Human Rights and the Search for an Overlapping Consensus: The Case of Islamic Political Morality

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I. Introduction

Modern world is characterized by ethical, religious and philosophical disagreements among peoples. What are the implications of these doctrinal conflicts- the "fact of reasonable pluralism"- for our understanding of justice and human rights? Do human rights need to be located in a particular secular or religious conception of the good in order to be justified? How a conception of human rights can be supported from a range of ethical and religious traditions?

Since the end of World War II, human rights have emerged as a fundamental concern of international ethics. The so called human rights revolution, like other revolutions, has brought both progress and confusion. It is clear to almost everyone now that there are some rights held by all individual persons but the content, nature, and justificatory basis of these rights are not clear. For clarifying this point, consider two distinguished predominant views about human rights, which familiar from the philosophical literature: 'maximalism' or 'cosmopolitan egalitarianism' and 'minimalism' or 'humanitarianism.'

Maximalism (cosmopolitan egalitarianism) holds that human rights are coextensive with rights founded on justice. According to cosmopolitan egalitarianism as a "monistic" theory of morality, a single set of fundamental norms of justice always applies to individuals, even if the implications of those norms varies with circumstance. Cosmopolitanism, understood as requiring equal concern, equal respect, and equal opportunity regardless of

background conditions. It requires that the egalitarian principles apply globally.[1] In other words, cosmopolitan egalitarian claims people everywhere stand to one another roughly as citizens of a liberal state stand to one another today. They have the same rights and the same opportunities. So according to this view, human rights require a liberal democratic egalitarian state.

On the contrary, humanitarianism suggests the idea that human rights are confined to the pre-institutional, negative rights that individuals could legitimately claim against each other even in a world with no social or political relations. On this view, claims for more institutionally dependent human rights, civil and political as well as social and economic, for example, rights to participation, education, or access to basic health care, are expressions of interest misrepresented as assertions of rights. So minimalism (humanitarianism) confines human rights to protections of bodily security. If this account of human rights is correct, then much of the debate about and since Universal Declaration about the nature and content of human rights has been badly misguided, since that debate has often assumed a wide range of institutionally dependent human rights.

In this paper, I will illustrate a conception of human rights that confirm a less extensive than the rights that maximalism (cosmopolitan egalitarianism) endorse and more expansive sets of rights than minimalism (humanitarianism) embrace. The alternative conception of human rights that I defense here is derived from John Rawls's *The Law of Peoples* (1999). I will argue that this conception of human rights which is founded on an acknowledgement of pluralism and a commitment to toleration, can win support from different ethical and religious traditions. To illustrate this point further I will consider the case of Islam. My aim is not to illustrate that we can identify which rights are human rights by deriving them from within the Islamic tradition. Instead the aim is to show that how the Islamic fundamentals might be

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1. See for example, Charles Beitz, *Political Theory and International Relations* (Princeton, N.J.: Princeton University Press, 1979) and Simon Caney, "International Distributive Justice," *Political Studies*, 2001, 49: 974 -997.)

interpreted in a way that support the conception of human rights. Similar explanations can be developed for other ethical and religious traditions.

II. Political Liberalism

John Rawls, perhaps the most important political philosopher of the twentieth century, developed the conception of human rights as part of his political liberalism. In *Political Liberalism*[1] Rawls reconstructed the comprehensive liberalism including his own account of justice as fairness advanced in *A Theory of Justice* (hereafter, *Theory*).[2] In *Theory,* Rawls proposed an ideal of a well-ordered, democratic society based on the consensus on a conception of justice rooted in the value of fair cooperation among citizens as free and equal persons. In his second book *Political Liberalism* Rawls thinks that *Theory*, did not take the fact of reasonable pluralism seriously enough. In *Theory* the conception of justice as fairness depended on a comprehensive liberal philosophy of life that only people who believe it have reason to endorse justice as fairness.

