

## ARE UNIVERSAL HUMAN RIGHTS AND ISLAMIC LAW RECONCILABLE?

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Muslim societies have been experiencing significant social, economic and cultural changes since the last century. These changes were the effect of modernization, that is to say of the modern economy and the modern nation-state. Modernization in Muslim societies has gradually destroyed the traditional social and religious institutions, which served to protect individuals against pressures of the state and poverty, and it has created new threats to human dignity. This situation can be compared to the transition period from feudalism to commercial and industrial capitalism in the west. During this period western societies developed universal human rights doctrines to provide better protection for individuals against the threats of the modern state. Today, Muslim societies need to develop similar institutions to protect human dignity against these new threats. However, the universal human rights approach has been widely rejected by Muslim scholars until recently, on the ground that it represents a western value and is therefore inapplicable to Islam. The aim of this article is to examine Islamic and universal approaches to human rights and evaluate the suggestions for the reconciliation of the two approaches.

### 1. Islamic and universal approaches to human rights

The contemporary Muslim scholars specialized on human rights are divided into two groups. The first group argues that the concept of universal human rights is a western value, and therefore inappropriate and irrelevant to Islam. The other group takes the opposite view and claims that Islam and universal human rights are compatible with each other since Islamic law (Shari'ah) has laid down some universal human rights for every person very similar to the rights stipulated in the western human rights documents. This article examines the Islamic point of view on rights and freedoms and compares it with universal human rights approach.

Scholars who argue that Islam and human rights are compatible

have very challenging views and suggestions. They argue that contemporary human rights doctrines merely replicate the 1,400-year-old Islamic ideas. Here are some examples:

Khwaja Gulam Sadik, a scholar from India says: "*Islam had introduced a Universal Human Rights Declaration almost one thousand years before the English Bill of Rights*" (Sadik, 1982: 121). Sultanhusseyin Tabandeh, an Iranian thinker argues that Universal Declaration of Human Rights "*had not promulgated anything that was new nor inaugurated innovations and that every clause of it...already existed in better and more perfect form in Islam*".<sup>1</sup> According to Abul A'la Mawdudi, a Muslim scholar from Pakistan, "*Islam has laid down some universal fundamental rights for humanity as a whole...fundamental rights for every man by virtue of his status as a human being*" (Mawdudi, 1976: 10). A Turkish scholar, Yasar Nuri Ozturk argues; "*The Qur'an is a much more comprehensive human rights declaration than the declarations issued in the contemporary west*" (Ozturk, 1992: 64).<sup>2</sup>

It seems that these writers confuse the concepts of "human rights" and "human dignity".<sup>3</sup> There is no doubt that every culture has the concept of human dignity and every society introduces some institutions or mechanisms to realize and protect human dignity. Otherwise, solidarity among the members of a society cannot be achieved, which is the crucial factor for social life. The Qur'an (the Holy Book of Muslims) and hadith (the traditions about the deeds and teachings of the Prophet) explicitly entrench human dignity as well. Islam, as Malik puts it, "*wants to create a society based on a deep sense of moral responsibility and justice in order to preserve human dignity*" (Malik, 1981: 57). Accordingly, Islamic law has

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<sup>1</sup> As quoted by Katerina Dalacoura, in *Islam, Liberalism and Human Rights: Implications for International Relations*, London, NY: I.B.Tauris Publishers, 1998, p. 54.

<sup>2</sup> Most of the contemporary pro-Islamic Turkish writers are also very prone to say that the Prophet Mohammad has declared the world's first human rights manifesto in his Farewell Discourse. For Turkish writers' approaches to this issue see Uygun, 2000: 29-30 and the sources mentioned therein.

<sup>3</sup> A discussion of the relationship between "human dignity" and "human rights" is found in Jack Donnelly (1989) *Universal Human Rights in Theory & Practice*, Ithaca and London: Cornell University Press pp. 66-87.



established certain institutions for protection of human dignity. However, these institutions are very different from the universal human rights approach in that human dignity is the common element for every society, but human rights is a specific means for realizing human dignity. Arguing that every society has a human rights concept is somewhat misleading.

What are the distinctive features of the universal human rights approach? The human rights approach sees each person as an equal human being endowed with certain inalienable rights. There are three crucial elements in this approach:<sup>4</sup>

(i) All human beings are *equal* in having human rights. Being a man or woman, a believer or non-believer, a white or black has never a negative or positive effect for possessing human rights. This principle is violated when some persons are denied the possession of human rights, usually on the ground of some particular characterizations such as race, colour, sexual orientation, language, religion, political or other opinion, property, ethnicity, birth or other status.

