of things'. It is important to note that many people are not 'naturally inclined' to pursue the goal of

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<sup>384</sup> Both the Traditional and Progressive School would agree with this statement in general. However, they would disagree concerning what is absolute and universal and what is relative and contingent.

<sup>385</sup> Schuon, Frithjof. *Songs without Names*: Volumes I-VI. Bloomington: World Wisdom, 2006. P.279.

human perfection. Nonetheless, the point remains: most Muslims generally believe in the truth of revelation and understand that they are ultimately responsible to God for their beliefs and actions. As the next chapter demonstrates, this particular Muslim understanding of life is sometimes at odds with the secular-liberal conception of human rights. This is because the latter situates truth on the level of justice by primarily focusing on moral theory and the liberal ideologies of rights, freedom, and equality.



## CHAPTER FIVE

### Traditional Virtue Theory and its Implication for Human Rights

#### Introduction

This final chapter engages in a critical discussion concerning the general implications of Islamic virtue ethics in the area of human rights. This is followed by some introductory remarks concerning the specific issues of Islamic law, religious pluralism, the penal code and gender. First however, it is important to reiterate why it is important to understand ‘Islamic Traditionalism’ even though traditional societies – largely due to colonization and globalization – no longer exist today. First, the traditional Islamic worldview, that is, basic ways of understanding the world, which has characterized Islamic civilizations for over a thousand years, is still a part of the ‘Muslim mentality’ today. Thus, Muslims are generally more inclined to adopt ‘new’ concepts if they understand them as part and parcel of their religious heritage. Second, the de-secularization of some societies and rise of so-called ‘Islamism’ means the possibility of an Islamic nation-state that is, at least to some extent, structured in accordance with traditional socio-legal and political norms. According to Adis Duderija, The concept “of Islamism (*islamiyyun/islamiyyin*)...emerged in the context of a modern, postcolonial nation-state in the Muslim majority world [and]... refers to political movements who oppose the authoritarian "secular" political establishments in the Middle East on the basis of some kind of "Islamisation" of society platform.<sup>386</sup> Duderija goes on to argue in favors of a ‘progressive Islamism’, that is, a

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<sup>386</sup> Duderija, Adis. “Why I am a Progressive Islamist” ABC Religion and Ethics. abc.net.au. 10 March 2018.

form of political Islam that is based on progressive ideals. That is, one that is “cosmopolitan in outlook, embraces constitutional democracy and contemporary ideas on human rights, gender equality and vibrant civil society”<sup>387</sup>

According to Islamic Traditionalists, the foundation or objective reality of everything, including human rights, is God. More specifically, it is God as He has revealed Himself in the Quran, and also, albeit secondarily, in nature and humanity itself. This is why the *Universal Islamic Declaration* begins by stating:

Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered.<sup>388</sup>

This is important because it means that rights exist by way of sovereign authority and are not a set of constructed and sentimental moralities that change in accordance with circumstance. Rather, as this study argues, they should be based on the perennial principles of a sacred text and the knowledge of a virtuous heart. These principles, which can be found in virtually every religious tradition, have grounded and guided human collectivities for thousands of years.

### Human Rights and the Principle of Servanthood

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<sup>387</sup> Duderija, Adis. “Why I am a Progressive Islamist” ABC Religion and Ethics. abc.net.au. 10 March 2018.

<sup>388</sup> See Appendix C.

The way in which people understand reality and their relationship to it determines their existential orientation in general and their understanding of human rights and its concomitant ideologies in particular. Chapter four argues that, according to the Islamic Traditionalism, many Muslims primarily see themselves as servants of God and therefore, responsible to Him and the Divine law. It is only on the basis of this servanthood (*'abd-allah*), that Muslims understand themselves as representatives of God on Earth and in this respect, entitled to certain human rights. This 'principle of servanthood' — in its numerous iterations — is ingrained in the basic Muslim consciousness, and it is the reason for much of the tension with the secular-liberal understanding of human rights, and the latter's emphasis on justice as individual freedom and equality.

The first and most obvious implication of the principle of servanthood is that Muslim Traditionalists believe that the contemporary focus on human *rights* is misguided. This is because it ignores or pays little attention to the reason for existence itself; namely, the duty or responsibility to worship God in the deepest sense of the word. The Qur'an states:

*But teach (thy Message) for teaching benefits the Believers. I have only created Jinns and men, that they may serve Me. No Sustenance do I require of them, nor do I require that they should feed Me. (51:55-57)*

*And remember We took a covenant from the Children of Israel (to this effect): worship none but Allah; treat with kindness your parents and kindred, and orphans and those in need; speak fair to the people; be steadfast in prayer; and practice regular charity. Then did ye turn back, except a few among you, and ye backslide (even now). (02:83)*

*Did I not enjoin on you, O ye Children of Adam, that ye should not worship Satan; for that he was to you an enemy avowed?-"And that ye should worship Me, (for that) this was the Straight Way? "But he did lead astray a great multitude of you. Did ye not, then, understand? (36:60-62)*

Umar al-Zamakhshari (d.1144) argues that verse 51:56

points to the purpose for which human beings were created, even if most of them do not fulfil this function. From this perspective, God only created human beings to worship Him by choosing to worship freely and not being constrained to do it, because He created them as contingent beings...<sup>389</sup>

Similarly, *The Study Quran* notes that the terms ‘enjoin’ in verse 36:60 has the same root as ‘*ahd*’ meaning ‘vow’ or ‘covenant’ and therefore , “it relates to the covenant that all human beings made with God before coming into this world, for in acknowledging that God is their Lord, they acknowledge only He is worthy of worship”<sup>390</sup> In any case, these type of verses show that faith and responsibility towards God and therefore, his creatures, are at the core of the Muslim understanding of the purpose of life. This is also why most of Ali’s sermons begin by reminding his listeners to remember God and fulfill their duty to Him. For instance, in the Imam’s correspondence with Malik al-Ashtar, Ali reminds the governor that his attitude and behavior towards his subjects should be determined by the remembrance of God, and in particular, remembrance that ultimately, all “power and majesty” belongs to God alone:

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<sup>389</sup> Nasr, S.H., ed. et al. *The Study Quran*. P.1280.

<sup>390</sup> Nasr, S.H., ed. et al. *The Study Quran*. P.1080.

*Do not say: "I am your overlord and dictator, and that you should, therefore, bow to my commands", as that will corrupt your heart, weaken your faith in religion and create disorder in the state. Should you be elated by power, ever feel in your mind the slightest symptoms of pride and arrogance, then look at the power and majesty of the Divine governance of the Universe over which you have absolutely no control. It will restore the sense of balance to your wayward intelligence and give you the sense of calmness and affability. Beware! Never put yourself against the majesty and grandeur of God and never imitate His omnipotence; for God has brought low every rebel of God and every tyrant of man. Let your mind respect through your actions the rights of God and the rights of man, and likewise, persuade your companions and relations to do likewise. For, otherwise, you will be doing injustice to yourself and injustice to humanity. Thus both man and God will turn unto your enemies. There is no hearing anywhere for one who makes an enemy of God himself. He will be regarded as one at war with God until he feels contrition and seeks forgiveness. Nothing deprives man of divine blessings or excites divine wrath against him more easily than cruelty. Hence it is, that God listens to the voice of the oppressed and waylays the oppressor.<sup>391</sup>*

Accordingly, any theory of human rights in Islam needs to be understood and formulated as a theory of human responsibilities. This study argues that this is the only way that it will be accepted by most Muslims as an integral part of their own intellectual heritage as a whole. Moreover, it is important to point out that this perspective is not alien to the modern world for two reasons. First, it is because every duty entails a right and vice versa; they are two sides of the

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<sup>391</sup> *The Nahj*. Letter number 52.

same coin.<sup>392</sup> For example, the duty to respect others corresponds to the human right to dignity and the duty not to take a life corresponds with the human right to life. Second, in practice, secular nation-states enforce a number of laws wherein responsibilities precede rights. In this regard Nasr, writes:

...Even in the modern West, in many cases responsibilities precede rights. For example, we have to be responsible drivers before we are given the right to drive on public roads and we have to accept the responsibility of mastering the laws of the land before being given the right to practice law. *In Islam, this relationship is not a matter of expediency, but of principle, and its acceptance dominates the cultural and intellectual landscape.*<sup>393</sup>

Some human rights theorists disagree with the existence of a correlative relationship between duties and rights; however, this argument seems to be more so a matter of semantics than facts.<sup>394</sup> Moreover, as Alison Renteln points out, establishing this relationship is important insofar as it allows international human rights to be more flexible and inclusive. She writes:

The importance of demonstrating the logical correlativity of rights and duties does not lie so much in any explanatory power it has for Western human rights theories, but rather in the flexibility it affords the formulation of international human rights standards. Correlativity is crucial because it means that the framing of moral claims in terms other than rights is not necessarily problematic. The recognition of an obligation may well signify the presence of an implicit right.<sup>395</sup>

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<sup>392</sup> This is known as the ‘logical correlativity doctrine’. In general, see: Renteln, Alison D. “The Concept of Human Rights”.

<sup>393</sup> Nasr, S.H. *Heart of Islam*. P.278. Emphasis added.

<sup>394</sup> For example, see: Hohfeld, Wesley N. *Fundamental Legal Conceptions*. New Haven: Yale University Press, 1964.

<sup>395</sup> Renteln, Alison D. “The Concept of Human Rights”.

Thus, many Muslims feel at odds with any theory of justice that does not consider one's duty towards God as central and is solely focused on expounding all the 'rights' that humans are owed. On the other hand, the notion of duty or responsibility is already part of the Muslim intellectual orientation and needs to be applied in order to further the cause of justice and peace in Muslim societies.

Another implication of the Islamic 'principle of servanthood' is that it is at odds with the contemporary emphasis on the right to liberty. Of course, the Islamic tradition, both in theory and practice, has allowed for individual freedoms and distinguished between private and public acts. Thus, the issue is not about freedom in general, but rather, it is about the type of freedom that is being emphasized. According to Muslim traditionalists, human rights' over-emphasis on the liberal understanding of freedom misses the point of existence. This is because, according to the Islamic intellectual tradition, freedom is not primarily an extrinsic quality but rather, it is an intrinsic virtue. In other words, freedom can be perceived in one of two ways. The first is outward; it is the freedom from bondage from the 'other' and the second is inward; it is freedom from the bondage of the Egoic self. In Lord Northbourne's words', "we can aspire to freedom *for* our terrestrial nature, or we can aspire to freedom *from* our terrestrial nature".<sup>396</sup> According to Islamic Traditionalism, it is liberation from the Egoic self that is of the utmost importance because it is this type of freedom that is Absolute in nature and hence, mirrors its Divine form. According to Lings:

The desire for freedom is above all the desire for God, Absolute Freedom being an essential aspect of Divinity...It was clearly above all to this freedom that Christ referred

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<sup>396</sup> Northbourne, Lord. *Looking Back on Progress*. New York: Sophia Perennis, 2001. P. 5.

when He said: ‘Get knowledge, for knowledge will make you free’, inasmuch direct knowledge, Gnosis, means union with the object of knowledge, that is, with God.<sup>397</sup>

Of course, some may object on the basis that an individual must be free from external restrictions in order to overcome the oppressive nature of the ego. However, this is only a partial truth because, one needs certain external ‘constraints’, such as Divine laws and rites, to actualize freedom on the spiritual plane. It is in this light that verses such as 5:6 can be understood:

*...Allah doth not wish to place you in a difficulty, but to make you clean, and to complete his favour to you, that ye may be grateful. (5:6)*

On the other hand, outward liberty is somewhat of myth, because there is no way to completely escape from the ties of a relational and relative world. According to Northbourne:

Progress achieved towards the satisfaction of terrestrial needs, desires and fancies contributes nothing by itself towards inward freedom; on the contrary, when pursued beyond what is necessary, it tends more and more to supplant and to suppress the search for inward freedom, thereby defeating its own ends.<sup>398</sup>

In the same light, Ali also emphasizes and gives primary importance to internal freedom, that is, freedom from one’s own ‘lower’ self:<sup>399</sup>

*The Strongest people are those who are strongest against their own souls.*

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<sup>397</sup> Lings, Martin. *Ancient Beliefs*. Pp. 40-41.

<sup>398</sup> Northbourne, Lord. *Looking Back*. P. 5.

<sup>399</sup> The following two quotes can be found in: Shah-Kazemi. *Justice and Remembrance*. P. 40.