In *Political Liberalism,* Rawls asks whether justice as fairness can be freed from this dependence. Can views that disagree about moral fundamentals, nevertheless agree on a political and not metaphysical conception of justice? *Political Liberalism* defends the possibility better than "a mere modus vivendi": of achieving a consensus on political justice under conditions of fundamental moral, religious and philosophical disagreement. The key to this possibility is that political values, such as the value of fair cooperation among citizens, can be acknowledged as such by conflicting moral and religious conceptions. To be sure, those views will explain such values in very different terms: for example, as rooted in autonomy, or human happiness, or the equality of human being as God's creatures. Therefore, an affirmation of the fundamental political values is not the unique property of a particular moral view. So the advocates of different moral views may each have good reason to support the political conception of justice.

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1. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).
2. John Rawls, *A theory of Justice* (Cambridge: Harvard university Press, 1971).

In such a society, we have an "overlapping consensus" on a "political conception of justice." This account of combination of unity and pluralism rests on a new interpretation of toleration. Rawls says toleration must now be applied to "philosophy itself." This frees debates in political philosophy from longstanding controversies in metaphysics and theology by developing a conception of justice that can be presented as "freestanding." The central line of thought in political liberalism, then, is this: given the plurality of incompatible yet reasonable views held by equal citizens in a democratic society, the ideal of fair cooperation recommends that we free the vocabulary of political justification from dependence on any particular view.

In *The Law of Peoples*, Rawls extends his reflections on justice to the global level – to an international society composed of different "peoples," with distinct values, traditions, and ideas of justice. It aspires to present a conception of human rights, as an essential element of a conception of global justice for an ethically pluralistic world.

III. Human Rights: neither Maximal nor Minimal

Rawls's conception of human rights has three features:

1. They are *universal* in being owed by every political society, and owed to all individuals.

2. They are requirements of political morality whose force as such does not depend on their expression in enforceable law.[1]

3. They are especially *urgent* requirements of political morality.

In *The Law of People*, Rawls argues that human rights are "a proper subset of the rights possessed by citizens in a liberal constitutional democratic regime, or of the rights of the members of a decent hierarchical society." They are "a special class of urgent right, such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide." These rights "play a special role in a reasonable Law of Peoples: they restrict the justifying reasons for war and its conduct, and they specify limits to a regime's internal

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1. For discussion of this point, see Amartya Sen, "Element of a Theory of Human Rights," *Philosophy and Public Affairs* 2004, 32 (4).

autonomy" by setting "a necessary, though not sufficient, standard" for the decency of a society's political institutions and legal order.[1] However, although a society's having a government that secures human rights is not sufficient to make it a decent society, it is sufficient to render unjustified any attempts by the governments of other societies to use diplomatic or economic sanctions or military force to compel it to change its domestic institutions or practices.

According to Rawls, thus, human rights set minimal, necessary - but not sufficient- requirements of justice that apply to the basic structure of any well-ordered society. These rights are essential to any "common good idea of justice" and therefore are not "peculiarly liberal or special to the Western tradition." Although human rights "are binding on all peoples and societies," Rawls does not claim that they belong to human beings "as such" or "in virtue of their common humanity." They can be said to be common to all peoples only in special sense: they are compatible with all reasonable political doctrines, including those of both "liberal" and "decent" peoples.