(ii) The second important element of this approach regards *the nature of the rights*. Human rights are “inalienable” rights. Inalienability means that the human personality and the rights that belong to it cannot be separated. Persons cannot be alienated from their rights. This is not to say that one cannot be denied the enjoyment of human rights. We know very well that many repressive governments in the world continuously deny their peoples’ human rights. They alienate their people from their rights. What is claimed here is something different: For a person, losing human rights, not physically but morally, is impossible. If a person loses his or her rights or they are denied completely, he or she cannot be called “human being” in a moral sense. Therefore, human rights doctrines roughly equate having human rights and being human. Human rights are inseparable elements of the human being. They comprise minimum standards to protect human dignity at a very basic level. In a sense, without them, no existence will be considered human.

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<sup>4</sup> See Donnelly, 1989: pp.9-27; Uygun, 2000: 13-21.

(iii) The third element is *the source of human rights*: human rights derive from the inherent dignity of the human person. They are not given to people by God, Nature or the state. Therefore, being a person or human being is the only (necessary and sufficient) condition for having human rights.

Does the Islamic approach regarding rights and freedoms comprise these three crucial elements? Muslim writers, in their writings, enumerate some rights and freedoms according to Islam.<sup>5</sup> International Islamic documents (prepared by Arab or Islamic countries) also present lists of rights, some of which are quite similar to the lists produced in the west. Especially, the Arab Charter on Human Rights (approved by the League of Arab States on 15 September 1994) embraces many components of the human rights affirmed by the Universal Declaration of Human Rights.<sup>6</sup> Examining these writings and documents carefully, it can be seen that the concept of human rights has a different meaning in Islamic works than in universal documents.

Abdul Aziz Said's article, "Precept and Practice of Human Rights in Islam", is a good example of how the concept of human rights is understood in Islam. Said says:

*"Human rights exist only in relation to human obligations. Individuals possess certain obligations towards God, fellow humans, and nature, all of which are defined by Shariah. When individuals meet these obligations they acquire certain rights and freedoms, which are again prescribed by the Shariah. Those individuals who do not accept these obligations have no rights"* (Said, 1979: 73-74).

S. H. Nasr shares the same view:

*"As a result of fulfilling these obligations we gain certain rights and freedoms which are again outlined by the Divine Law. Those who do not fulfill these obligations have no*

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<sup>5</sup> See Malik, 1981: 61-64; Said, 1979: 65-68.

<sup>6</sup> With two exceptions: The right to change one's religion was not accepted and a clear prohibition on slavery was omitted in this document. In spite of some weaknesses, the Arab Charter on Human Rights appear to be more comprehensive a document than the Universal Islamic Declaration of Human Rights.



*legitimate rights; any claims of freedom they make upon the environment or society is illegitimate and a usurpation of what does not belong to them...”<sup>7</sup>*

As can be seen, the possession and exercise of human rights are conditional on the acceptance of some obligations. Human rights are not considered as rights that are inherent to the individual and, most importantly, independent of the discharge of civic or religious responsibility. Human rights do not exist, as Said and Nasr puts it, unless individuals meet some obligations. This approach is not compatible with the view that human rights derive from the inherent dignity of the human person as expressed in the universal human rights documents.

The idea that human rights are fundamental and unconditional entitlements simply on the grounds of being human is absent in all Islamic or Arab documents on human rights as well. For instance, the Universal Islamic Declaration of Human Rights (1980) explicitly states “*our duties and obligations have priority over our rights*”.<sup>8</sup>

From the Islamic point of view, rights can easily be alienated from human personality in case one does not fulfill one’s obligations towards God, fellow citizens or Nature. Rights are not considered inalienable in their character. Therefore, although persons hold and enjoy numerous rights in Islam, these rights cannot be defined as “human rights”.<sup>9</sup>

Another point to be mentioned here is that what is called “right” by Islamic scholars is formulated as “duty” in Islam. The right to life is in fact the divine injunction not to kill. The right to justice is the duty of the rulers to establish justice. The right to freedom is merely a duty not to enslave unjustly. The freedom of expression is actually an obligation to speak the truth (Donnelly, 1989: 51). Duties and obligations are not alien to the concept of universal human rights. But in Islamic law, they are the essence of the alleged human rights.