*The ultimate battle is that of a man against his own soul*

*Truly, one who fights his own soul, in obedience to God and does not sin against Him, has the rank of the righteous martyr in God's eyes.*

Thus, first and foremost, the human right to freedom needs to be understood from its metaphysical perspective, that is, intrinsically. This is because transcendence towards Absolute liberty is the purpose of human existence; it is both a human duty and right. In this light, it is necessary for an Islamic human rights theory to place certain religious restraints on individual liberty. According to the secular-liberal tradition, these restraints exist at the point where the 'other' begins; from the Traditional Islamic perspective, they exist from the outset, that is, at the point where the 'self' begins. Of course, enforcing these religious restraints is generally an individual's prerogative. Nevertheless, the point remains: the over-emphasis on the secular-liberal understanding of freedom is alien to the traditional Muslim's cultural and intellectual orientation. It is 'inward freedom' that is central to the Quran's and Islamic intellectual tradition's spiritual ethos.

Another space of friction between the Islamic 'principle of servanthood' and contemporary human rights lies with the liberal conception of equality. The Islamic intellectual tradition, much like in the case of freedom, has always emphasized the divine dimension of equality over its terrestrial one. From the metaphysical perspective, equality is considered to be "the need to be adequate once more to the Divine Presence".<sup>400</sup> According to Lings, it is "...the greatest of all Mysteries [and] is expressed in Islam in the words: Neither My earth no My heaven hath room

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<sup>400</sup> Lings, Martin. *Ancient Beliefs*. P. 43.

for Me, but the heart of my believing servants hath room for me”<sup>401</sup> Similarly, Nasr writes that in an Islamic society, equality exists to the extent that

All...are priests and stand equally before God as his vice-gerents on earth. But he who is more able to realize his real nature and function is qualitatively superior to one for whom being in the human state is only accidental. The equality of [humans] is not in their qualities...but in the fact that for all...the possibility of realizing their theomorphic nature and fulfilling the purpose of human existence is ever present.<sup>402</sup>

Thus, equality is the human potential, insofar as humans contain the ‘Divine Breath’, to mirror the Absolute Names and Qualities. In other words, it is to become God-like. Again, from the traditional Islamic perspective, this is the purpose of human existence and therefore, it is a human duty and right. Hence, it must form the foundation of an Islamic theory of human rights. Furthermore, the spiritual understanding of equality is closely related to justice and the Divine balance (*mizan*). From the traditional Islamic point of view, liberal equality ignores the ‘Divine balance’ and thereby, tends towards reducing things to their lowest common denominator. In other words, it ignores the Quranic view that God “hath created...and gave order and proportion.”<sup>403</sup> and it also ignores Ali’s words that “justice puts things in their place”<sup>404</sup> According to Islamic Traditionalism, people have different natures, and therefore, different divine ‘callings’. On this view, hierarchal structures are a precondition for balance and harmony and do not necessarily lead to oppression.<sup>405</sup> According to Traditionalists, it is the loss of hierarchy – based

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<sup>401</sup> Lings, Martin. *Ancient Beliefs*. P. 43.

<sup>402</sup> Nasr, S.H. *Ideals and Realities*. P. 104.

<sup>403</sup> Q. 87:2.

<sup>404</sup> Cleary, Thomas. *Living and Dying*. P.64.

<sup>405</sup> This is not to dismiss the undeniable fact that many Muslim women have been victims of hierarchical power structures that have oppressed, silenced and marginalized them.

on Divine archetypes and human ‘talents’ – that has resulted in the loss of balance and harmony and is therefore responsible for the disorder and chaos in the Modern world. To reiterate, Guenon states:

...Under the present state of affairs in the Western world, nobody any longer occupies the place that he should normally occupy by virtue of his own nature... Since the undertaking of a function, no matter of what sort, is no longer dictated by any legitimate rule, the inevitable result is that each person finds himself obliged to do whatever kind of work he can get, often that for which he is the least qualified... It is the negation of these differences, bringing with it the whole negation of all social hierarchy, that is the cause of this whole disorder...<sup>406</sup>

This study’s discussion of the Quranic principle of ‘servanthood’ clearly demonstrates why there is friction between the basic Muslim mentality and the modern conception of human rights. For most Muslims, any theory of justice, that is, human rights, must be rooted in God’s revelation, and expounded in light Islam’s principle imperative, that is, submission to the Divine will in all of its consequences. In other words, according to the Islamic intellectual tradition, any concept of human rights and human flourishing must take into account, first and foremost, the concept of the ‘inner human’, virtue, and the goal of self-realization. This means that the existing friction with human rights is not about the concepts of freedom and equality as such; rather, the friction is about the primary and exclusive emphasis on a particular understanding of freedom and equality. From the Traditional Islamic perspective, all social norms and laws are valid ‘rights’ insofar as they allow humans to achieve their purpose of existence. Of course, many Muslims have and will continue to fall short of this ideal. However, it is a matter of degrees; the

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<sup>406</sup> Guenon, Rene. *The Crisis*. P. 70.

closer one is to self-realization, the closer one is to a harmonious self, family and society. Moreover, the secular space is not a vacuum. It is always filled with a system of beliefs that influences human states and dispositions. Thus, this study argues that a society is ‘un-Islamic’ to the extent that it is centrifugal, this is, it draws people away from their ‘absolute centers’, that is, their ‘certain inner hearts’ towards their ‘relative peripheries’, that is, their relative thoughts and desires. This is the case with many of today’s secular spaces which, in the name of external freedom and equality, are filled with the ideologies of individualism and consumerism. According to Islamic Traditionalism, societies that have lost any sense of the Divine Presence no longer function as a means to salvation and are, to that extent, illegitimate. According to the Qur’an, communities that disobey and/or forget God are eventually led to ruin:<sup>407</sup>

*How many were the populations We utterly destroyed because of their iniquities, setting up in their places other peoples? (21:11)*

*What! Are they better than the people of Tubba and those who were before them? We destroyed them because they were guilty of sin. (44:37)*

*See they not how many of those before them We did destroy? - generations We had established on the earth, in strength such as We have not given to you - for whom We poured out rain from the*

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<sup>407</sup> It is important to reiterate that the Quran was revealed in a specific context and many of its verses were revealed in response to specific situations. These following verses, for example, should not be taken out of context to imply that the Quran is ‘irrationally violent’. According to the Islamic intellectual tradition, these verses are an expression of Divine justice and point to the fact that any society that turns away from the Real and chases the illusionary will inevitably be ruined.

*skies in abundance, and gave (fertile) streams flowing beneath their (feet): yet for their sins We destroyed them, and raised in their wake fresh generations (to succeed them). (06:06)*

On the other hand, a society is ‘Islamic’ to the extent that it is centripetal, that is, it draws people away from the illusions of multiplicity towards the reality of unity. This is possible in a public sphere that is filled with reminders of the Divine; reminders of the human testimony to God’s existence and the human’s acceptance of ‘the Trust’ to represent God on Earth by living in truth and justice. In this way, society functions as a ‘silent theology’. According to Lings:

The purpose of religion as a whole is to knit together all looseness in man by setting up in his soul an impetus towards the center which will bring it once more within range of the attraction of the Heart... Here lies the essence of a sacred civilization, to be forever demanding...that it should pull itself together and keep itself together.<sup>408</sup>

Throughout Islamic history, religious law has been applied to different extents and by way of different expressions. However, traditional Islamic societies have always carried a palpable presence of the Sacred – as revealed in the Quran – and in doing so, have sculpted the thought and behavior of Muslims for over a thousand years. To reiterate, this cultivated ‘Muslim mentality’ is the reason for the friction between the Islamic tradition and the contemporary human rights tradition. This friction is not simply theoretical; it has practical implications, and in terms of the latter, none is more controversial than the general implementation of Islamic law.

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<sup>408</sup> Lings, Martin. *Ancient Beliefs*. P. 33.

## Islamic Law, Pluralism, the Penal Code and Gender

At the outset, it is important to restate that the goal of this study is to explore the Islamic intellectual tradition – as expressed by the Traditional School of thought – in search for the fundamental principles that must ‘ground’ any Islamic theory of human rights. It is specifically concerned with the Islamic notion of virtue and its metaphysical implications in relation to truth, justice, freedom and equality. Moreover, this study has suggested that an ‘Islamic’ society is primarily one that is centered around the Sacred and functions to help human beings achieve their primary purpose for existence. In this sense, Islamic law is secondary, and only important insofar as it acts as a means towards individual, familial and societal unity and not as an end in and of itself. Nevertheless, this study will conclude this section with some introductory comments on the more specific issues of Islamic law, religious pluralism, the penal code and gender. In doing so, it intends to point towards potential areas of overlap and consensus between the Islamic and human rights traditions.

According to the Progressive School, one of the greatest challenges facing the implementation of human rights – both in Islamic thought and practice – is the traditional understanding of Islamic law. Progressive Muslims generally argue that this traditional understanding is based on three false assumptions. First, that the Quran’s purpose is to govern, as opposed to guide, Muslim lives and Islamic societies. Second, that Islamic law is Divine and therefore, not a human construct. And third, that humans have objective access to the Divine will and therefore, their duty is to simply accept and execute the law. For example, Khaled Abou El-Fadl, writing on the subject of Islam and democracy, states:

...Arguments claiming that God is the sole legislator endorse a fatal fiction that is defensible... Such arguments pretend that some human agents have perfect access to God's will, and that human beings could become the perfect executors of the divine will without inserting their own human judgments and inclinations in the process.<sup>409</sup>

El-Fadl continues and states, "If we say that the only legitimate source of law is the divine text and that human experience and intellect are irrelevant to the pursuit of the divine will, then divine sovereignty will always stand as an instrument of authoritarianism and an obstacle to democracy."<sup>410</sup> However, according to the Traditional School, this line of argumentation misunderstands the importance and function of the shariah in Islamic societies and Muslim life. Here, it is first important to remember that Traditionalism's understanding of Islamic law is based on the premise that religions are providential forms that embody different aspects of the Divine Will in particular ways.<sup>411</sup> They are providential and necessary because different religious forms allow people to use their free-will to choose, or not choose, any one of the 'paths that lead to the same summit'. In light of this, the Islamic Traditionalism maintains that the shariah – in both its general and concrete injunctions – is the Islamic embodiment of the Divine Will.<sup>412</sup> In any case, on this view, it can be argued that the shariah is an expression of the principle of *tawhid* because its all-encompassing nature functions to sanctify, integrate and unify all human thought and behavior. It is important to note that this is one of the reasons for the friction between Islam and contemporary human rights. The latter generally assumes that human rights is solely a theory of justice and can remain neutral when it comes to the truth in general and religion in particular.

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<sup>409</sup> Abou El Fadl, Khaled. *Islam and the Challenge of Democracy*. Princeton: Princeton University Press, 2004. P.9.

<sup>410</sup> Abou El Fadl, Khaled. *Islam and the Challenge of Democracy*. P.9.

<sup>411</sup> For Islamic Traditionalism's approach to Islamic law, see: Schuon, Frithjof. *Understanding Islam*. Pp. 1-35 and Pp. 33-85. Also see: Nasr, S.H. *Ideals and Realities*. Pp. 85-115.

<sup>412</sup> In other words, different religious forms 'call' to different types of people and thereby, open up many paths to human salvation. On this view, Islam is providential because its 'forms' – as they have developed over history – correspond to particular types of people and are therefore necessary for the latter's salvation.

Underlying this assumption is the fact that human rights are rooted in the Western legal tradition and its separation between the Church and state. Nevertheless, the comprehensive nature of the shariah does not remove human agency and free-will but rather, it redirects it. In other words, it moves the will away from the horizontal or worldly aspects of life and allows it to focus on the vertical or spiritual imperatives of religion. In this regard, Nasr writes:

Some may object that accepting the shariah totally destroys human initiative. Such a criticism, however, fails to understand the inner workings of the Divine Law... Initiative does not come only in rebelling against the Truth... initiative and creativity come most of all in seeking to live in conformity with the Truth and in applying its principles to the condition which destiny has placed before man. To integrate all of one's tendencies and activities within a divinely ordained pattern requires all the energy which man is capable of giving.<sup>413</sup>

Furthermore, most Muslims have always understood that Islamic law is, at least in part, a product of human intellectual endeavor. However, this view is qualified by the fact that this endeavor has its basis in the Quran and the latter's transcendent principles. This means that many Muslims understand Islamic law as an extension of the Quran and therefore, Divine in its own right, that is, in principle.<sup>414</sup> Moreover, as this study has shown, the Islamic intellectual tradition has always balanced the reality of human subjectivity with the Islamic concept of transcendence and the human ability to 'know' by way of revelation and intellection. Dismissing the concept of transcendence is equivalent to dismissing the reason for existence itself and ignoring humanity's greatest gift and potential. This study is not arguing that Islamic legal scholars used revelation

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<sup>413</sup> Nasr, S.H. *Ideals and Realities*. P. 91.