The list of human rights honored by both liberal and decent hierarchical regimes should be understood a universal rights in the following sense: they are intrinsic to the Law of Peoples and have a political (moral) effect whether or not they are supported locally. That is, their political (moral) force extends to all societies; and they are binding on all peoples and societies ….[2]

Rawls states a list of human rights as following:

Among the human rights are the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly).[3]

Rawls does not regard this list of human rights as exhaustive, but instead as a brief summary of "human rights proper," which he distinguishes from certain purported human rights that are asserted in

1. John Rawls, *The Law of Peoples* (Harvard University Press, 1999), pp. 78-81.
2. Rawls, *The Law of Peoples*, pp. 80-81.
3. Rawls, *The Law of Peoples*, p. 65.

international declarations. Of the 30 Articles of the United Nations Universal Declaration of Human Rights of 1948 (hereafter, UDHR), Rawls thinks that Articles 3 to l8 may fall under the heading of human rights proper, "pending certain questions of interpretation". And he regards the special conventions on genocide (1948) and on apartheid (1973) as obvious implications of these rights. Of the Articles of the UDHR that he disqualifies; he explains that some, e.g. Article 1, "seem more aptly described a stating liberal aspirations," while others, e.g., Articles 22 (which peaks of a right to social security) and 23 (which speaks of a right to equal pay for equal work and of a right to join trade unions), "appear to presuppose specific kinds of institutions."[1] He disqualifies these Articles because as he conceives human rights, the broad requirements of justice in which they are grounded can, at least in principle, be satisfied by various political institutions, not only by those of a constitutional democracy with a capitalist economy.

IV. The Arguments for the Conception of Human Rights

In *The Law of Peoples* Rawls seems to be presenting two intertwined arguments in defense of his interpretation of the idea of human rights: the first argument provides a justification of Rawls's criteria of decency. And the second argument employs a description of an imaginary decent society, Kazanistan.

(a) the Criteria of Decency

According to Rawls the criteria of the decency of a society's political institutions and legal order are necessary conditions of social justice; therefore, any society structured in accordance with the requirements of a conception of justice, whether liberal or non-liberal, recognizes and secures human rights. Rawls sets out two criteria of decency that I will now briefly examine.

First, the society does not have aggressive aims, and it recognizes that it must gain its legitimate ends through diplomacy and trade and other ways of peace.[2]

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1. Rawls, *The Law of Peoples*, p. 80, note 23.
2. Rawls, *The Law of Peoples*, p. 64.

A society meeting this first criterion is one that "respects the political and social order of other societies." Either it does not seek to increase its power relative to other societies, or if it does, "it does so in ways compatible with the independence of other societies, including their religious and civil liberties." This condition entails that if the society has a comprehensive doctrine, whether religious or secular, that underlies and influences its social policies and the structure of its government, this doctrine "supports the institutional basis of its peaceful conduct."[1]

(2 The second criterion has three parts.

(a) The first part is that a decent hierarchical people's system of law, in accordance with its common good idea of justice, secures for all members of the people what have come to be called human rights. (b) The second part is that a decent people's system of law must be such as to impose *bona fide* moral duties and obligations (distinct from human rights) on all persons within the people's territory. (c) Finally, the third part of the second criterion is that there must be a sincere and not unreasonable belief on the part of judges and other officials who administer the legal system that the law is indeed guided by a common good idea of justice….[2]

(b) A Decent Non-Liberal Society

Rawls determines the criteria of decency by considering the example of an imaginary society Kaanistan which, he thinks, liberals should regard as a non-liberal society entitled to toleration and to recognition as a member of the Society of Peoples.

Kazanistan is a Muslim society, but a decent non-liberal society need not be religious, Rawls says, and "[m]any religious and philosophical doctrines with their different ideas of justice"[3] may lead to institutions satisfying the conditions of decency. In Kazanistan, only Muslims can hold high legal or political positions, by contrast to liberal democracies, where all offices and positions are open to every citizen. Yet Kazanistan satisfies the second criterion of decency, for

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1. Ibid.
2. Rawls, *The Law of Peoples*, pp. 65-67.
3. Rawls, *The Law of Peoples*, p. 64.

its political and legal system constitutes a "decent consultation hierarchy". This is a type of political structure that a decent associationist society could have.