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<sup>7</sup> As quoted by Ebrahim Moosa in “The Dilemma of Islamic Rights Schemes”, *The Journal of Law and Religion*, Vol. XV. No. 1&2, p. 199.

<sup>8</sup> For more details see Moosa, 2001: 195-200; Dalacoura, 1998: 49-51; Abu-Sahlieh, 1993: 240-244.

<sup>9</sup> According to Tibi, this difference is based on the incompatible cosmological views of world, namely the theocentric and the man-centered. “*In order to embrace human rights as entitlements, Muslims need to embrace cultural modernity.*” See Tibi, 1994: 298.

## 2. The most problematic issues of Islamic law regarding human rights

Recent human rights literature on Islam, together with Arab or Islamic Declarations and Charters, has made a major contribution to the harmonization of the Islamic law and the universal human rights. However, there are still many problems to be solved regarding such issues as slavery, some types of punishments, and the status of women, religious minorities and unbelievers, which are generally considered as points in Islam that are incompatible with the universal human rights. In the following these issues will be treated one by one, in brief.

### 2.1 Slavery

The Qur'an endorses slavery as an institution (Rosenthal, 1960: 29). Islamic law orders that slaves should be treated humanely. The law encourages people to free their slaves. In Islam, slaves are considered human, not animals or property, which is a major step taken 1.400 years ago towards equality before the law. As known, ancient Greek and Roman law defined slaves as property. Slaves, in the ancient societies, did not have any human rights including the right to life, the right to keep their own names, the right to marry and the right to have children. They were given animal names by their masters. Children of a slave were the property of his master. People in Greek city-states or the Roman Empire held the opinion that slaves were a kind of animal, not a human being.<sup>10</sup>

Islamic law elevated the status of slaves from property to human beings with very limited rights. In spite of these positive steps, there

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<sup>10</sup> The status of slaves remained the same until the 19<sup>th</sup> or even 20<sup>th</sup> century. For example, in the USA, until the civil war, the legal status of a black person was defined as property in legal documents. Although the American Declaration of Independence stated that "*all men are created equal and they are endowed with certain inalienable rights*", the word of "men" did not originally include black people and women. The same is true for the French Revolution. In the French Declaration of the Rights of Men, the word "men" was considered not to include women and slaves or colored people in the French colonies. See Senger, 1993: 52-66. However, most of the Muslim scholars accept that the terms such as "man" or the like in the Qur'an include slaves. According to Islam, slavery is not a natural destiny; the basic principle for all children of Adam is freedom. See Rosenthal, 1960: pp. 29-34.



is no prohibition of slavery, but on the contrary endorsement of it. This is incompatible with the universal human rights approach as expressed in the article 4 of the Universal Declaration: "*Slavery and the slave trade shall be prohibited in all their forms*".

Although the Qur'an endorses slavery, almost nobody, today, is in favor of it. Social life has fundamentally changed and slavery has become a useless or unnecessary institution over time. The conditions that permitted the existence of slavery at the time of the Prophet no longer exist. One can claim that the Qur'an, 1,400 years ago, gave the slaves a higher status than they had before in pre-Islamic society. This shows the ultimate objective of the Qur'an: Abolition of slavery entirely in the long run. The Qur'an recognizes slavery only as a transitional condition and provided various methods for its elimination.<sup>11</sup>

Although the Qur'an uses a gradual approach to the change of the well-established institution of slavery, Islamic scholars have not yet developed a clear prohibition of slavery by reinterpreting the Qur'an. Islamic or Arab human rights documents are not courageous but very cautious on slavery. Usually, the freedom from slavery was omitted in these documents. Surprisingly, the Cairo Declaration on Human Rights in Islam (1990) has a provision on slavery stating (article 11) "*no one has the right to enslave*". This is, of course, not an explicit statement to abolish slavery but when it is fully implemented, slavery would no longer exist.<sup>12</sup>

## 2.2 *The fixed punishments (Hadd punishments)*

The fixed punishments constitute a major problem from the viewpoint of universal human rights. According to some Muslim jurists, Islamic criminal law recognizes six major offences, each of which has a penalty prescribed in fixed terms in the Qur'an or hadith. These offences are the drinking of alcohol, theft, armed robbery, illicit sexual relations, slanderous accusation of unchastity, and apostasy (El-Awa, 1982: 1-42). The punishments prescribed for these offences such as stoning, beating, scourge or amputation are today considered

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<sup>11</sup> In this vein see Al-Hibri, 2001: 58.