<sup>414</sup> Kamali, Mohammad, H. *Shariah Law*. Pp. 20-21



*and* the inner heart to develop the law beyond their immediate subjective realities. Rather, it is arguing that any objection to Islamic law that is *exclusively* based on the concept of relativity, is alien to the Islamic intellectual tradition as a whole and therefore, unlikely to succeed. Finally, the idea that Islam needs to ‘reform’ and ‘catch up’ with society is a modern concept and an anomaly in Islamic history.<sup>415</sup> This is because traditional Muslims have always sought to conform their societies to Quranic laws and norms and not the other way around. For example, Ali constantly reminds his listeners about the importance of following the revealed law. He states:

*...This world begins in weariness and ends in death. You are accountable for what is lawful in it and punishable for what is unlawful... How excellent is the man who performs good deeds and undertakes acts of purity, who earns something he can set aside and avoided what he is warned against...*<sup>416</sup>

*What can I say about a place in which the healthy fall ill and the sick are remorseful. Where the poor grieve and the wealthy are seduced, where one is held accountable for what is lawful and where unlawful things leads to fire.*<sup>417</sup>

*The lawful and unlawful are distinct...The unlawful was not safe for past generations, and it is not safe for those yet to come...The law is inviolable.*<sup>418</sup>

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<sup>416</sup> Whitall, Perry, ed. *Treasury of Virtues*. P.45.

<sup>417</sup> Whitall, Perry, ed. *Treasury of Virtues*. P.47.

<sup>418</sup> Whitall, Perry, ed. *Treasury of Virtues*. P. 157. The full quote clearly shows that Ali is speaking in relation to the Quran’s concrete injunctions. He refers to the separation between men and women, marriage between relatives, and marriage to multiple wives.

Despite the different understandings of Islamic law between the Traditional and Progressive Schools, there is also room for some agreement and overlap. This is because Traditionalists are open to the idea of legal reform as long as this reform does not contradict the basic Islamic worldview and its fundamental principles. This is because they understand that the law operates in the world – the realm of the relative – and therefore, the Quran’s principles must be continuously reapplied according to changing circumstances. This is why this study has argued that it is both revelation *and* virtue, that allows one to understand and execute the Divine Will. For example, the Quran’s specific laws of inheritance are an expression of Islamic principles in the context of 7<sup>th</sup> Century Arabia, where men were financially responsible for maintaining their families. However, in the context of societies where both men and women carry the financial burden, this particular expression, that is, the laws of inheritance, is open to reform. Finally, it is important to note that traditional Islamic law is virtually non-existent today. This is because contemporary nation-states are generally governed by modern socio-political institutions and modes of discourse and are not properly grounded in the Islamic intellectual heritage as a whole.<sup>419</sup>

Another area of contention between Islam and human rights concerns the issue of pluralism, and the differential and oppressive treatment of minorities in general and non-Muslims in particular. Certain Particular Quranic verses and Islamic historical norms, *potentially* provide the ground for the marginalization and oppressive treatment of the ‘Other.’ For example, chapter three raised the issue of *jizyah* based on the following Quranic verse:

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<sup>419</sup> A detailed study of contemporary ‘Islamic’ nation-states is beyond the scope of this paper. For a comprehensive analysis, see: Roy, Olivier. *The Failure of Political Islam*. Trans. Carol Volk. Cambridge: Harvard University Press, 1994.

*Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the religion of Truth, (even if they are) of the People of the Book, until they pay the jizya with willing submission, and feel themselves subdued. (9:29)*

According to al-Razi, there are a number of Jews and Christians that affirm the existence of God and the hereafter. Nevertheless, he still maintains that the legal ruling (*hukm*), that is, to ‘fight them until they pay the *jizyah*’, applies to all ‘People of the Book’. He states:

These [who believe in God] do not fall under [the description of this verse], but the requirement of the indemnity holds for them since it is said that, when an indemnity is required for some of them one says the same for all of them, since no one [that is, no jurist] holds the view that there is separation<sup>420</sup>

In other words, al-Razi says it applies to all ‘People of the Book’ simply because there is no legal opinion to the contrary. According to *The Study Quran*, “This interpretation characterizes much of the mainstream of Islamic legal opinion on the matter.”<sup>421</sup> In any case, there are many Quranic verses that can and have functioned to construct a mentality of ‘Muslim superiority’. For example:

*Do not marry unbelieving women, until they believe: A slave woman who believes is better than an unbelieving woman, even though she allures you. Nor marry (your girls) to unbelievers until they believe: A man slave who believes is better than an unbeliever, even though he allures you.*

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<sup>420</sup> Nasr, S.H., ed. et al. *The Study Quran* P. 513.

<sup>421</sup> Nasr, S.H., ed. et al. *The Study Quran* P. 513.

*unbelievers do (but) beckon you to the Fire. But Allah beckons by His Grace to the Garden (of bliss) and forgiveness, and makes His Signs clear to mankind: That they may celebrate His praise. (2:221)*

*Those who take disbelievers as protectors over the believers: do seek honor through them? Nay, all honor belongs to Allah. (4:139)<sup>422</sup>*

It is verses such as these that have sometimes been used to justify the oppressive treatment of the ‘Other’. However, in my opinion, these types of verses are not absolute principles; they are particular regulations that were intended for a society that was divided by religious lines and largely at war in accordance with those divisions. However, in keeping line with the Traditionalist framework, the two questions that need to be asked are: what are the underlying principles of the verses that seem to justify marginalization? And what are the different ways that these principles can be understood and expressed? In this light, this study argues that verses such as 9:29, 2:221 and 4:139 are based on the perennial principles of truth and justice and the Divine command for people and societies to conform themselves to the two virtues. In other words, these verses speak out against any person that knowingly denies the truth and attempts to thwart justice. This argument is strengthened when one understands ‘unbelief’ (*kufir*) in its etymological sense of ‘intentionally covering up the truth’. In this regard, Chittick writes:

“The original sense of the term *kufir* is to conceal something. People who are ungrateful conceal the good that has been done to them by not mentioning it. A person who has no faith conceals the self-evident truths of existence. *Kufir*, in short, is understood as

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<sup>422</sup> My translation

covering over and a concealing of the truths one knows. Hence...the term (ungrateful) truth-concealing.”<sup>423</sup>

Thus, the distinction between the believer and unbeliever can be reformulated as a distinction between sincerity and hypocrisy. Moreover, a corrective to the marginalization of the ‘Other’, can be found in the Quran and its metaphysics of pluralism. In this regard, Eric Geoffroy writes:

... In Islam, God alone is One and unique, all that is other than Him, namely, His creation, is projected into multiplicity. However, the divine mercy, which ‘embraces all things’ ensures that there is no rupture between these two levels... Thus, the recognition of Unicity (*tawhid*) that is required by the faithful Muslim, should, by direct implication, bring about in his consciousness the recognition of solidarity and interdependence of all realms of creation.<sup>424</sup>

In other words, and more concretely, the Quran contains a number of principles that can and have been used by Muslims to create policies of inclusivity. These include the ideas that all humans are children of Adam (*bani Adam*), that they share a single human nature (*fitrah*) and that the different religious forms (*ahl al-kitab*) are based on a single, primordial religion (*din al-qayyim*). In this regard, the Quran reads:

*So set thou thy face steadily and truly to the Faith: (establish) Allah’s handiwork according to the pattern [fitrah] on which He has made mankind: no change (let there be) in the work*

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<sup>423</sup> Sachiko Murata and William Chittick C. *The Vision of Islam*. Minnesota: Paragon House, 1994. P. 42.

<sup>424</sup> Geoffroy, Eric. “Pluralism or the Consciousness of Alterity in Islam” *Universal Dimensions of Islam*. Ed. Laude. Bloomington: World Wisdom, 2011. P. 98.

*(wrought) by Allah: that is the standard Religion [din al-qayyim]: but most among mankind understand not. (30:30)*

*Those who believe (in the Qur'an), and those who follow the Jewish (scriptures), and the Christians and the sabians,- any who believe in Allah and the Last Day, and work righteousness, shall have their reward with their Lord; on them shall be no fear, nor shall they grieve. (2:82)*

In the same light, Ali reminds Malik ibn al-Ashtar that his subjects are also his brothers – either in faith or in humanity – and therefore, he should treat them accordingly. In this regard, Ali states:

*Develop in your heart the feeling of love for your people and let it be the source of kindness and blessing to them. Do not behave with them like a barbarian, and do not appropriate to yourself that which belongs to them. Remember that the citizens of the state are of two categories. They are either your brethren in religion or your brethren in kind. They are subject to infirmities and liable to commit mistakes.<sup>425</sup>*

Thus, the Islamic intellectual tradition contains the perennial principles that are needed in order to extend equal civil, political, and socio-economic rights to all of its citizens. This includes the right to freedom of religion and conscience because it is this freedom and its responsibilities that makes one quintessentially human. As the Quran states:

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<sup>425</sup> *The Nahj*. Letter number 52.

*Let there be no compulsion in religion: Truth stands out clear from Error: whoever rejects evil and believes in Allah hath grasped the most trustworthy hand-hold, that never breaks. And Allah heareth and knoweth all things. (2:256)*

*to you be your Way, and to me mine (109:6)*

However, it should also be noted that these rights are not inalienable. In other words, they extend to all citizens, but only on the condition that those citizens do not abuse their rights in order to disturb public law and morality. In this light, Nasr writes:

In modern society, the rights of citizens do not change whether those citizens fulfill their responsibilities toward God or even believe in God or not... Some in the West have contrasted this state of affairs with the situation in the Islamic world, and claim that, from the Islamic point of view, such persons would have no rights. This assertion is, however, not at all true. If certain Muslims fall into religious and intellectual doubt...their right to the protection of their life and property by society still remains as long as they do not...act against social norms and laws.<sup>426</sup>

Nasr continues and notes that, from a traditional perspective, religious and intellectual doubt cannot negate a human being's rights. This is because, according to the Islamic intellectual tradition, all human beings contain the 'Divine spark' and moreover, they may, during the course of their lifetimes, return to their belief in God and act in accordance with that belief.<sup>427</sup>

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<sup>426</sup> Nasr, S.H. *The Heart of Islam*. P. 280.

<sup>427</sup> See the debate concerning the 'status of a sinner' in: Blankinship, Khalid. "The Early Creed" *The Cambridge Companion* Ed. Winter.

Chapter four pointed out that the current friction between the Islamic penal code and contemporary human rights is a matter of different worldviews and their primary assumptions. It argued that, from the traditional Islamic perspective, physical punishment functions on an individual, societal and spiritual level.<sup>428</sup> On the other hand, it also argued that punishment in the form of incarceration, as practiced in many secular-liberal nation-states, contradicts certain Islamic principles, namely, the unity of the family and its role as the fundamental unit of society. However, many human rights advocates also agree that incarceration as punishment is problematic. Here, ‘Western’ and ‘Islamic’ human rights have the ability to etch out a space of overlapping consensus. That is, they can find consensus in the concept of rehabilitation. According to Leonard Lewisohn, Muslim jurists generally agree that the Quranic ‘eye for an eye’ doctrine of retributive justice means “retributive justice as a process of rehabilitation rather than a cycle of violence of the sort common in the pre-Islamic tribal culture of revenge.”<sup>429</sup> From the perspective of Islamic Traditionalism, rehabilitation can be grounded in the perennial principles of Divine mercy, and human free-will, that is, the human capacity for change. For example, the Quran reads:

*Those who sustain the Throne (of Allah) and those around it Sing Glory and Praise to their Lord; believe in Him; and implore Forgiveness for those who believe: "Our Lord! Thy Reach is over all things, in Mercy and Knowledge. Forgive, then, those who turn in Repentance, and follow Thy Path; and preserve them from the Penalty of the Blazing Fire! (40:7)*

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<sup>428</sup> Again, it is important to reiterate that this explanation is not an argument in favour of the traditional Islamic penal code’s use of physical punishment. Instead, it is an argument about the ways in which worldviews work in the background to shape human attitudes and norms. Moreover, it maintained that the principles that underlie the Islamic penal code can be expressed differently, and in line with the changing conditions of society.

<sup>429</sup> Lewisohn, Leonard. “‘Ali ibn Abi Talib’s Ethics of Mercy in the Mirror of the Persian Sufi Tradition.” *The Sacred Foundations*. Ed. Lakhani. P.127.



