

Human rights are compass-less values

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In recent years, the criticism on human rights and Islam has increased. This includes two extreme views which surprisingly both have the same claim, namely that Islam and human rights are incompatible. One group working from an 'Western secular vision' which sees Islam as a religion with fossilized medieval laws incompatible with contemporary 'Western human rights'. The other group consists of Muslims from an orthodox-dogmatic perspective who 'argues that the phenomenon of human rights' is a human, Western innovation which in no way has any claim on the divine law.

Both views are based on an authoritative interpretation of Islamic texts as the authentic and true interpretation. But to make this authoritarian interpretation "the sole spokesman of Islam" is to deny the great diversity and complex developments of the historical and contemporary Shari'a as a legislative system based on Qur'anic and other legislative texts. It ignores the large groups of Muslims in the past and present who read these texts differently. By only focussing on the extreme groups that declare Islam as inhumane or human rights as western colonisation methods, is to ignore the groups which hold the solution.

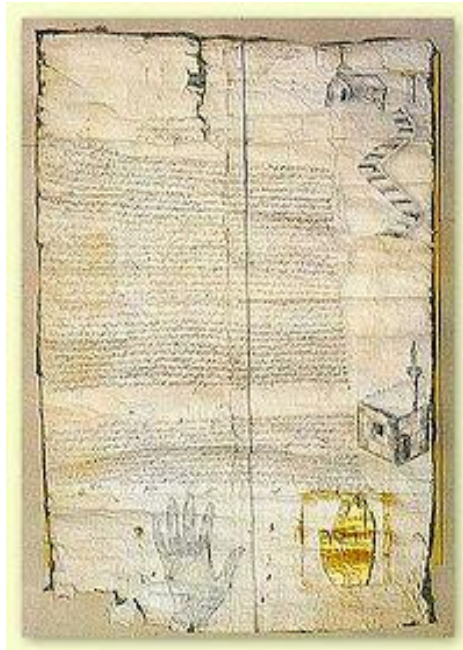
Justice in early Islam

To form a correct vision on human rights in Islam, we must begin by reading texts in the Qur'an itself and examine the context in which these texts were created. We immediately notice that Islam introduced revolutionary values to the seventh century Arabs. These revolutionary values came from newly accepted principles such as 'all people have the same origin', 'all men are equal', 'all people have freedom of religion' and that Muslims should cooperate with other faiths to pursue a just moral society (see Qur'anic verses 4:1, 5:8, 5:32, 4:85, 16:90, 4:75, 2:256, 22:39-40, 2:62, 2:148, 3:110 - 115, 5:48, 3:64, 17:70, 42:15, 49:13 and 60:8).

The main pillar of Islam, the testimony that God is one, is equated with the pursuit of justice (3:18), and is directly connecting theology with humanism. In verse 42:15, the Prophet is ordered to create equality among all the followers of all religions (*umurtu li-Adlan baynakum*), and in verse 3:64 Muslims are told to setup an equity agreement (*kalimatin sawa'in*) with the followers of other religions that no one will rule over the other as masters (*arbaban*). In verse 6:82, Muslims are ordered not to mix up their faith with oppression (*zulm*), and the Qur'an orders Muslims to rule through democratic consultation (*shura*, verse 42:38) as the rule by the people is directly linked to fighting oppression in society (42:39-43). In 17:70 God says that He has given dignity (*karamna*) to every member of the human species, dignity being the basis for human rights, and in 5:30 we're told that one human life is equal to that of all of mankind. According to verse 7:157 the purpose of law is to '**free people from their confinements/burdens and shackles**' explaining that law should be used to enhance human freedom, not to confine it. Law must protect human freedom, life, property, and their means to develop themselves as through self-determination, freedom of religion, family, education, free travel etc.