<sup>12</sup> Today slavery is still being practiced in such Arab or Muslim countries as Saudi Arabia and Mauritania. See Abu-Sahlieh, 1993: p. 245.



torture, inhuman or at least degrading punishments in the modern world.

The fixed punishments cannot be changed (be alleviated or made heavier) or pardoned by the judge, public authorities or the victim of the offence. No human legislator is supposed to abolish them. (El-Awa, 1982: 1).

Some of these punishments such as stoning have no Qur'anic basis and therefore may be set aside with the liberal interpretation of the Holy Book. However, some others are prescribed in the Qur'an. Regarding amputation punishment the Qur'an states that (5:38): *"As for the thief, both male and female, cut off their hands. It is the reward of their own deeds, an exemplary punishment from Allah"*. The Prophetic tradition is in harmony with this verse. As reported in Bukhari and Muslim, amputation of hands was practiced by the Prophet himself. The Prophet also prohibited any mediation in executing the fixed punishments (El-Awa, 1982: 2).

This punishment is a clear violation of Article 5 of the Universal Declaration and Article 3 of the European Convention. Amputation of the hand of a thief is a cruel, inhuman or degrading punishment according to international human rights documents.

One may argue that the execution of this punishment according to Islamic law depends on so strict conditions that situations hardly ever meet them. Therefore, the implementation of this punishment would be very limited or almost impossible in Islamic states.<sup>13</sup> Indeed, Islamic states throughout their history have usually found out some reasons to avoid the implementation of this precept.

However, the problem here is not how often and under what strict conditions this corporal punishment is applied. The problem is whether this punishment can be condemned as cruel, inhuman or degrading and whether a position can be taken against it. For a Muslim, this issue is not open to discussion since God, as expressed in the Qur'an, settled this matter. If a Muslim wants to discuss this matter, it means he or she has lost his faith. This person might be blamed for apostasy, which is a punishable behavior (An-Naim, 1992: 34-35).

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<sup>13</sup> Most Muslim countries have introduced secular criminal law while still preserving religious civil law. However, Islamic law has always been official criminal law in Saudi Arabia.

There is again a way out in order to avoid implementing this punishment. From the Islamic point of view, a human life does not end at the death, but extends beyond to the next life. A religiously sanctioned punishment prevents an offender being punished in the other world because God does not punish twice for the same offence. Since the punishment in the next world would be much more strenuous than that is in this world, amputation might be desirable for a faithful offender (An-Naim, 1992: 35).

In this context, An-Naim's argument can be improved to its logical end: A Muslim government, with a liberal interpretation of Islamic law, could argue that the amputation of the hand of a thief is an option for the rulers. This is permission, not a necessity. In other words, governments are allowed to do that; they do not have to do so. If a government opts for a lower punishment, which is considered sufficient to protect public order, the offender will be punished again in the next world for the same offence to some extent.

This kind of interpretation is not likely to lead to the total abolition of amputation. It might only provide a legitimate ground not to implement this punishment. Therefore, the inconsistency between Islamic law and universal human rights at this point would remain unsolved.

### 2.3 *The position of unbelievers*

The Qur'an states that unbelievers (idolaters) must be slain (2: 191): "*And slay them wherever ye find them*". Unbelievers may be forced to convert to Islam especially during the Holy War, Jihad. But the Qur'an also (in the same chapter) states (2: 256) "*there is no compulsion in religion*". There are some other verses in the Qur'an, which emphasize the importance of the freedom of choice.<sup>14</sup>

These verses are apparently contradictory to each other. It is difficult to say from the viewpoint of classical interpretation method

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<sup>14</sup> Here are two examples: "*And if thy Lord willed, all who are in the earth would have believed together. Wouldst thou (Muhammad) compel men until they are believers?*" (Q. 10: 99).

"And if they argue with thee, (O Muhammad), say: I have surrendered my purpose to Allah...Have ye (too) surrendered? If they surrender, then truly they are rightly guided, and if they turn away, then it is thy duty only to convey the message (unto them)" (Q. 3: 20).



that one of them has a priority over all other verses chronologically or on the ground of its specialty in nature. Under the assumption that all verses in the Qur'an have the same value and effect, the verses relating to a single issue should be interpreted in away allowing each of them to be implemented optimally. Accordingly, although the Qur'an says unbelievers must be slain, the proper meaning of this verse cannot be understood in isolation from the other related verses. This legal reasoning, together with the liberal interpretation method make it possible to follow a moderate policy towards unbelievers. However, this is still not yet compatible with universal human rights.