*When those come to thee who believe in Our signs, Say: "Peace be on you: Your Lord hath inscribed for Himself (the rule of) mercy: verily, if any of you did evil in ignorance, and thereafter repented, and amend (his conduct), lo! He is Oft-forgiving, Most Merciful. (6:54)*

The principle of mercy is also found in Ali's letter to the governor of Egypt in which he emphasizes the importance of love, kindness and forgiveness. In this regard, he counsels:

*Develop in your heart the feeling of love for your people and let it be the source of kindness and blessing to them... [The citizens of the state] are subject to infirmities and liable to commit mistakes....some indeed do commit mistakes. But forgive them even as you would like God to forgive you.... look after those under you and to be sufficient unto them. And you will be judged by what you do for them.<sup>430</sup>*

Thus, the Quran and *hadith* provide Muslims with the principles they need to incorporate rehabilitation into their legal systems without betraying the Islamic intellectual tradition and its consequent worldview.

As mentioned, this section is mainly concerned with making some introductory remarks on the specific issues concerning Islam and human rights. Hence, this study's discussion of gender is restricted to the male and female and does not address gender in its full spectrum. Although the latter is beyond the scope of this work, it should be noted that its absence is not meant to ignore its reality or to lessen its importance. In any case, gender is arguably the most

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<sup>430</sup> *The Nahj*. Letter number 52.

contentious and debated area in contemporary Islamic thought. According to most Progressive Muslims, the different religious descriptions and prescriptions for men and women in the Quran were largely a matter of context, and hence, are no longer applicable in modern societies.<sup>431</sup> For example, Islamic law maintains that, in cases in which a ‘witness’ (*shahadah*) is needed, one man is equal to two women. This is based on the Quranic verse that reads:

*O ye who believe! When ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing Let a scribe write down faithfully as between the parties: let not the scribe refuse to write: as Allah Has taught him, so let him write. Let him who incurs the liability dictate, but let him fear His Lord Allah, and not diminish aught of what he owes. If they party liable is mentally deficient, or weak, or unable Himself to dictate, let his guardian dictate faithfully, and get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her. The witnesses should not refuse when they are called on (For evidence). Disdain not to reduce to writing (your contract) for a future period, whether it be small or big: it is juster in the sight of Allah, more suitable as evidence, and more convenient to prevent doubts among yourselves but if it be a transaction which ye carry out on the spot among yourselves, there is no blame on you if ye reduce it not to writing. But take witness whenever ye make a commercial contract; and let neither scribe nor witness suffer harm... (2:282)*

Abdulaziz Sachedina summarizes the issue at state by asking, “Is the conditional commandment given for the specific situation in the Medinese society to be interpreted as an unconditional

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<sup>431</sup> In general, see: Safi, Omid, ed. *Progressive Muslims*. Also see: Kruzman, Charles, ed. *Liberal Islam*.

commandment, evincing the probable conclusion that regardless of whether a woman errs or not, her evidence is to be reduced to half of a man's evidence?"<sup>432</sup> After citing a hadith that seems to confirm the law of *shahada*, Sachedina goes on to write:

This and other similar *hadith* raise serious questions not only about the authenticity of these narratives that ignored the intertextuality of the daily details of the lives of women entrapped in male jurists' subjectivity and skewed vision of her social role; it also puts in doubt the claim by the pious for the validity and applicability of these legal rulings in all ages and at all times.<sup>433</sup>

Thus, for Sachedina, and the Progressive School, many of the Quranic restrictions placed on women – and further developed by the Islamic legal tradition – were based on the context of 7<sup>th</sup> century Arabia and therefore, need to be revisited and reformed today. On the other hand, according to the Islamic intellectual tradition, the differences between men and women cannot be reduced to a matter of biology. This is because they reflect an essential complementarity in the Divine principle of creation.<sup>434</sup> In other words, they are a manifestation, on the terrestrial plane, of the first duality between the Absolute (male) and the Infinite (female). In this regard, Fatima Casewit writes:

...Every human being is created "in the image of God." However, human beings are of two types: man and woman, and since we are all created "in the image of God," our souls must be like mirrors reflecting the light of God. The supreme polarity of the cosmos, or the macrocosm, is reflected in the human soul, the microcosm. As human beings our

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<sup>432</sup> Sachedina, Abdulaziz. "Woman, Half-the-Man? The Crisis of Male Epistemology in Islamic Jurisprudence" *Intellectual Traditions in Islam*. Ed. Daftary. New York: I.B. Taurus, 2001. P.171.

<sup>433</sup> Sachedina, Abdulaziz. "Woman, Half-the-Man? *Intellectual Traditions*. P.173.

<sup>434</sup> Sachiko, Murata. *The Tao of Islam*. P. 14.

souls reflect God's oneness. As men and women we reflect the supreme polarity: the Absolute and the Infinite, and we combine these two divine aspects in the human state.<sup>435</sup>

On this view, the differences between men and women are essential to the extent that all states reflect their higher states throughout the different levels of the cosmos.<sup>436</sup> According to many Muslims then, men and women have different roles that complement each other; neither sex is complete without the other, and neither sex is 'lesser' than the other.<sup>437</sup> Moreover, according to many *Sufis*, the 'higher feminine' is the goal of all 'seekers on the path' because it represents the hidden or 'veiled' Divine Essence. In this regard, Maria Dakake points out:

In Sufi symbolism, and indeed in Islam itself, man (and here I mean human beings in general) is surrounded by the feminine in his own existence...The word for mercy...is grammatically feminine, and is etymologically related to the word... "womb." God's Compassion and Mercy can thus be said to encompass and nurture everything in existence, just as the womb initially encompasses, nourishes, and protects every human being. Thus the mercy of existence itself is symbolized as a kind of "Divine womb" which embraces and sustains all being. While the experience of "being in the womb" is common to all humanity...the "womb" itself is, of course, a specifically feminine concept. Man's relation to the Divine perceived in this way is the relationship of the child to the mother, and so it is a relationship universally understood among human beings...while it is also one in which the Divine is considered from the feminine aspect of maternity.<sup>438</sup>

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<sup>435</sup> Casewit, Fatima J. "Islamic Cosmological Concepts of Femininity and the Modern Feminist Movement" *worldwisdom.com*. World Wisdom Library of Articles. 08 April. 2017.

<sup>436</sup> Sachiko, Murata. *The Tao of Islam*. P. 14.

<sup>437</sup> Again, it is important to note that my intention is not to dismiss or justify the oppression that Muslim women have undoubtedly faced throughout Islamic history. Rather, it is to explain the perennial principles that underlie the traditional Muslim understanding of the relationship between men and women.

<sup>438</sup> Dakake, Maria M. "'Walking Upon the Path of God Like Men?': Women and the Feminine in the Islamic Mystical Tradition" World Wisdom Online Library. *Worldwisdom.com*. 10 Feb. 2018.

Dakake goes on to explain that men and women move between two ‘feminine poles’ of existence. These two ‘poles’ are the human ego (*nafs*) which represents the ‘lower feminine’, and the Divine Essence (*dhat*) which represents the ‘higher feminine’.<sup>439</sup> She also points out that, according to the Islamic intellectual tradition, the primordial or complete human being is both male and female and that either sex can become completely human and thereby, return to their original nature.<sup>440</sup> Thus, both men and women are entitled to the same dignity because they have the same spiritual and moral worth. Nevertheless, Traditionalists emphasize that the issue of gender is a matter of the ‘plane of existence’ and the ‘dominant element’ on that plane. In other words, spiritual and moral equality does not negate the differences between men and women on the terrestrial level. Throughout Islamic history, these differences have expressed themselves in a myriad of ways and these expressions are not problematic as long as they do not lead to the negation of God-given natures and any consequent disequilibrium. This is because, according to Muslim Traditionalists, living in a form of ‘harmony based on nature’ is necessary in achieving the goal of human perfection. Thus, Islamic Traditionalism’s understanding of gender is at odds with its modern counterpart, and the friction between the two seems insurmountable. It seems this way because the Progressive School’s emphasis on ‘context’ and ‘subjectivity’ is not enough to displace the view that the Divine Will created men and women with different and complementary roles for the sake of familial and societal harmony. This perspective is in line with the Islamic intellectual tradition and any effective reform must also be in line with the latter. In this light, and in my opinion, the most important work being done on the subject is by Muslim women such as Sadiyya Shaikh. This is because she is ‘rethinking the terms of the debate’ by

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<sup>439</sup> Dakake, Maria M. “Walking Upon the Path of God Like Men?”

<sup>440</sup> Dakake, Maria M. “Walking Upon the Path of God Like Men?”

focusing on ‘theological anthropology’.<sup>441</sup> Shaikh outlines her project in the area of gender ethics in the following way:

In this chapter, I suggest that bringing particular Sufi perspectives to debates on gender in the law offers Muslim feminists rich spaces to explore the underlying foundations of the law. Such a project directs one’s inquiry to core definitions of the human being, the God–human relationship and related implications for social ethics, all of which implicitly underlie fiqh discussions. I argue that this level of enquiry allows Muslims to re-examine critically the formulation of the fiqh canon in light of the deepest existential and religious priorities in the Muslim tradition. Such an approach provides important criteria to determine whether dominant fiqh concepts reflect the best possible contemporary understandings of essential religious and spiritual prerogatives in Islam.<sup>442</sup>

Thus, the discovery of some common ground in the area of gender is possible. However, whether this possibility will become a reality now or in the near future seems doubtful. If it does not become a reality, then human rights advocates must remember that Muslims are self-understanding agents with the right to self-determination; they do not need saving. Any disagreements must be approached dialogically, and if all else fails, they must be accepted on the basis of mutual respect. In this regard, Coomarswamy writes:

Of all the forces that stand in the way of... a mutual understand indispensable for co-operation, the greatest are those of ignorance and prejudice. Ignorance and prejudice underlie the naive presumption of a civilizing mission... Before a world government can even be dreamed of, we must have citizens of the world, who can meet their fellow

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<sup>441</sup> Shaikh’s ‘Theological Anthropology’ is not a reference to the Modern Anthropological study of Religion. It is a reference to the religious understanding of what it means to be human.

<sup>442</sup> Shaikh, Sa’diyya. “Islamic Law, Sufism and Gender” *Men in Charge?* P.107.

citizens without embarrassment, as gentlemen meet gentlemen, and not as would-be school masters meeting pupils...<sup>443</sup>

Finally, it should be noted that the 'Islamic world' is currently in the process of understanding and debating issues related to international human rights – including the issue of gender. For example, Sachedina notes:

In the last three decades...there has been sustained interest in the foundations of the Universal Declaration of Human Rights and its compatibility with Islam. A number of books and articles in Arabic and Persian written by some prominent traditionalist interpreters of the Islamic revealed texts...underscore the attention and interest the international document has attracted...<sup>444</sup>

Again, Muslims are more than capable of determining what is (and what is not) in line with their understanding of the purpose of life. There have already been many changes implemented by Muslims themselves and there is no need for any 'intervention' on the basis of an assumed moral superiority. A single community does not share a single set of views; in every community, there is discussion, debate and mobilization. Tensions are inevitable and those tensions, in some way or another, are ultimately resolved.

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<sup>443</sup> Coomarswamy, Ananda K. *The Bugbear of Literacy*. Bloomington: Sophia Perennis, 1979. P.125.

<sup>444</sup> Sachedian, Abulaziz. *Islam and the Challenge*. P. 6.

## CONCLUSION

There seems to be a growing consensus that human rights are a set of universal norms that can easily be adopted and applied by all of the different cultural traditions in the world. However, this study has argued that this ‘growing consensus’ is unfounded and therefore, problematic. This is because human rights, as presented in the *Universal Declaration* and its offshoots, are clearly underpinned by the Western tradition and its concomitant ideologies which largely developed during the Renaissance, Reformation and Enlightenment periods. This includes, for example, the ideologies of individualism, liberalism and secularism. This study has argued that it is the particular and relative nature of human rights that has resulted in growing friction and resistance from different parts of the world. For example, some human rights theorists working within the Asian, African and Islamic traditions argue that their respective values and ways of life are decidedly different from those underlying ‘international’ human rights norms and laws today. According to Sinha’s study, these traditions differ in three main ways: they emphasize duties over rights, the group over the individual and some form of personal reconciliation over procedural legalism.<sup>445</sup> Thus, these theorists argue that the forceful implementation of human rights, by way of direct ‘humanitarian intervention’ or indirect political, social and/or economic pressure, is a form of intellectual and cultural imperialism that cannot be justified. For this reason, this study argues that human rights need to be revisited and revised. More specifically, it argues that human rights need to be decentralized and plural if they hope to become effective and universal respectively. With this in mind, this study maintains that

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<sup>445</sup> In general, see: Sinha, Prakash. “Human Rights: A Non-Western Viewpoint”.



the various cultural traditions around the world should be free to develop their own human rights models as long as they meet the minimum criteria of (1) curbing excess of power and (2) helping citizens pursue their societies' particular understanding of the 'good.' If this is done, this study's working assumption is that it will result in a minimal overlapping consensus between cultural traditions. It is important to note that this consensus would be the product of an 'accidental universality' as opposed to one that is constructed and then imposed. This would ensure that rights are both integral and organic to each tradition and therefore, not seen as a ploy towards economic and/or socio-political domination. In order to open up a 'space for dialogue' for alternative visions, the first section of this study attempts to 'clear the ground' by critically surveying human rights history and some of the underlying ethical theories that attempt to justify human rights within the secular-liberal tradition.