According to Rawls, all decent non-liberal societies differ from liberal societies in that they are "*associationist* in form: that is, the members of these societies are viewed in public life as members of different groups, and each group is represented in the legal system by a body in a decent consultation hierarchy," or in an equivalent basic structure that gives "a substantial political role to its members in making political decisions."[1] Although the members of a decent hierarchical society do not have the equal political rights of citizens in a democratic society, they do each have some political rights, and the system as a whole functions so as to secure certain fundamental interests for each member.

In Kazanistan "each person engages in distinctive activities and plays a certain role in the overall scheme of cooperation", and everyone belongs to a group (association, corporation, or estate) represented by a body in the political system.[2] There is "a family of representative bodies whose role in the hierarchy is to take part in an established procedure of consultation and to look after what the people's common good idea of justice regards as the important interests of all members of the people."[3]

In political decisions a decent consultation hierarchy allows an opportunity for different voices to be heard... Persons as members of associations, corporations, and estates have the right at some point in the procedure of consultation (often at the stage of selecting a group's representatives) to express political dissent, and the government has an obligation to take a group's dissent seriously and to give a conscientious reply..... [T]he dissenters are not required to accept the answer given to them; they may renew their protest, provided they explain why they are still dissatisfied, and their explanation in turn ought to receive a further and fuller reply. Dissent... is permissible provided it stays within the basic framework of the common good idea

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1. Ibid.
2. Rawls, *The Law of Peoples*, p. 72.
3. Rawls, *The Law of* Peoples, p. 71.

of justice.[1]

Kazanistan's consultation hierarchy satisfies six conditions or guidelines. The first three are intended to ensure that the fundamental interests of all groups are consulted and taken into account:

First, all groups must be consulted. Second, each member of a people must belong to a group. Third, each group must be represented by a body that contains at least one of the group's own members who know and share the fundamental interests of the group. …Fourth, the body that makes the final decision — the rulers of Kazanistan must weigh the views and claims of each of the bodies consulted, and, if called upon, judges and other officials must explain and justify the rulers decision: In the spirit of the procedure, consultation with each body may influence the outcome. Fifth, the decision should be made according to a conception of the special priorities of Kazanistan. Among these special priorities is to establish a decent and rational Muslim people respecting the religious minorities within it. ...Sixth, and last but highly important these special priorities must fit into an overall scheme of cooperation, and the fair terms according to which the group's cooperation should be conducted should be explicitly specified.[2]

In addition, the bodies in the consultation hierarchy meet in assemblies where representatives can raise objections to government policies and obtain replies from members of the government. "Dissent is respected in the sense that a reply is due that spells out how the government thinks it can both reasonably interpret its policies in line with its common good idea and impose duties and obligations on all members of society."[3] And dissent can lead to reform: "I further imagine, as an example of how dissent …can instigate change, that in Kazanistan dissent has led to important reforms in the rights and role of women, with the judiciary agreeing that existing norms could not be squared with society's common good idea of justice."[4]

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1. Rawls, *The Law of Peoples*, p. 72.
2. Rawls, *The Law of Peoples*, p. 77. Rawls says, in footnote, that this idea is close to John Finnis's sense of the common good in his *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), pp. 155ff.
3. Rawls, *The Law of Peoples*, p. 78.
4. Ibid.

Rawls arguments show that if there can be decent non-democratic societies, i.e., non-democratic societies that have a moral character such that liberal societies are obligated to tolerate them, then the principles guiding liberal societies in their conduct toward other societies should be such that decent non-democrat societies can endorse those principles. And if liberal societies are to require other societies to respect human rights, then this requirement, too, and its associated interpretation and justification of human rights, should be such that decent non-democratic societies can endorse them. He does so because he thinks it is not morally permissible for liberal societies to compel all non-democratic societies to become liberal democracies; the mere fact that a society's political system is not democratic is not obviously sufficient justification for the use of coercive force against it to compel domestic institutional reform. Thus Rawls argues that a conception of justice and human rights applicable to international relations must be endorsable by all peoples, i.e., by all decent societies, whether liberal or non-liberal. It must meet the criterion of reciprocity. This criterion requires that the conception of human rights depend on no particular comprehensive religious or philosophical doctrine.