#### 2.4 *The freedom of religion and conscience and the apostasy punishment*

Islamic law prohibits conversion from Islam to another religion, which is a denial of the freedom of religion and conscience. As known, internationally recognized norms on freedom of religion and conscience include the right to change one's religion and belief. This right has always been omitted in Islamic or Arab documents on human rights.

Although there is a consensus on the prohibition of conversion, the punishment is a controversial issue among the Muslim scholars.<sup>15</sup> Conversion is generally referred to as *apostasy (irtidad)* in terms of Islamic law, which is committed when a Muslim rejects Islam by word, deed or omission. The punishment assigned to this offence, according to most Muslim jurists, is the death penalty.

The warrant for punishing apostasy is not derived from the Qur'an, but from the hadith. Apostasy is mentioned in the Qur'an in 13 verses, but all these verses may be interpreted as saying that apostasy will be punished in the Hereafter rather than in this world. The Muslim jurists generally rely on certain Prophetic traditions in order to support the death penalty for apostasy. Here are two examples<sup>16</sup>:

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<sup>15</sup> For more details see Sidahmed, 2000: 129-137; Hamidullah, 1997: 239.

<sup>16</sup> See Sidahmed, 2000: 130.



*“Whosoever changes his religion, slay him”. “The blood of a fellow Muslim should never be shed except in three cases: That of the (married) adulterer, the murderer and whoever forsake the religion of Islam”.*

The authenticity of these sayings is debated among the jurists.

Some contemporary scholars argue that apostasy is not a religious but a political offence and that is subject to punishment at the discretion of political authorities (Al-Muhairi, 1995: 301-303; Moosa, 2001: 200-202). Mohamed S. El-Awa, in his book ‘Punishment in Islamic Law’ concluded that

*“the Qur’an prescribes no punishment in this life for apostasy...A court may either sentence an apostate to death, imprison him, or prescribe whatever other punishment it thinks appropriate”* (El-Awa, 1982: 56).

From the point of view of the universal human rights approach, the problem is not what kind of penalty Islamic law prescribes for conversion. The problem is the fact that conversion, in any case, is a punishable offence in Islam. Even though the Qur’an states (2:256) *“there is no compulsion in religion”* and it has many verses which emphasize the freedom of choice, Muslim jurists agree on this argument that a Muslim is not allowed to convert to another religion or to unbelief.<sup>17</sup> This is a violation of article 18 of the Universal Declaration, which confers the right to freedom of thought, conscience and religion, including the right to change one’s religion and belief.

Execution for apostasy has rarely been invoked throughout the history of Islam. The limited cases show that apostasy charges have been often used for political purposes rather than religious considerations. This punishment was abolished under the Ottoman Empire in 1844. Today, the debate on apostasy is not only an academic interest but also remains a real threat to the freedom of conscience and even to the right to life. The contemporary apostasy cases (M.

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<sup>17</sup> The apostasy punishment shows its effects not only in criminal law but also in civil law. The case of Nasr Hamid Abu Zeid is a striking example in this vein. The Cairo Court of Appeal, in 1995 ruled that Abu Zeid, a university lecturer in Egypt, should be divorced from his wife on the ground that he had been found guilty of apostasy. According to Islamic law, a Muslim woman is not allowed to marry with a non-Muslim. See Sidahmed, 2000: 140-141.

M. Taha, N. Abu Zeid, S. Rushdi) prove that the threat of the implementation of this punishment tends to narrow the scope of reinterpretation of Islam (Sidahmed, 2000: 139-44).

### 2.5 *Status of Christian and Jewish minorities*

The position of religious minorities is different from the position of unbelievers. Christian and Jewish minorities are both categorized as "People of the Book" and they are ensured certain rights such as security of person, freedom of worship, property rights and a degree of communal autonomy. But they are also restricted in many ways, and are not equal in all rights with Muslims. For example, Jews and Christians are forbidden from holding the highest political offices and are not allowed to preach openly. Taking into consideration these limitations, Jewish and Christian minorities may be defined as second-class citizens in an Islamic state. They enjoy religious tolerance rather than religious freedom (Dalacoura, 1998: 46).

In the history of Islamic states, religious minorities have generally enjoyed relative safety. Generally speaking, their status was better than that of their counterparts in the European states until 19<sup>th</sup> century. However, today modern democratic states have reached the understanding that everybody is equal before the law irrespective of his or her religion, which is an idea quite alien to Islamic law.