Chapter one critically explores popular human rights histories because these histories are directly connected to how people in general, and human rights' theorists and activists in particular, understand and act in relation to human rights today. To this end, chapter one argues that popular human rights histories share three interrelated assumptions that are dubious at best. The first assumption is that that humanity in general, and human rights in particular, have developed in a linear and progressive fashion. In this regard, this study has argued that the 'belief in progress' was a byproduct of the scientific and industrial revolutions and is no longer tenable today. This is because material and technological progress have also resulted in societal and spiritual regress. This is seen, for example, in the cult of mass consumerism, the breakdown of the nuclear family and the rise of new age spiritual movements. The second assumption of popular human rights histories is that they tend to 'describe' the world's religions as an important historical stage leading to the development of a universal world order based on human rights. In

this regard, this study has argued that the historicization of religion is misleading because the latter continues to play a central and active role in the lives of millions. This is seen, for example, in the rise of the so-called ‘religious resurgence’ and contemporary ‘Islamist’ movements. Moreover, this study argues that religions are inherently dynamic and have boundaries that are constantly being negotiated. Therefore, religions can incorporate the concept of human rights and therefore, help legitimize the latter in the eyes of the faithful. The third common assumption underlying popular human rights histories is that the Medieval Age was a ‘dark’ and oppressive time in the West. However, chapter one argues that this view is an inaccurate overgeneralization. Some historians, such as Norman Cantor, argue that the period’s religious nature and hierarchical structure facilitated times of unprecedented growth and development in areas such as agriculture, philosophy and art.<sup>446</sup> In light of all this, this study has argued that the assumptions underlying popular human rights history are clearly problematic and therefore, contemporary human rights should not be seen as the rightful and inevitable end to the search for justice.

Chapter two argues that human rights are normative claims that need to be justified in order to be accepted by peoples around the world. To this end, the chapter critically explores three of the most popular ethical theories that attempt to justify or ‘ground’ human rights in a universal manner. These are the theories of utilitarianism, natural rights and postmodern ethical sentimentalism. In terms of utilitarianism, this study argues that it is problematic for three main reasons. First, it wrongly assumes that it is possible to know all the various effects that are produced by human actions and thereby calculate what is moral and what is not. Second, utilitarianism mistakenly argues that peoples from different cultural traditions and their respective worldviews would agree on what constitutes ‘human utility’. This is mistaken because

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<sup>446</sup> In general, see: Cantor, Norman. *Inventing the Middle Ages*.

determining ‘human utility’ clearly depends on how a particular society understands reality and the human being’s relationship to it. Lastly, even if the first two problems are somehow solved, utilitarianism is still left with the impossible issue of measuring and grading qualitative experiences in quantitative terms. Thus, chapter two argues that utilitarianism cannot universally ground human rights. In regards to natural rights, chapter two argues that it is also problematic and cannot legitimize one specific universal human rights model. This is because modern natural rights theories, which can be traced back to John Locke and his imaginative ‘state of nature’, assume that all peoples think in the same way. However, this study argues that human reason and nature cannot operate in a vacuum, and as such, human rights are largely determined by a peoples’ inherited culture and the latter’s respective ‘teachings’, assumptions and experiences. Chapter two then goes on to critically explore the theory of ethical sentimentalism, and in doing so, argues that it is also problematic for two main reasons. First, ethical sentimentalism argues that empathy – as opposed to knowledge – should be the basis for human rights. This is troublesome because empathy is based on sentimentality and the latter is always open to manipulation by those in control of public information. The second principal problem with ethical sentimentalism is that it argues that there is no foundation for anything. If this is the case, then there is also no foundation for morality in general, and human rights in particular. This legitimizes the claim that human rights are relative to the Western historical experience and as such, their forceful implementation is a form of imperialism. Therefore, like utilitarianism and natural rights, ethical sentimentalism cannot work to legitimize a universal theory of human rights. Of course, these three theories have their strengths and should be continued to be developed. Nevertheless, the point remains: all three theories are subject to an ongoing debate within the secular-liberal tradition itself. Thus, there is nothing definitive about contemporary

human rights and therefore, there is no good reason to ignore any alternative approaches. It is important to remember that this study does not argue in favor of constructing one universal human rights theory. Rather, it argues for the construction of multiple human rights models and its working assumption is that the latter will produce an ‘accidental universality’. That is, an ‘after-the-fact’ minimal overlapping consensuses between the world’s cultural traditions.

After ‘clearing up a space for dialogue’, chapter three goes on to explore the issue of Islam and human rights in particular. In doing so, it points out that there are four principal ‘spaces of friction’ between the two traditions. These are the implementation of Islamic law in general; the marginalization of religious minorities; the use of corporeal punishment and the differential legal treatment between men and women. It also points out that the Muslim response to these issues can be divided into four broad schools of thought. These are the Fundamental, Traditional, Progressive and Liberal. Chapter three focuses on the Traditional and Progressive Schools because they are the most nuanced in their respective approaches and together, they represent the majority of Muslims today. In doing so, this study argues that the Progressive School is an important ‘voice’ but nevertheless, that it is also deeply problematic. This is because its general socio-historical approach is alien to the Islamic intellectual tradition as a whole and moreover, it has a tendency to negate aspects of the Islamic tradition that many Muslims consider inviolable, such as the *hadith* literature and the shariah in general. Thus, chapter three argues that ‘Progressive Islam’ – at least in its totality – cannot be easily accepted by Muslims in general and therefore, it will not succeed in its goal of legal reform. For this reason, among others, this study works within the framework of the Traditional School of thought in the Islamic context, that is, ‘Islamic Traditionalism’. Chapter three readily admits that Islamic Traditionalism represents just one of many ‘Muslim voices’ and moreover, that it is primarily ‘esoteric’ in nature

and emphasizes spiritual realities over socio-political contingencies. Nevertheless, this study maintains that Islamic Traditionalism represents an important and substantial ‘Muslim voice’ that is generally underrepresented in Western academic institutions. Moreover, it argues that this School of thought is important because it approaches Muslims on their own terms and also because it understands that Islamic law cannot be understood, let alone ‘reformed’, without addressing the law’s deeper assumptions concerning the nature of reality, the human being and the ‘good’.<sup>447</sup> Before looking at these ‘deeper assumptions’, chapter three concludes by situating the Traditional School within the larger context of religious studies. It argues that the Traditional School is unique because it is able to combine the strengths of the theological and academic approaches to religion without falling victim to their weaknesses. In other words, chapter three points out that the Traditional School accepts the truth claims of virtually all religions without being biased and partial towards a particular religion. This is because it sees all religions as various expressions of the Absolute, and therefore, different but valid paths that ‘lead to the same summit’.

Chapter four develops a theory of virtue ethics by primarily drawing on the Quran and thought of Ali. This is important because virtue ethics addresses the fundamental questions concerning the human condition that need to be answered in order to determine any human rights model. In doing so, chapter four argues that the Quran and thought of Ali present human nature as a spectrum between two dualities and that the goal of all humans is to ‘be’ their higher nature as servants and representatives of God on Earth. This is possible because humans have the ability know the Truth, that is, the essence of things, and to apply justice, that is, to put things in their

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<sup>447</sup> The Traditional School can be seen as a counterweight to the Progressive School and therefore, it is with both approaches in mind that one can have a more accurate understanding of the Islamic tradition as a whole and the Muslims that belong to the tradition.

rightful place or to give each thing its rightful due. This understanding is based on the Quranic story of the Prophet Adam – the prototype of humanity – who received the ‘Divine breath’ and the knowledge of the ‘name of all things’. Moreover, according to Islamic Traditionalism, knowing the truth and applying justice can only be achieved through inner transformation culminating in the attainment of a virtuous heart. This is because the inner Heart is the seat of true wisdom; it is able to know God and know all else in relation to God. Moreover, this knowledge is not ‘acquired’ but rather, it is ‘remembered’ by the theurgic power of religious rites and the descent of Divine grace. For this reason, chapter four argues that an ‘Islamic’ human rights society is one that is filled with reminders of the Divine presence and thereby helps Muslims achieve their primary purpose in life – a virtuous heart in this world and felicity in the hereafter.

Chapter five addresses some of the more specific issues concerning human rights in light of the study’s virtue theory. It argues that many Muslims cannot accept a theory of human rights that is not grounded in God and His revelation. Moreover, it argues that an ‘Islamic’ human rights model must emphasize human duties, inward freedom, and familial and societal harmony. This is because much of the friction between the Islamic tradition and contemporary human rights is a product of the latter’s emphasis on the liberal and extrinsic interpretation of concepts such as freedom and equality. For example, chapter five argues that the *Universal Declaration* and its offshoots have a tendency to focus on freedom as liberty *for* the egoic self, while Muslim Traditionalists, in line with the Quran’s intellectual and spiritual ethos, emphasize the importance of liberty *from* the egoic self. Chapter five goes on to make some introductory remarks on the issues of Islamic law, pluralism, corporeal punishment and gender. In doing so, it argues that there are ‘spaces of convergence’ between Islamic Traditionalism and contemporary human

rights. For example, in terms of corporeal punishment, this study argues that a 'space of convergence' can be etched out by incorporating a system of rehabilitation in line with the Quranic principles of Divine mercy and human free-will. At the same time however, it also notes that there are fundamental differences between the two traditions. In these cases, this study argues that it is the responsibility of human rights advocates to protect any differences in the name of human rights, rather than opposing them as 'primitive' and/or 'outdated'. After all, Islam's perennial principles and their societal expressions have successfully held together Islamic societies for over a thousand years. On the other hand, human rights societies are still in their infancy, and only time will tell if they are able to do the same.

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## APPENDICIES

### Appendix A:

#### THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

##### Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore,

The General Assembly,

proclaims This Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society,

keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

#### Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

#### Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

#### Article 3

Everyone has the right to life, liberty and security of person.

#### Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

#### Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

#### Article 6

Everyone has the right to recognition everywhere as a person before the law.

#### Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

#### Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

#### Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

#### Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

#### Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

#### Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

#### Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

#### Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

#### Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

#### Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

#### Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

#### Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

#### Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

#### Article 20.

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

#### Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

#### Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

#### Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

#### Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

#### Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

## Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

## Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

## Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

## Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

## Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

## **APPENDIX B:**

### **UNIVERSAL DECLARATION OF HUMAN RESPONSIBILITIES**

Proposed by the InterAction Council

#### Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and implies obligations or responsibilities,

whereas the exclusive insistence on rights can result in conflict, division, and endless dispute, and the neglect of human responsibilities can lead to lawlessness and chaos, [b]whereas[/b] the rule of law and the promotion of human rights depend on the readiness of men and women to act justly,

whereas global problems demand global solutions which can only be achieved through ideas, values, and norms respected by all cultures and societies,

whereas all people, to the best of their knowledge and ability, have a responsibility to foster a better social order, both at home and globally, a goal which cannot be achieved by laws, prescriptions, and conventions alone,

whereas human aspirations for progress and improvement can only be realized by agreed values and standards applying to all people and institutions at all times,

Now, therefore,

The General Assembly,

proclaims this Universal Declaration of Human Responsibilities as a common standard for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall contribute to the advancement of communities and to the enlightenment of all their members. We, the peoples of the world thus renew and reinforce commitments already proclaimed in the Universal Declaration of Human Rights: namely, the full acceptance of the dignity of all people; their inalienable freedom and equality, and their solidarity with one another. Awareness and acceptance of these responsibilities should be taught and promoted throughout the world.

Fundamental Principles for Humanity



#### Article 1

Every person, regardless of gender, ethnic origin, social status, political opinion, language, age, nationality, or religion, has a responsibility to treat all people in a humane way.

#### Article 2

No person should lend support to any form of inhumane behavior, but all people have a responsibility to strive for the dignity and self-esteem of all others.

#### Article 3

No person, no group or organization, no state, no army or police stands above good and evil; all are subject to ethical standards. Everyone has a responsibility to promote good and to avoid evil in all things.

#### Article 4

All people, endowed with reason and conscience, must accept a responsibility to each and all, to families and communities, to races, nations, and religions in a spirit of solidarity: What you do not wish to be done to yourself, do not do to others.