V. The Ideas of Freestanding Conception and Overlapping Consensus

The central idea of Rawls's view, then, is that a conception of human rights should be presented freestanding: that is, independent of particular philosophical or religious doctrines that might be used to explain and justify its content. This conception, as Rawls suggests in his account of *overlapping consensus*, can win support from different ethical and religious traditions; each would offer the different lines of argument. In this respect, this view recalls the remark in the Universal Declaration of Human Rights, that human rights are "a common standard of achievement for all peoples and all nations." As Jacques Maritain – the central figure in 20th century efforts to reconcile Catholic social thought with democracy and human rights, and who participated in discussions leading to the Universal Declaration- he said the point of developing a conception of human rights was to create agreement "not on the basic of common speculative ideas, but

on common practical ideas, not on the affirmation of one and the same conception of the world, of [humanity] and knowledge, but upon the affirmation of a single body of beliefs for guidance in action."[1] Given the practical role of a conception of human rights, we need to avoid formulating the rationale for human rights (as well as their content) by reference to a particular religious or secular moral outlook. So we should avoid saying that, for example, human rights are preconditions of the autonomous moral agency prized by Kantians, or for fulfilling divinely imposed obligations, whether the preferred statement of the obligations is found in Thomistic or Lockean natural law theory, or some formulation of the Shari'a.

Instead, on this view, human rights norms are best thought of as norms associated with an idea of *membership or inclusion* in an organized political society. The central feature of the notion of membership is that a person's interests are taken into account by the political society's basic institutions: to be treated as a member is to have one's interests given due consideration, both in the processes of authoritative decision-making and in the content of those decisions.[2]

As I earlier said, the freestanding conception of human rights which aims to present reasonable global norms and standards would be modeled by an agreement made with awareness of the fact that there are fundamentally different religious and ethical traditions. But the agreement would not be made with awareness of the content of those traditions. Instead, the enterprise of showing that the ideas and principles of human rights can win support within different ethical and religious traditions may requires a new interpretation of those traditions by their advocates. It should be understood that the point of a new interpretation is not simply to fit the tradition to the demands of the world, but to provide that tradition with its most convincing statement. I do not claim that we can "find" a conception of human rights in specific ethical and religious traditions. Instead, what I am saying is that: there are ways of interpreting an ethical and religious doctrine that is non-liberal in its conception of the person and political

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1. Jacques Maritain, "Introduction," in *Human Rights: Comments and Interpretations*. A symposium edited by UNESCO (Paris: UNESCO, 1948).
2. See Rawls's account of a decent non-liberal society, Kasanistan which earlier illustrated.

society, but that is also consistent with a reasonable conception of standards to which political societies can reasonably be held.

For illustrate this point about the new interpretation of a doctrine in relation to a freestanding conception of human rights I want to consider the case of Islam.

VI. Modern Islam and Challenge of Human Rights

Perhaps the most formidable moral and political challenge confronting Islam in the modern age is the problem of human right. In general, the modern Muslim intellectual response could be summed up within two predominate approaches: apologetic and puritan.

(i) Apologetic Approach

The apologetic approach consists of the effort of a large number of Islamic scholars to defend the Islamic system of belief and tradition from the attack of Westernization and modernity by simultaneously emphasizing both the compatibility and the supremacy of Islam. A common device of apologetics is to argue that any valuable modern institutions were first invented and realized by Muslims. Therefore, according to the apologists, Islam liberated women, created a democracy, endorsed pluralism, and protected human rights, long before these institutions ever existed in the West. The apologetic approach raises the issue of Islamic authenticity in relation to universal human rights, but did not seriously engage it. By merely affirming the place of human rights in Islam instead of investigating it, the apologetic movement, however avoids to reinterpret Islamic fundamentals for reconciling the idea of human rights.[1]