### 2.6 *The status of women*

The inequality between sexes is a major problem in Islamic law. When one examines the positive side, Islam guaranteed certain rights to women compared to the pre-Islamic Arabia. Although limited, women have such rights as the right to inheritance, to be party to a contract in marriage (not an object for sale), to manage her own property and certain rights to divorce. Nowhere does the Qur'an clearly state that women must be veiled, that stoning is the punishment for adultery, that women must be circumcised (Dalacoura, 1998: 46; Al-Hibri, 2001: 46-66).

Recognition of women's right to own property and manage their own affairs in Islam existed long before the Western countries introduced similar rights for women. This right seems very convenient for reinforcing the potential for women's autonomy and equality in the modern world.

On the negative side, Islamic law stresses the superiority of the



man over the woman. It appears that the inferior position of women is not only based on the pre-Arabic traditions but also Qur'anic text:

*"Men are in charge of women, because Allah hath made the one of them to excel the other, and because they spend of their property" (Q. 4:34). "Men are a degree above them (women)" (Q. 2: 228).*

A man is allowed to use physical violence against his wife. The Qur'an states that (4: 34):

*"So good women are the obedient, guarding in secret that which Allah hath guarded. As for those from whom ye fear rebellion, admonish them and banish them to beds apart, and scourge them. Then if they obey you, seek not a way against them".*

The Prophet Mohammad, in his Farewell Discourse, delivered on the Last Pilgrimage, expressed the Islamic point of view on this issue very clearly:

*"...They (women) should not let your beds be trampled by others than you, should not allow those to enter your houses whom you do not like without your authorization, and they should not commit turpitude. If they do commit that, then God has given you permission to reprimand them, to separate yourself from them in beds, and to strike them but not hard".<sup>18</sup>*

Husbands can divorce their wives without explanation and can be polygamous if they so choose. Husbands have exclusive rights of custody over the children in case of separation. Testimony of one male witness is equal to that of two women.

Does the liberal interpretation of Islam work here as well? Some writers' answer is "yes". Reinterpretation of Islam may help to solve

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<sup>18</sup> The extract is cited from Hamidullah, 1997: 208 The Farewell Discourse is generally considered the best statement of human rights in Islam. According to Malik, *"The farewell sermon of the Holy Prophet was a comprehensive charter founded on the basic, fundamental, inalienable, and residual rights of man guaranteed in written form, under the Holy Qur'an which constitutes the "Spoken Word of God".* Malik, 1981: 57.



this problem at least partially.<sup>19</sup> The essence of their argument is that Islam has introduced certain new rights for women and elevated their status as compared to their pre-Islamic status. Therefore, it can reasonably be said that the ultimate aim of Islam is to reach real and complete gender equality. This aim could not be realized 1.400 years ago all at once, but only step by step. Therefore, contemporary Islamic governments have an obligation to take necessary measures in order to reach this goal.

The Qur'an has traditionally been interpreted as indicating that men are a degree above women, that the good women must obey their husbands, that men may beat their wives and that men may have up to four wives. However, this interpretation necessarily reflects the perspective of the interpreters, which is based completely on patriarchal values. According Al-Hibri, the Qur'an, in fact, uses a gradual approach to change entrenched patriarchal customs, beliefs, and practices. Fundamental changes in human consciousness do not usually occur overnight. Instead, they require a period of individual or even social gestation.<sup>20</sup> The prohibition against drinking wine is a good example to demonstrate how a change was introduced in stages in the ancient Arabia, which was used to drinking. In the first stage, the Qur'an stated that drinking alcoholic beverages is not good. In the second stage, drunken men were prohibited to pray. Finally, the Qur'an prohibited drinking alcohol completely.<sup>21</sup>

Examining the Qur'anic verses and the prophetic traditions regarding violence against women, Al-Hibri has reached the conclusion that Islamic law did not authorize wife abuse. It only introduced a transitory stage for change:

*"This position was developed in ancient Arabia, over fourteen hundred years ago when the world viewed beating one's wife as a right. Today, we can transcend the earlier*

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<sup>19</sup> See Al-Hibri, 2001: 57-64; Dalacoura, 1998: 46-47 and the sources mentioned therein.

<sup>20</sup> See Al-Hibri, 2001: 55-65.