#### Non-Violence and Respect for Life

#### Article 5

Every person has a responsibility to respect life. No one has the right to injure, to torture or to kill another human person. This does not exclude the right of justified self-defense of individuals or communities.

#### Article 6

Disputes between states, groups or individuals should be resolved without violence. No government should tolerate or participate in acts of genocide or terrorism, nor should it abuse women, children, or any other civilians as instruments of war. Every citizen and public official has a responsibility to act in a peaceful, non-violent way.

#### Article 7

Every person is infinitely precious and must be protected unconditionally. The animals and the natural environment also demand protection. All people have a responsibility to protect the air, water and soil of the earth for the sake of present inhabitants and future generations.

#### Justice and Solidarity

#### Article 8

Every person has a responsibility to behave with integrity, honesty and fairness. No person or group should rob or arbitrarily deprive any other person or group of their property.

#### Article 9

All people, given the necessary tools, have a responsibility to make serious efforts to overcome poverty, malnutrition, ignorance, and inequality. They should promote sustainable development all over the world in order to assure dignity, freedom, security and justice for all people.

#### Article 10

All people have a responsibility to develop their talents through diligent endeavor; they should have equal access to education and to meaningful work. Everyone should lend support to the needy, the disadvantaged, the disabled and to the victims of discrimination.

#### Article 11

All property and wealth must be used responsibly in accordance with justice and for the advancement of the human race. Economic and political power must not be handled as an instrument of domination, but in the service of economic justice and of the social order.

#### Truthfulness and Tolerance

#### Article 12

Every person has a responsibility to speak and act truthfully. No one, however high or mighty, should speak lies. The right to privacy and to personal and professional confidentiality is to be respected. No one is obliged to tell all the truth to everyone all the time.

#### Article 13

No politicians, public servants, business leaders, scientists, writers or artists are exempt from general ethical standards, nor are physicians, lawyers and other professionals who have special duties to clients. Professional and other codes of ethics should reflect the priority of general standards such as those of truthfulness and fairness.

#### Article 14

The freedom of the media to inform the public and to criticize institutions of society and governmental actions, which is essential for a just society, must be used with responsibility and discretion. Freedom of the media carries a special responsibility for accurate and truthful reporting. Sensational reporting that degrades the human person or dignity must at all times be avoided.

## Article 15

While religious freedom must be guaranteed, the representatives of religions have a special responsibility to avoid expressions of prejudice and acts of discrimination toward those of different beliefs. They should not incite or legitimize hatred, fanaticism and religious wars, but should foster tolerance and mutual respect between all people.

## Mutual Respect and Partnership

### Article 16

All men and all women have a responsibility to show respect to one another and understanding in their partnership. No one should subject another person to sexual exploitation or dependence. Rather, sexual partners should accept the responsibility of caring for each other well-being.

### Article 17

In all its cultural and religious varieties, marriage requires love, loyalty and forgiveness and should aim at guaranteeing security and mutual support.

### Article 18

Sensible family planning is the responsibility of every couple. The relationship between parents and children should reflect mutual love, respect, appreciation and concern. No parents or other adults should exploit, abuse or maltreat children.

## Conclusion

### Article 19

Nothing in this Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the responsibilities, rights and freedom set forth in this Declaration and in the Universal Declaration of Human Rights of 1948.

## **Appendix C**

### **Universal Islamic Declaration of Human Rights**

This is a declaration for mankind, a guidance and instruction to those who fear God.  
(Al Qur'an, Al-Imran 3:138)

#### Foreword

Islam gave to mankind an ideal code of human rights fourteen centuries ago. These rights aim at conferring honour and dignity on mankind and eliminating exploitation, oppression and injustice.

Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered.

Human rights in Islam are an integral part of the overall Islamic order and it is obligatory on all Muslim governments and organs of society to implement them in letter and in spirit within the framework of that order.

It is unfortunate that human rights are being trampled upon with impunity in many countries of the world, including some Muslim countries. Such violations are a matter of serious concern and are arousing the conscience of more and more people throughout the world.

I sincerely hope that this Declaration of Human Rights will give a powerful impetus to the Muslim peoples to stand firm and defend resolutely and courageously the rights conferred on them by God.

This Declaration of Human Rights is the second fundamental document proclaimed by the Islamic Council to mark the beginning of the 15th Century of the Islamic era, the first being the Universal Islamic Declaration announced at the International Conference on The Prophet Muhammad (peace and blessings be upon him) and his Message, held in London from 12 to 15 April 1980.

The Universal Islamic Declaration of Human Rights is based on the Qur'an and the Sunnah and has been compiled by eminent Muslim scholars, jurists and representatives of Islamic movements and thought. May God reward them all for their efforts and guide us along the right path.

Paris 21 Dhul Qaidah 1401 Salem Azzam

19th September 1981 *Secretary General*

O men! Behold, We have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to know one another. Verily, the noblest of you in the sight of God is the one who is most deeply conscious of Him. Behold, God is all-knowing, all aware. (Al Qur'an, Al-Hujurat 49:13)

#### Preamble

WHEREAS the age-old human aspiration for a just world order wherein people could live, develop and prosper in an environment free from fear, oppression, exploitation and deprivation, remains largely unfulfilled;

WHEREAS the Divine Mercy unto mankind reflected in its having been endowed with super-abundant economic sustenance is being wasted, or unfairly or unjustly withheld from the inhabitants of the earth;

WHEREAS Allah (God) has given mankind through His revelations in the Holy Qur'an and the Sunnah of His Blessed Prophet Muhammad an abiding legal and moral framework within which to establish and regulate human institutions and relationships;

WHEREAS the human rights decreed by the Divine Law aim at conferring dignity and honour on mankind and are designed to eliminate oppression and injustice;

WHEREAS by virtue of their Divine source and sanction these rights can neither be curtailed, abrogated or disregarded by authorities, assemblies or other institutions, nor can they be surrendered or alienated;

*Therefore we, as Muslims, who believe*

- a) in God, the Beneficent and Merciful, the Creator, the Sustainer, the Sovereign, the sole Guide of mankind and the Source of all Law;
- b) in the Vicegerency (Khilafah) of man who has been created to fulfill the Will of God on earth;
- c) in the wisdom of Divine guidance brought by the Prophets, whose mission found its culmination in the final Divine message that was conveyed by the Prophet Muhammad (Peace be upon him) to all mankind;
- d) that rationality by itself without the light of revelation from God can neither be a sure guide in the affairs of mankind nor provide spiritual nourishment to the human soul, and,

knowing that the teachings of Islam represent the quintessence of Divine guidance in its final and perfect form, feel duty-bound to remind man of the high status and dignity bestowed on him by God;

- e) in inviting all mankind to the message of Islam;
- f) that by the terms of our primeval covenant with God our duties and obligations have priority over our rights, and that each one of us is under a bounden duty to spread the teachings of Islam by word, deed, and indeed in all gentle ways, and to make them effective not only in our individual lives but also in the society around us;
- g) in our obligation to establish an Islamic order:
  - i) wherein all human beings shall be equal and none shall enjoy a privilege or suffer a disadvantage or discrimination by reason of race, colour, sex, origin or language;
  - ii) wherein all human beings are born free;
  - iii) wherein slavery and forced labour are abhorred;
  - iv) wherein conditions shall be established such that the institution of family shall be preserved, protected and honoured as the basis of all social life;
  - v) wherein the rulers and the ruled alike are subject to, and equal before, the Law;
  - vi) wherein obedience shall be rendered only to those commands that are in consonance with the Law;
  - vii) wherein all worldly power shall be considered as a sacred trust, to be exercised within the limits prescribed by the Law and in a manner approved by it, and with due regard for the priorities fixed by it;
  - viii) wherein all economic resources shall be treated as Divine blessings bestowed upon mankind, to be enjoyed by all in accordance with the rules and the values set out in the Qur'an and the Sunnah;
  - ix) wherein all public affairs shall be determined and conducted, and the authority to administer them shall be exercised after mutual consultation (Shura) between the believers qualified to contribute to a decision which would accord well with the Law and the public good;
  - x) wherein everyone shall undertake obligations proportionate to his capacity and shall be held responsible pro rata for his deeds;

- xi) wherein everyone shall, in case of an infringement of his rights, be assured of appropriate remedial measures in accordance with the Law;
- xii) wherein no one shall be deprived of the rights assured to him by the Law except by its authority and to the extent permitted by it;
- xiii) wherein every individual shall have the right to bring legal action against anyone who commits a crime against society as a whole or against any of its members;
- xiv) wherein every effort shall be made to
  - (a) secure unto mankind deliverance from every type of exploitation, injustice and oppression,
  - (b) ensure to everyone security, dignity and liberty in terms set out and by methods approved and within the limits set by the Law;

*Do hereby, as servants of Allah and as members of the Universal Brotherhood of Islam, at the beginning of the Fifteenth Century of the Islamic Era, affirm our commitment to uphold the following inviolable and inalienable human rights that we consider are enjoined by Islam.*

### I Right to Life

- a) Human life is sacred and inviolable and every effort shall be made to protect it. In particular no one shall be exposed to injury or death, except under the authority of the Law.
- b) Just as in life, so also after death, the sanctity of a person's body shall be inviolable. It is the obligation of believers to see that a deceased person's body is handled with due solemnity.

### II Right to Freedom

- a) Man is born free. No inroads shall be made on his right to liberty except under the authority and in due process of the Law.
- b) Every individual and every people has the inalienable right to freedom in all its forms physical, cultural, economic and political — and shall be entitled to struggle by all available means against any infringement or abrogation of this right; and every oppressed individual or people has a legitimate claim to the support of other individuals and/or peoples in such a struggle.

### III Right to Equality and Prohibition Against Impermissible Discrimination

- a) All persons are equal before the Law and are entitled to equal opportunities and protection of the Law.
- b) All persons shall be entitled to equal wage for equal work.
- c) No person shall be denied the opportunity to work or be discriminated against in any manner or exposed to greater physical risk by reason of religious belief, colour, race, origin, sex or language.

#### IV Right to Justice

- a) Every person has the right to be treated in accordance with the Law, and only in accordance with the Law.
- b) Every person has not only the right but also the obligation to protest against injustice; to recourse to remedies provided by the Law in respect of any unwarranted personal injury or loss; to self-defence against any charges that are preferred against him and to obtain fair adjudication before an independent judicial tribunal in any dispute with public authorities or any other person.
- c) It is the right and duty of every person to defend the rights of any other person and the community in general (Hisbah).
- d) No person shall be discriminated against while seeking to defend private and public rights.
- e) It is the right and duty of every Muslim to refuse to obey any command which is contrary to the Law, no matter by whom it may be issued.

#### V Right to Fair Trial

- a) No person shall be adjudged guilty of an offence and made liable to punishment except after proof of his guilt before an independent judicial tribunal.
- b) No person shall be adjudged guilty except after a fair trial and after reasonable opportunity for defence has been provided to him.
- c) Punishment shall be awarded in accordance with the Law, in proportion to the seriousness of the offence and with due consideration of the circumstances under which it was committed.
- d) No act shall be considered a crime unless it is stipulated as such in the clear wording of the Law.



- e) Every individual is responsible for his actions. Responsibility for a crime cannot be vicariously extended to other members of his family or group, who are not otherwise directly or indirectly involved in the commission of the crime in question.

#### VI Right to Protection Against Abuse of Power

Every person has the right to protection against harassment by official agencies. He is not liable to account for himself except for making a defence to the charges made against him or where he is found in a situation wherein a question regarding suspicion of his involvement in a crime could be reasonably raised

#### VII Right to Protection Against Torture

No person shall be subjected to torture in mind or body, or degraded, or threatened with injury either to himself or to anyone related to or held dear by him, or forcibly made to confess to the commission of a crime, or forced to consent to an act which is injurious to his interests.

#### VIII Right to Protection of Honour and Reputation

Every person has the right to protect his honour and reputation against calumnies, groundless charges or deliberate attempts at defamation and blackmail.

#### IX Right to Asylum

- a) Every persecuted or oppressed person has the right to seek refuge and asylum. This right is guaranteed to every human being irrespective of race, religion, colour and sex.
- b) Al Masjid Al Haram (the sacred house of Allah) in Mecca is a sanctuary for all Muslims.

#### X Rights of Minorities

- a) The Qur'anic principle "There is no compulsion in religion" shall govern the religious rights of non-Muslim minorities.
- b) In a Muslim country religious minorities shall have the choice to be governed in respect of their civil and personal matters by Islamic Law, or by their own laws.