(ii) Puritan Approach

The Puritan movement resists the modernity by escaping to a strict literalism in which the text became the only source of

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1. For a critical assessment of the impact of apologetic upon Muslim culture, see Tariq Ramadan, *Islam, the West, and the Challenges of Modernity*, trans. Said Amghar (Markefield: Islamic Foundation, 2001), pp. 286-290. See also Louay Safi, *Tensions and Transformations in the Muslim World* (New York: University Press of Amirica, 2003). For an insightful analysis of the role of apologetics in modern Islam, see Wilfred Cantwell Smith, *Islam in Modern History* (Princeton: Princeton University Press, 1977).

legitimacy. It seeks to return to the presumed golden age of Islam, when the Prophet created a perfect, just society in Medina. The puritan movement also held that any form of moral thought that was not dependent on the text to be a form of idolatry. It also rejects any attempt to interpret the divine law from a historical or contextual perspective and, in fact, treats the vast majority of Islamic history as a corruption of the true Islam. The puritans' primary concern is not to explore or investigate the parameters of Islamic values or the historical experience of the Islamic civilization but to oppose the Western culture and modernity.[1]

The puritan movement avoids any analytical or historical approaches to the understanding of the Islam and claimed that all the challenges posed by modernity are resolvable by a return to the original sources of the Qur'an and Sunna. On this view, Islam is a self-contained and self-sufficient system of beliefs and laws, therefore Islam does not need to reconcile itself with any other system of thought include the conception of human rights. According to the puritans, God is the only legislator and lawmaker. Consequently, any normative position that is derived from human reason or socio-historical experience is fundamentally illegitimate.

Acknowledging the primacy of the apologetic and puritan approaches in modern Islam, however, does not mean that the problematic relationship between Islam and human rights is fundamentally irresolvable. In fact, there have been some serious intellectual movements, especially among Iranian religious intellectuals and some Western Muslim scholars for developing a critical and analytical Islamic efforts dealing with the issue. The common theoretical characteristic of these movements is that religious doctrine does not necessarily have to remain locked within a particular socio-political and historical practice. Therefore, Islamic doctrine can be reconstructed in order to achieve entirely new social and political ends.

The methodological feature of the some contemporary Muslim intellectuals is to locate a primary Islamic value, such as tolerance,

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1. It worth noting that in the writings of some dogmatists such as Sayyid Qutb and Abu A'la al-Mawdudi, the human rights discourse was described as a part of the Western cultural invasion of Muslim world.

dignity, or self-determination, and utilize this value as a way by which the human rights tradition may be integrated into Islam.[1] A number of those scholars suggest the argument that God's original intent was consistent with a scheme of greater rights for human beings but that the socio-historical experience was unable to achieve a fulfillment of such intent.[2] Some of the theorists though acknowledge the essential rethinking of the Islamic moral and theological tradition, however, what is needed, according to them is not a human-centered theology, but a rethinking of the meaning and implications of divinity, and a reconstruction of the relationship between God and creation.[3] By inspiration of the current Islamic intellectual enterprises, in the rest of this paper I will show that how the Islamic fundamentals might be interpreted in a way that supports the freestanding conception of human rights.

VII. The Elements of an Interpretation of Islamic Fundamentals

According to the Islamic fundamentals, individuals themselves are the ultimate locus of responsibility and accountability: "And fear the day when ye shall be brought back to Allah. Then shall every soul be paid what it earned, and none shall be dealt with unjustly" (2:281). Or again: "But how will they fare when we gather them together against a day about which there is no doubt. And each soul will be paid out just what it earned" (3:25). And "On the day when every soul will be

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1. See foe example, Abdolkarim Soroush, *Reason, Freedom and Democracy in Islam*, trans. M. Sadri and A. Sadri (Oxford: Oxford University Press, 2000), pp. 61-64, 122-130.