<sup>21</sup> "...The sin of them (strong drink and game of chance) is greater than their usefulness" (Q. 2:219); "O ye who believe! Draw not near unto prayer when ye are drunken" (Q. 4: 43); "O ye believe! Strong drink and games of chance...are only an infamy of Satan's handiwork. Leave it aside in order that ye may succeed" (Q. 5:90).

*stages of human interaction and insist on the achievable Islamic marital ideal of tranquility, affection, and mercy” (Al-Hibri, 2001: 64).*

### **3. From liberal reinterpretation to total reconstruction**

Liberal reinterpretation of Islamic law may help to overcome the problematic issues discussed above and provide necessary conditions for the reconciliation of Islam and universal human rights to a greater extent. The ambiguity of some of the texts, the contradictions between different precepts and some positive and egalitarian elements in the Qur’an make this kind of interpretation possible. However, the effect of the reinterpretation of Islamic law is limited. Some problems still remain unsolved. Especially, the full equality on the ground of sex and religion cannot be achieved only by the reinterpretation of Islam since some texts in the Qur’an and hadith are explicitly discriminatory. It is quite clear that the superiority of men over women and Muslims over non-Muslims was asserted in the Qur’an itself. This is not an issue regarding one or two verses but the general approach of the Qur’an towards women and non-Muslims. Therefore, the total reconstruction of Islamic law is necessary if the harmonization between Islam and universal human rights is desired.

Ahmed An-Na’im suggests a magic formula for the total reconstruction of Islamic law, which is originally developed by Mahmoud Muhammad Taha, a Sudanese religious reformist leader (An-Naim, 1990: 180). According to An-Naim, every Muslim believes that the Qur’an is the word of God and the Prophet Mohammad made it known to the public. This method is called “divine revelation”. The Qur’an was revealed in two stages. Some verses were revealed in Mecca and some others in Medina. The Meccan verses are dealing with general moral and religious principles while the verses which were revealed in Medina are more specific and legalistic because they were responding to a concrete situation; forming a new community and its state. Only the Meccan verses must be taken as authoritative for all time. These verses state general principles that are applicable to all societies for all time. As the writer puts it:

*“...We must be able to set aside clear and definite text of the Qur’an and Sunna of the Medina stage as having served their transitional purpose and implement those texts of the*



*Meccan stage which were previously inappropriate for practical application but are now the only way to proceed”* (An-Na'im, 1990: 180).

This suggestion, undoubtedly more radical and unacceptable for most of the Islamic scholars, could provoke a major reform, and render a total reconstruction in Islam possible. The above-mentioned verses, which are considered incompatible with the universal human rights, were revealed in Medina. Following the suggestion of An-Naim, it can be said that if the ultimate goal for a Muslim community is the creation of a just Islamic society, some specific rules of Islamic law can be overlooked, which were revealed for transitional purposes, and only the verses, which are universal in their nature taken into account. Otherwise, harmonization of Islamic law with the international human rights standards cannot be achieved.

#### 4. Conclusion

Muslim societies have developed some instruments to protect human dignity since the beginning of Islam. These protection instruments worked well during long period in their history. However, today, modernization has destroyed almost all protective instruments and cut off all traditional ties in the society. Institutions that had played a key role in the past to protect individuals against poverty and against the violations of the state have disappeared gradually. In today's Muslim societies, an individual is alone to protect his or her dignity. Furthermore, most of the Islamic countries have political regimes of a kind of dictatorship in which individuals look very weak, vulnerable and small while the state is so big, comprehensive and omnipotent.

Traditional Islamic societies, which once protected individuals' dignity, now appear in the form of modern state as an oppressive power and a real threat to human dignity. Under such circumstances, universal human rights appear to be a natural response to changing conditions, a logical and necessary evolution of the means to realize human dignity.<sup>22</sup> Since the autonomous and independent individual

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<sup>22</sup> See Donnelly, 1989: 57-60. The writer also states that “to the extent that other countries were forced or coerced into participating in world markets, and to the extent that repressive states in the Third world are a legacy of western colonialism

was absent in Islamic societies in the past, an individualistic human rights approach was inappropriate for them. Modernization has created autonomous individuals in these societies, on a large scale. These individuals need individual rights for protection of their dignity. That's why, today, the harmonization of Islamic law with the universal human rights approach is one of the most debated issues among the Islamic scholars. This harmonization could be achieved to a greater extent on the basis of a reinterpretation of Islam. However, a radical break with the traditional understanding of Islamic law is required if universal human rights are to be fully implemented in a Muslim society. This, however, cannot be achieved by only engaging in a liberal reinterpretation of Islam. What is needed is a total reconstruction rather than a reinterpretation. This process is only possible by taking the universal principles of Islam into account, while leaving aside some specific rules of the Qur'an and the hadith prescribed for transitional purposes.