#### XI Right and Obligation to Participate in the Conduct and Management of Public Affairs

- a) Subject to the Law, every individual in the community (Ummah) is entitled to assume public office.
- b) Process of free consultation (Shura) is the basis of the administrative relationship between the government and the people. People also have the right to choose and remove their rulers in accordance with this principle.

## XII Right to Freedom of Belief, Thought and Speech

- a) Every person has the right to express his thoughts and beliefs so long as he remains within the limits prescribed by the Law. No one, however, is entitled to disseminate falsehood or to circulate reports which may outrage public decency, or to indulge in slander, innuendo or to cast defamatory aspersions on other persons.
- b) Pursuit of knowledge and search after truth is not only a right but a duty of every Muslim.
- c) It is the right and duty of every Muslim to protest and strive (within the limits set out by the Law) against oppression even if it involves challenging the highest authority in the state.
- d) There shall be no bar on the dissemination of information provided it does not endanger the security of the society or the state and is confined within the limits imposed by the Law.
- e) No one shall hold in contempt or ridicule the religious beliefs of others or incite public hostility against them; respect for the religious feelings of others is obligatory on all Muslims.

## XIII Right to Freedom of Religion

Every person has the right to freedom of conscience and worship in accordance with his religious beliefs.

## XIV Right to Free Association

- a) Every person is entitled to participate individually and collectively in the religious, social, cultural and political life of his community and to establish institutions and agencies meant to enjoin what is right (ma'roof) and to prevent what is wrong (munkar).
- b) Every person is entitled to strive for the establishment of institutions whereunder an enjoyment of these rights would be made possible. Collectively, the community is obliged to establish conditions so as to allow its members full development of their personalities.

## XV The Economic Order and the Rights Evolving Therefrom

- a) In their economic pursuits, all persons are entitled to the full benefits of nature and all its resources. These are blessings bestowed by God for the benefit of mankind as a whole.
- b) All human beings are entitled to earn their living according to the Law.

- c) Every person is entitled to own property individually or in association with others. State ownership of certain economic resources in the public interest is legitimate.
- d) The poor have the right to a prescribed share in the wealth of the rich, as fixed by Zakah, levied and collected in accordance with the Law.
- d) All means of production shall be utilised in the interest of the community (Ummah) as a whole, and may not be neglected or misused.
- e) In order to promote the development of a balanced economy and to protect society from exploitation, Islamic Law forbids monopolies, unreasonable restrictive trade practices, usury, the use of coercion in the making of contracts and the publication of misleading advertisements.
- f) All economic activities are permitted provided they are not detrimental to the interests of the community(Ummah) and do not violate Islamic laws and values.

#### XVI Right to Protection of Property

No property may be expropriated except in the public interest and on payment of fair and adequate compensation.

#### XVII Status and Dignity of Workers

Islam honours work and the worker and enjoins Muslims not only to treat the worker justly but also generously. He is not only to be paid his earned wages promptly, but is also entitled to adequate rest and leisure.

#### XVIII Right to Social Security

Every person has the right to food, shelter, clothing, education and medical care consistent with the resources of the community. This obligation of the community extends in particular to all individuals who cannot take care of themselves due to some temporary or permanent disability.

#### XIX Right to Found a Family and Related Matters

- a) Every person is entitled to marry, to found a family and to bring up children in conformity with his religion, traditions and culture. Every spouse is entitled to such rights and privileges and carries such obligations as are stipulated by the Law.
- b) Each of the partners in a marriage is entitled to respect and consideration from the other.
- c) Every husband is obligated to maintain his wife and children according to his means.

- d) Every child has the right to be maintained and properly brought up by its parents, it being forbidden that children are made to work at an early age or that any burden is put on them which would arrest or harm their natural development.
- e) If parents are for some reason unable to discharge their obligations towards a child it becomes the responsibility of the community to fulfill these obligations at public expense.
- e) Every person is entitled to material support, as well as care and protection, from his family during his childhood, old age or incapacity. Parents are entitled to material support as well as care and protection from their children.
- f) Motherhood is entitled to special respect, care and assistance on the part of the family and the public organs of the community (Ummah).
- g) Within the family, men and women are to share in their obligations and responsibilities according to their sex, their natural endowments, talents and inclinations, bearing in mind their common responsibilities toward their progeny and their relatives.
- h) No person may be married against his or her will, or lose or suffer diminution of legal personality on account of marriage.

## XX Rights of Married Women

Every married woman is entitled to:

- a) live in the house in which her husband lives;
- b) receive the means necessary for maintaining a standard of living which is not inferior to that of her spouse, and, in the event of divorce, receive during the statutory period of waiting (iddah) means of maintenance commensurate with her husband's resources, for herself as well as for the children she nurses or keeps, irrespective of her own financial status, earnings, or property that she may hold in her own rights;
- c) seek and obtain dissolution of marriage (Khul'a) in accordance with the terms of the Law. This right is in addition to her right to seek divorce through the courts.
- d) inherit from her husband, her parents, her children and other relatives according to the Law;
- e) strict confidentiality from her spouse, or ex-spouse if divorced, with regard to any information that he may have obtained about her, the disclosure of which could prove detrimental to her interests. A similar responsibility rests upon her in respect of her spouse or ex-spouse.

## XXI Right to Education

- a) Every person is entitled to receive education in accordance with his natural capabilities.
- b) Every person is entitled to a free choice of profession and career and to the opportunity for the full development of his natural endowments.

## XXII Right of Privacy

Every person is entitled to the protection of his privacy.

## XXIII Right to Freedom of Movement and Residence

- a) In view of the fact that the World of Islam is veritably Ummah Islamia, every Muslim shall have the right to freely move in and out of any Muslim country.
- b) No one shall be forced to leave the country of his residence, or be arbitrarily deported therefrom without recourse to due process of Law.

### *Explanatory Notes*

1 In the above formulation of Human Rights, unless the context provides otherwise:

- a) the term 'person' refers to both the male and female sexes.
- b) the term 'Law' denotes the Shari'ah, i.e. the totality of ordinances derived from the Qur'an and the Sunnah and any other laws that are deduced from these two sources by methods considered valid in Islamic jurisprudence.

2 Each one of the Human Rights enunciated in this declaration carries a corresponding duty.

3 In the exercise and enjoyment of the rights referred to above every person shall be subject only to such limitations as are enjoined by the Law for the purpose of securing the due recognition of, and respect for, the rights and the freedom of others and of meeting the just requirements of morality, public order and the general welfare of the Community (Ummah).

The Arabic text of this Declaration is the original.

## Appendix D

### The Asean Declaration (Bangkok Declaration) Bangkok, 8 August 1967

The Ministers and representatives of Asian States, meeting at Bangkok from 29 March to 2 April 1993, pursuant to General Assembly resolution 46/116 of 17 December 1991 in the context of preparations for the World Conference on Human rights,

Adopt this Declaration, to be known as "The Bangkok Declaration", which contains the aspirations and commitments of the Asian region:

#### **BANGKOK DECLARATION**

Emphasizing the significance of the World Conference on Human Rights, which provides an invaluable opportunity to review all aspects of human rights and ensure a just and balanced approach thereto,

Recognizing the contribution that can be made to the World Conference by Asian countries with their diverse and rich cultures and traditions,

Welcoming the increased attention being paid to human rights in the international community,

Reaffirming their commitment to principles contained in the Charter of the United Nations and the Universal Declaration on Human Rights,

Recalling that in the Charter of the United Nations the question of universal observance and promotion of human rights and fundamental freedoms has been rightly placed within the context of international cooperation,

Noting the progress made in the codification of human rights instruments, and in the establishment of international human rights mechanisms, while expressing concern that these mechanisms relate mainly to one category of rights,

Emphasizing that ratification of international human rights instruments, particularly the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, by all States should be further encouraged,

Reaffirming the principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of States,

Stressing the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization,

Recognizing that the promotion of human rights should be encouraged by cooperation and consensus, and not through confrontation and the imposition of incompatible values,

Reiterating the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the inherent interrelationship between development, democracy, universal enjoyment of all human rights, and social justice, which must be addressed in an integrated and balanced manner,

Recalling that the Declaration on the Right to Development has recognized the right to development as a universal and inalienable right and an integral part of fundamental human rights,

Emphasizing that endeavours to move towards the creation of uniform international human rights norms must go hand in hand with endeavours to work towards a just and fair world economic order,

Convinced that economic and social progress facilitates the growing trend towards democracy and the promotion and protection of human rights,

Stressing the importance of education and training in human rights at the national, regional and international levels and the need for international cooperation aimed at overcoming the lack of public awareness of human rights,

1. Reaffirm their commitment to the principles contained in the Charter of the United Nations and the Universal Declaration on Human Rights as well as the full realization of all human rights throughout the world;
2. Underline the essential need to create favorable conditions for effective enjoyment of human rights at both the national and international levels;
3. Stress the urgent need to democratize the United Nations system, eliminate selectivity and improve procedures and mechanisms in order to strengthen international cooperation, based on principles of equality and mutual respect, and ensure a positive, balanced and non-confrontational approach in addressing and realizing all aspects of human rights;
4. Discourage any attempt to use human rights as a conditionality for extending development assistance;
5. Emphasize the principles of respect for national sovereignty and territorial integrity as well as non-interference in the internal affairs of States, and the non-use of human rights as an instrument of political pressure;
6. Reiterate that all countries, large and small, have the right to determine their political systems, control and freely utilize their resources, and freely pursue their economic, social and cultural development;

7. Stress the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization, and that no violation of human rights can be justified;
8. Recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds;
9. Recognize further that States have the primary responsibility for the promotion and protection of human rights through appropriate infrastructure and mechanisms, and also recognize that remedies must be sought and provided primarily through such mechanisms and procedures;
10. Reaffirm the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the need to give equal emphasis to all categories of human rights;
11. Emphasize the importance of guaranteeing the human rights and fundamental freedoms of vulnerable groups such as ethnic, national, racial, religious and linguistic minorities, migrant workers, disabled persons, indigenous peoples, refugees and displaced persons;
12. Reiterate that self-determination is a principle of international law and a universal right recognized by the United Nations for peoples under alien or colonial domination and foreign occupation, by virtue of which they can freely determine their political status and freely pursue their economic, social and cultural development, and that its denial constitutes a grave violation of human rights;
13. Stress that the right to self-determination is applicable to peoples under alien or colonial domination and foreign occupation, and should not be used to undermine the territorial integrity, national sovereignty and political independence of States;
14. Express concern over all forms of violation of human rights, including manifestations of racial discrimination, racism, apartheid, colonialism, foreign aggression and occupation, and the establishment of illegal settlements in occupied territories, as well as the recent resurgence of neo-nazism, xenophobia and ethnic cleansing;
15. Underline the need for taking effective international measures in order to guarantee and monitor the implementation of human rights standards and effective and legal protection of people under foreign occupation;
16. Strongly affirm their support for the legitimate struggle of the Palestinian people to restore their national and inalienable rights to self-determination and independence, and demand an immediate end to the grave violations of human rights in the Palestinian, Syrian Golan and other occupied Arab territories including Jerusalem;
17. Reaffirm the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human



rights, which must be realized through international cooperation, respect for fundamental human rights, the establishment of a monitoring mechanism and the creation of essential international conditions for the realization of such right;

18. Recognize that the main obstacles to the realization of the right to development lie at the international macroeconomic level, as reflected in the widening gap between the North and the South, the rich and the poor;

19. Affirm that poverty is one of the major obstacles hindering the full enjoyment of human rights;

20. Affirm also the need to develop the right of humankind regarding a clean, safe and healthy environment;

21. Note that terrorism, in all its forms and manifestations, as distinguished from the legitimate struggle of peoples under colonial or alien domination and foreign occupation, has emerged as one of the most dangerous threats to the enjoyment of human rights and democracy, threatening the territorial integrity and security of States and destabilizing legitimately constituted governments, and that it must be unequivocally condemned by the international community;

22. Reaffirm their strong commitment to the promotion and protection of the rights of women through the guarantee of equal participation in the political, social, economic and cultural concerns of society, and the eradication of all forms of discrimination and of gender-based violence against women;

23. Recognize the rights of the child to enjoy special protection and to be afforded the opportunities and facilities to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity;

24. Welcome the important role played by national institutions in the genuine and constructive promotion of human rights, and believe that the conceptualization and eventual establishment of such institutions are best left for the States to decide;

25. Acknowledge the importance of cooperation and dialogue between governments and non-governmental organizations on the basis of shared values as well as mutual respect and understanding in the promotion of human rights, and encourage the nongovernmental organizations in consultative status with the Economic and Social Council to contribute positively to this process in accordance with Council resolution 1296 (XLIV);

26. Reiterate the need to explore the possibilities of establishing regional arrangements for the promotion and protection of human rights in Asia;

27. Reiterate further the need to explore ways to generate international cooperation and financial support for education and training in the field of human rights at the national level and for the establishment of national infrastructures to promote and protect human rights if requested by States;

28. Emphasize the necessity to rationalize the United Nations human rights mechanism in order to enhance its effectiveness and efficiency and the need to ensure avoidance of the duplication of work that exists between the treaty bodies, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights, as well as the need to avoid the multiplicity of parallel mechanisms;
29. Stress the importance of strengthening the United Nations Centre for Human Rights with the necessary resources to enable it to provide a wide range of advisory services and technical assistance programmes in the promotion of human rights to requesting States in a timely and effective manner, as well as to enable it to finance adequately other activities in the field of human rights authorized by competent bodies;
30. Call for increased representation of the developing countries in the Centre for Human Rights.