2. See, for example, Abdulaziz Sachedina, *The Islamic Roots of Democratic Pluralism* (Oxford: Oxford University Press, 2001); Farid Esack, *Qur'an, Liberalism, and Pluralism* (Oxford: Oneworld, 1997); Abdulhi A. An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse: Syracuse University press, 1996); Abdullahi A. An-Na'im, *Human Rights, Religion and the Contingency of Universalist Projects* (Syracuse: Syracuse University Press, 2001); Mohammad Hashim Kamali, *The Dignity of Man: An Islamic Perspective* (Cambridge: Islamic Texts Society, 2002); Ahmad Moussali, *The Islamic Quest for Democracy, Pluralism, and Human Rights* (Gainesville: University Press of Florida, 2001).

3. See Khaled Abou El Fadl, *Islam and Challenge of Democracy* (Princeton University Press, 2004); Khaled Abou El Fadl, "The Human Rights Commitment in Modern Islam," *Human Rights and Responsibilities in the World Religion*, eds., J. Runzo, N. Martin, and A. Sharma (Oxford: Oneworld, 2003), pp. 301-364.

confronted with all the good it has done and all the evil it has done, it will wish there were a greater distance between it and its evil" (3:30). Moreover, the fundamental duty of commanding right and forbidding wrong is assigned to individuals: "command right and forbid wrong, and bear patiently whatever may befall thee" (31:17). In his study of this duty, Michael Cook says that it assigns to "each and every legally competent Muslim an executive power of the law of God."[1]

Despite the focus on individually responsible agents, trouble for an idea of human rights might be seen as emerging from a way of interpreting the fundamental conception of God as sovereign.[2] Thus suppose we think of God as exercising His authority by setting down strictures (expressed in Shari'a) that provide a fully detailed specification of the right way to live, a firm order of normative requirements that determine, for every possible circumstance of choice, the right way to act.[3] Suppose, too, that God has created human beings with the intellectual capacities required for understanding those requirements and also with the high status of vicegerents (2:30), who are assigned, among others, an obligation to promote justice: not simply to act rightly, but also to "command right and forbid wrong."

Now it might be argued that fulfilling this obligation, which is assigned to all, actually requires the variety of basic rights: that if individuals are to fulfill the moral demands of vicegerency, by forbidding wrong and promoting justice, they must have rights of expression and association, and perhaps rights of participation, as well as the circumstances of health, education, and security that are preconditions for fulfilling their obligations. But that attractive conclusion does not follow so easily. For the contents of right and wrong are given primarily by the firmly ordered strictures of this non-tolerant God. So the submission to God's will that is Islam arguably consists in individual self-righteousness and an enforcement of the

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1. See Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge: Cambridge University Press, 2000), p. 583.

2. See Abou El Fadl, *Islam and the Challenge of Democracy,* pp. 7-10.

3. See Kevin Reinhart's Introduction to Laleh Bakhtiar, *Encyclopaedia of Islamic Law: A Compendium of the Major Schools* (Chicago: KAZI Publications, 1996), p. xxxiii.

righteousness of others, where righteousness involves obedience with those strictures, as expressed in some formulation of Shari'a. And although God "careth for all" and is "truly the cherisher of all," "Allah loveth not those who do wrong" (3:57).[1]

This line of thought suggests a case from within Islam that works against the idea that political societies must ensure conditions of social membership for each person. Instead, it seems to favor extending basic rights only for those who can act rightly—freedom of opinion for those with correct opinions, freedom of assembly for those who assemble to forbid the wrong. So it might be said that each person has a determinate personal responsibility under the law to "cleanse and purify" his desires and "make them follow the path of righteousness," and that there is no case for rights that permit departures from that path.[2]

But an alternative interpretation of these fundamentals suggests a different conclusion.[3] Three points are essential to the alternative interpretation. The first is a distinction between the true propositions of law—that is, standards of right conduct—as set down by God and the historically situated human interpretation of those laws, which is both fallible and contextual.[4] Failure to acknowledge and give sufficient weight to the distinction between law and human interpretation is a form of idolatry, a failure to distinguish sovereign and vicegerent. But drawing the distinction creates space for the disagreement and error that inevitably comes with the territory of human interpretive activity, and also for efforts to improve understanding of right conduct and reinterpret those requirements under changed conditions.