## Bibliography

- Abu-Sahlieh, Sami A. Aldeeb, (1993), "Muslims and Human Rights: Challenges and Perspectives", in Wolfgang Schmale (ed.) *Human Rights and Cultural Diversity*, Goldbach, Germany: Keip Publishing, pp. 239-268
- Al-Hibri, Azizah Yahia, (2001), "Muslim Women's Rights in the Global Village: Challenges and Opportunities", *The Journal of Law and Religion*, Vol. XV. No. 1&2, pp. 37-66
- Al-Muhairi, Butti Sultan Butti Ali, (1995), "Islamisation and Modernisation within the UAE Penal Law: Shari'a in the Pre-modern Period", *Arab Law Quarterly*, Vol. 10. No. 4, pp.287-309
- An-Na'im, Abdullahi Ahmed, (1990), *Towards an Islamic Reformation: Civil Liberties, Human Rights, and International Law*, Syracuse, NY: Syracuse University Press
- An-Na'im, Abdullahi Ahmed, (1992), "Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment", *Human Rights in Cross-Cultural Perspectives*, Philadelphia: University of Pennsylvania Press

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*and neocolonialism, the West can also be blamed for creating the conditions that required human rights in order to guarantee human dignity.*" Donnelly, 1989: 65 (in footnote 6).



- Dalacoura, Katerina, (1998), *Islam, Liberalism and Human Rights: Implications for International Relations*, London, NY: I.B.Tauris Publishers
- Donnelly, Jack, (1989), *Universal Human Rights in Theory & Practice*, Ithaca and London: Cornell University Press
- El-Awa, Mohamed S., (1982), *Punishment in Islamic Law*, Indiana: American Trust Publications
- Hamidullah, Muhammad, (1997), *Introduction to Islam* Ankara: The Turkish Religious Foundation
- Malik, Magbul Ilahi, (1981), "The Concept of Human Rights in Islamic Jurisprudence", *Human Rights Quarterly*, Vol. 3. No. 3, pp. 56-67
- Mawdudi, Abul A'la, (1976), *Human Rights in Islam*, Leicester: Islamic Foundation.
- Moosa, Ebrahim, (2001), "The Dilemma of Islamic Rights Schemes", *The Journal of Law and Religion*, Vol. XV. No. 1&2, pp. 185-215
- Ozturk, Yasar Nuri, (1992), "Insan, Insan Haklari ve Islam" ("Human Being, Human Rights and Islam") *Yeni Toplum*, Vol.1. No.2, pp.60-71
- Rosenthal, Franz, (1960), *The Muslim Concept of Freedom*, Leiden: E.J.Brill
- Sadik, Khwaja Gulam, (1982), "Bugunku Islamda Insan Haklari" *Insan Haklarinin Felsefi Temelleri* ("Human Rights in Contemporary Islam" in Philosophical Foundations of Human Rights, Ankara: Hacettepe Universitesi Yayini
- Said, Abdul Aziz, (1979), "Precept and Practice of Human Rights in Islam", *Universal Human Rights*, Vol. 1. No. 1, pp. 63-79
- Senger, Harro von, (1993), "From the Limited to the Universal Concept of Human Rights: Two Periods of Human Rights", in Wolfgang Schmale (ed.) *Human Rights and Cultural Diversity*, Goldbach, Germany: Keip Publishing, pp. 47-100
- Sidahmed, Abdel Salam, (2000), "Freedom of Religion, Apostasy and Human Rights: An Appraisal", *Mediterranean Journal of Human Rights*, Vol. 4, pp. 125-144
- The Glorious Qur'an* (Translation by Marmaraduke Pickthall, 1998) Istanbul: Cagri Yayinlari
- Tibi, Bassam, (1994), "Islamic Law/Shari'a, Human Rights, Universal Morality and International Relations", *Human Rights Quarterly*, Vol. 16. No. 2, pp. 277-299
- Uygun, Oktay, (2000), "Insan Haklari Kurami", *Insan Haklari* ("The Jurisprudence of Human Rights" in Human Rights), YKY, Istanbul, pp.13-44