## Appendix E

### AFRICAN CHARTER ON HUMAN RIGHTS AND PEOPLES RIGHTS

Adopted in Nairobi June 27, 1981  
Entered into Force October 21, 1986

#### PREAMBLE

The African States members of the Organisation of African Unity, parties to the present Convention entitled “African Charter on Human and Peoples’ Rights”;

*Recalling* Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of “a preliminary draft on an African Charter on Human and Peoples’ Rights, providing inter alia for the establishment of bodies to promote and protect human and peoples’ rights”;

*Considering* the Charter of the Organisation of African Unity, which stipulates that “freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples”;

*Reaffirming* the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights;

*Taking into consideration* the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples’ rights;

*Recognizing* on the one hand, that fundamental human rights stem from the attitudes of human beings, which justifies their international protection and on the other hand that the reality and respect of peoples’ rights should necessarily guarantee human rights;

*Considering* that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone;

*Convinced* that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

*Conscious* of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, language, religion or political opinions;

*Reaffirming* their adherence to the principles of human and peoples’ rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organisation of African Unity, the Movement of Non-Aligned Countries and the United Nations;

*Firmly convinced* of their duty to promote and protect human and peoples' rights and freedoms and taking into account the importance traditionally attached to these rights and freedoms in Africa;

Have agreed as follows:

## Part 1. Rights and Duties

### Chapter 1. Human and Peoples' Rights

#### *ARTICLE 1*

The Member States of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.

#### *ARTICLE 2*

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.

#### *ARTICLE 3*

1. Every individual shall be equal before the law
2. Every individual shall be entitled to equal protection of the law

#### *ARTICLE 4*

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

#### *ARTICLE 5*

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

#### *ARTICLE 6*

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

#### *ARTICLE 7*

1. Every individual shall have the right to have his cause heard. This comprises:
  - a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
  - b) The right to be presumed innocent until proved guilty by a competent court or tribunal;
  - c) The right to defence, including the right to be defended by counsel of his choice;
  - d) The right to be tried within a reasonable time by an impartial court or tribunal.
  
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

#### *ARTICLE 8*

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

#### *ARTICLE 9*

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

#### *ARTICLE 10*

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association.

#### *ARTICLE 11*

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

#### *ARTICLE 12*

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.

2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

#### *ARTICLE 13*

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of the country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

#### *ARTICLE 14*

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

#### *ARTICLE 15*

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

#### *ARTICLE 16*

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. State Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

#### *ARTICLE 17*

1. Every individual shall have the right to education
2. Every individual may freely take part in the cultural life of his community.
3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

#### *ARTICLE 18*

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

#### *ARTICLE 19*

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

#### *ARTICLE 20*

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of the State Parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

#### *ARTICLE 21*

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it
2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.
4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity.
5. State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

#### *ARTICLE 22*

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

#### *ARTICLE 23*

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organisation of African Unity shall govern relations between States.
2. For the purpose of strengthening peace, solidarity and friendly relations, State Parties to the present Charter shall ensure that:
  - a) any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State Party to the present Charter;
  - b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State Party to the present Charter.

#### *ARTICLE 24*

All peoples shall have the right to a general satisfactory environment favourable to their development.

#### *ARTICLE 25*

State Parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

#### *ARTICLE 26*

State Parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

### CHAPTER II: Duties

#### *ARTICLE 27*

1. Every individual shall have duties towards his family and society, the State and other legally recognised communities and the international community.



2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

#### *ARTICLE 28*

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

#### *ARTICLE 29*

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;
2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State whose national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is strengthened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to his defence in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

### PART II: Measures of Safeguard

#### CHAPTER I: Establishment and Organization of the African Commission on Human and Peoples' Rights

#### *ARTICLE 30*

An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organisation of African Unity to promote human and peoples' rights and ensure their protection in Africa.

#### *ARTICLE 31*

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience.

2. The members of the Commission shall serve in their personal capacity.

#### *ARTICLE 32*

The Commission shall not include more than one national of the same State.

#### *ARTICLE 33*

The members of the Commission shall be elected by secret ballot by the Assembly of Heads of State and Government, from a list of persons nominated by the State Parties to the present Charter.

#### *ARTICLE 34*

Each State Party to the present Charter may not nominate more than two candidates. The candidates must have the nationality of one of the State Parties to the present Charter. When two candidates are nominated by a State, one of them may not be a national of that State.

#### *ARTICLE 35*

1. The Secretary General of the Organisation of African Unity shall invite State Parties to the present Charter at least four months before the elections to nominate candidates;
2. The Secretary General of the Organisation of African Unity shall make an alphabetical list of the persons thus nominated and communicate it to the Heads of State and Government at least one month before the elections;

#### *ARTICLE 36*

The members of the Commission shall be elected for a six year period and shall be eligible for re-election. However, the term of office of four of the members elected at the first election shall terminate after two years and the term of office of three others, at the end of four years.

#### *ARTICLE 37*

Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organisation of African Unity shall draw lots to decide the names of those members referred to in Article 36.

#### *ARTICLE 38*

After their election, the members of the Commission shall make a solemn declaration to discharge their duties impartially and faithfully.

#### *ARTICLE 39*

1. In case of death or resignation of a member of the Commission, the Chairman of the Commission shall immediately inform the Secretary General of the Organisation of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.
2. If, in the unanimous opinion of other members of the Commission, a member has stopped discharging his duties for any reason other than a temporary absence, the Chairman of the Commission shall inform the Secretary General of the Organisation of African Unity, who shall then declare the seat vacant.
3. In each of the cases anticipated above, the Assembly of Heads of State and Government shall replace the member whose seat became vacant for the remaining period of his term, unless the period is less than six months.

#### *ARTICLE 40*

Every member of the Commission shall be in office until the date his successor assumes office.

#### *ARTICLE 41*

The Secretary General of the Organisation of African Unity shall appoint the Secretary of the Commission. He shall provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organisation of African Unity shall bear cost of the staff and services.

#### *ARTICLE 42*

1. The Commission shall elect its Chairman and Vice Chairman for a two-year period. They shall be eligible for re-election.
2. The Commission shall lay down its rules of procedure.
3. Seven members shall form the quorum.
4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The Secretary General may attend the meetings of the Commission. He shall neither participate in deliberations nor shall he be entitled to vote. The Chairman of the Commission may, however, invite him to speak.

#### *ARTICLE 43*

In discharging their duties, members of the Commission shall enjoy diplomatic privileges and immunities provided for in the General Convention on the Privileges and Immunities of the Organisation of African Unity.

#### *ARTICLE 44*

Provision shall be made for the emoluments and allowances of the members of the Commission in the Regular Budget of the Organisation of African Unity.

### CHAPTER II: Mandate of the Commission

#### *ARTICLE 45*

The functions of the Commission shall be:

1. To promote human and peoples' rights and in particular:
  - a) to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organise seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights and, should the case arise, give its views or make recommendations to Governments.
  - b) to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation.
  - c) Cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.
3. Interpret all the provisions of the present Charter at the request of a State Party, an institution of the OAU or an African Organisation recognised by the OAU.
4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

#### CHAPTER III: Procedure of the Commission

#### *ARTICLE 46*

The Commission may resort to any appropriate method of investigation; it may hear from the Secretary General of the Organisation of African Unity or any other person capable of enlightening it.

#### Communication from States

#### *ARTICLE 47*

If a State Party to the present Charter has good reasons to believe that another State Party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of that State to the matter. This Communication shall also be addressed to the Secretary General of the OAU and to the Chairman of the Commission. Within three months of the receipt of the Communication, the State to which the Communication is addressed shall give the enquiring State, written explanation or statement elucidating the matter. This should include as much as possible, relevant information relating to the laws and rules of procedure applied and applicable and the redress already given or course of action available.

#### *ARTICLE 48*

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

#### *ARTICLE 49*

Notwithstanding the provisions of Article 47, if a State Party to the present Charter considers that another State Party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organisation of African unity and the State concerned.

#### *ARTICLE 50*

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

#### *ARTICLE 51*

1. The Commission may ask the State concerned to provide it with all relevant information.
2. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representation.

#### *ARTICLE 52*

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of human and peoples' rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in Article 48, a report to the States concerned and communicated to the Assembly of Heads of State and Government.

#### *ARTICLE 53*

While transmitting its report, the Commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful.

#### *ARTICLE 54*

The Commission shall submit to each Ordinary Session of the Assembly of Heads of State and Government a report on its activities.

Other Communications

#### *ARTICLE 55*

1. Before each Session, the Secretary of the Commission shall make a list of the Communications other than those of State Parties to the present Charter and transmit them to Members of the Commission, who shall indicate which Communications should be considered by the Commission.
2. A Communication shall be considered by the Commission if a simple majority of its members so decide.

#### *ARTICLE 56*

Communications relating to Human and Peoples' rights referred to in Article 55 received by the Commission, shall be considered if they:

1. Indicate their authors even if the latter requests anonymity,
2. Are compatible with the Charter of the Organisation of African Unity or with the present Charter,
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organisation of African Unity,
4. Are not based exclusively on news disseminated through the mass media,
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter, and
7. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organisation of African Unity or the provisions of the present Charter.

#### *ARTICLE 57*

Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

#### *ARTICLE 58*

1. When it appears after deliberations of the Commission that one or more Communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.
2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its finding and recommendations.
3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.

#### *ARTICLE 59*

1. All measures taken within the provisions of the present Chapter shall remain confidential until the Assembly of Heads of State and Government shall otherwise decide.
2. However the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Government.
3. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

#### CHAPTER IV: Applicable Principles

##### *ARTICLE 60*

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on Human and Peoples' Rights, the Charter of the United Nations, the Charter of the Organisation of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of Human and Peoples' Rights, as well as from the provisions of various instruments adopted within the Specialised Agencies of the United Nations of which the Parties to the present Charter are members.

##### *ARTICLE 61*

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognised by Member States of the Organisation of African Unity, African practices consistent with international norms on Human and Peoples' Rights, customs generally accepted as law, general principles of law recognised by African States as well as legal precedents and doctrine.

##### *ARTICLE 62*

Each State Party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter.

##### *ARTICLE 63*

1. The present Charter shall be open to signature, ratification or adherence of the Member States of the Organisation of African Unity.
2. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary General of the Organisation of African Unity.
3. The present Charter shall come into force three months after the reception by the Secretary General of the instruments of ratification or adherence of a simple majority of the Member States of the Organisation of African Unity.

#### PART III: General Provisions

*ARTICLE 64*

1. After the coming into force of the present Charter, members of the Commission shall be elected in accordance with the relevant Articles of the present Charter.
2. The Secretary General of the Organisation of African Unity shall convene the first meeting of the Commission at the Headquarters of the Organisation within three months of the constitution of the Commission. Thereafter, the Commission shall be convened by its Chairman whenever necessary but at least once a year.

*ARTICLE 65*

For each of the States that will ratify or adhere to the present Charter after its coming into force, the Charter shall take effect three months after the date of the deposit by that State of the instrument of ratification or adherence.

*ARTICLE 66*

Special protocols or agreements may, if necessary, supplement the provisions of the present Charter.

*ARTICLE 67*

The Secretary General of the Organisation of African Unity shall inform members of the Organisation of the deposit of each instrument of ratification or adherence.

*ARTICLE 68*

The present Charter may be amended if a State Party makes a written request to that effect to the Secretary General of the Organisation of African Unity. The Assembly of Heads of State and Government may only consider the draft amendment after all the State Parties have been duly informed of it and the Commission has given its opinion on it at the request of the sponsoring State. The amendment shall be approved by a simple majority of the State Parties. It shall come into force for each State which has accepted it in accordance with its constitutional procedure three months after the Secretary General has received notice of the acceptance.

ADOPTED by the eighteenth Assembly of Heads of State and Government,  
June 1981 - Nairobi, Kenya