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1. Qutb's account of freedom of conscience and responsibility seems to be of this kind. See Sayyid Qutb, *Social Justice in Islam*, trans. John B. Hardie (Oneonta, N.Y.: Islamic Publications International, 1953). Thus freedom of conscience is a matter of, among other things, freedom from false worship, fear (of death, injury, and humiliation), and false social values (pp. 53–68).

2. Qutb, *Social Justice*, p. 80.

3. For a useful discussion of approaches to interpretation within Islamic law, see Wael B. Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), esp. chap. 6.

4. See for example, Khaled Abou El Fadl, Islam and Challenge of Democracy; also see Abdolkarim Soroush, Reason, Freedom and Democracy in Islam.

The second is a distinction between human responsibility and God's responsibility. The human responsibility is to seek to understand what is right and provide moral instruction, whereas God is responsible for entering final judgment on the sincerity of belief and righteousness of conduct. Associated with this distinction is the principle that there is to be "no compulsion in religion" (2:256). Usurping final judgment—and compulsion in religion is a form of usurpation—is another form of idolatry: "can they, if Allah wills some penalty for me, remove his penalty? Or if he wills some grace for me, can they keep back His grace" (39:38). By accepting these two distinctions—while also acknowledging the commitment to command right and forbid wrong—we have a case for wider assurances of basic rights, as conditions of membership and of the appropriate exercise of responsibility, rather than for extending them only to those who have what are supposed to be correct beliefs, as given by some interpretation of Shari'a.

The third idea is that a diversity of religious communities is a natural human condition: "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). If the first two points suggest a basis for a wider extension of rights within an Islamic community, with diverse interpretations of the law, the third—joined to the rejection of compulsion in religion and the idea that Allah cherishes all, loves all who do good, and "means no injustice to any of His creatures" (3:108)—suggests a basis for supporting the conception of human rights.

Conclusion

Rawls conceived human rights, the broad requirements of justice in which they are compatible with all reasonable moral and political doctrines, including those of both "liberal" and "decent" peoples. According to this view, human rights are a "proper subset" of the rights of members recognized and secured in any society that is (at

least) decent. Given the fact of reasonable pluralism, Rawls argued that the idea of human rights cannot meet the agreement of all reasonable peoples if it draws on ethical or religious traditions that they do not share. Instead, Rawls's view aims to avoid imposing unnecessary obstacles on accepting an account of human rights, by binding its formulation to a particular ethical tradition. It is left to different traditions—each with internal complexities and conflicting traditions of argument, and (in some cases) canonical texts—to elaborate the bases of a shared view of human rights within their own terms. As An-Na'im says, "If international human rights standards are to be implemented in a manner consistent with their own rationale, the people (who are to implement these standards) must perceive the concept of human rights and its content as their own. To be committed to carrying out human rights standards, people must hold these standards as emanating from their worldview and values."[1] But we do not specify the content of a human rights conception by looking to worldview and values, taking them as determinate, fixed, and given, and searching for actual agreement. Instead, we hope that different ethical and religious traditions can find resources for interpretation that support an independent conception of human rights as a common global standard. As my example should make clear, the conception of human rights is not simply *consistent with* the Islamic fundamentals, but even if it is not accepted by them in their historically prominent formulations, yet is supported by certain interpretations of them.

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1. Abdullahi Ahmed An-Na'im, *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (University of Pennsylvania Press, 1992), p. 431.