The historical sources of both Muslims and Christians, talk about how in the first period of Islam (610-670) the Muslims applied these humanist values. It was thanks to the Muslims that Jews, for the first time since the Roman persecution in 170CE, were allowed to enter and live in Jerusalem freely although the Byzantine Christians were against it. In 628CE monks from

the famous St.Catherina monastery in the Sinai desert came to ask Prophet Muhammad for protection against raiders and violent tribes. The Prophet signed a [treaty](#) with them which promised full freedom of religion, law, and protection of their religious buildings. Modern archaeological research confirms the correctness of these stories. For example professor Fred Donner in his 'Muhammad and the Believers at the Origins of Islam (2010)' refers to archaeological excavations: 'Instead, the archaeological record suggests that the area underwent a gradual process of social and cultural transformations that did not involve a violent and sudden destruction of urban or rural life at all. In town after town [in Syria], we find evidence of churches that are not destroyed, but, rather, continue in use for a century or more after the [Islamic] 'conquests' - or evidence that new churches were being constructed.'



Copy of the Prophet's Treaty with St.Catherine's monastery

Classical Sharia

With all that is mentioned above, it seems bizarre that in the classical Shari'a, which was developed over the first centuries of Islam, lays down extreme inequality between men and women, Muslim and non-Muslim and lacks freedom of religion and politics. And we have for example the [Treaty of Umar](#), a supposed letter by the second successor or of Muhammad, which orders the exact opposite of the above treaty with the monastery. And it is this supposed letter by Umar which has been used as a source for many discriminatory laws against Christians and other non-Muslims in the Shari'a. There are also many Islamic traditions reporting crimes against non-Muslims committed supposedly by the Prophet and his followers, which contradict the Qur'an and other historical reports. Concerning politics we see the Qur'an ordering Muslims to rule through democratic consultation (*shura*, verse 42:38), and ordered the Prophet to accept the 'vote' of the women (*baya*, 60:10-12). But the Shari'a as we know it today doesn't allow the rule of the people, and certainly doesn't allow women to have a say in politics or law.

What might have gone wrong? Why have we allowed to be ruled by traditions contradicting the Qur'anic message of religious humanism? After the death of Muhammad and his four successors, who were appointed by councils, we see the Umayyad family taking over the political rule of the Muslim state through force in 661CE and turn it into a monarchy. In the Qur'an, war is only allowed in self-defence (2:190-193, 9:13) and to fight oppression and

religious persecution of Muslims, Christians, Jews and others (4:75, 22:39-40), but during the Umayyad rule the concept of war was changed from self-defence into a means of expansion of the Muslim state and the soldiers were enticed by gaining booty and the false idea that fighting 'unbelievers' has abrogated the Qur'anic limits of self-defence and demands of pluralistic cooperation and peace (5:48, 8:61). During the classical period of Islam (800-1200), both the rulers and many scholars were from, or under the influence of, the ancient Persian empire, which was annexed into the Muslim empire a century before. The Persian monarchy had a strict class hierarchy starting with the monarch, elite, military leaders, priests, merchants, craftsmen, male workers, and ending at the bottom with the people of other faiths, foreigners, women and slaves. There was an established state religion which was adjusted to maintain this hierarchy (Donner, *Ibid*). An hierarchy we also see in the Shari'a. It was during this period that an "imperialist vision" of Islam was created that contaminated historical sources and Qur'an commentaries with stories and ideas that were convenient for the imperial rulers. The oldest biography on the Prophet was written around 750 by Ibn Ishaq on the order of the Muslim ruler. It is thus not an objective biography, but a political document to give the imperial influence on Islam authenticity by making Muslims believe the Prophet already acted in certain ways. Many of the *Hadith* collections, the traditional reports of the Prophet and his first followers, were collected two centuries after the Prophet using different thorough, but fallible, techniques. During those two centuries there have been many civil wars and the assimilations of Byzantine and Persian imperialism, and other Middle-Eastern religions and cultures, within Muslim civilization. They are thus a mix of truthful Islamic history and the religious, cultural and imperial propaganda's of the assimilated religions and cultures. There are for example striking resemblances between the above mentioned 'Treaty of Umar' and the Byzantine and Persian laws on religious minorities and Prophetic traditions on women with old Jewish laws. During the Umayyad rule and thereafter we see Muslim rulers placing themselves above the law, and made the Shari'a serve their own despotic interests rather than the interests of the people. The Muslim rulers were for example exempted from penalties for murder, rape and drunkenness. (See the famous Hanafi book of Fiqh, *al-Hidaya* (1170). By the end of the classical period the possibilities to apply *ijtihad*, the freedom of interpretation for theologians, jurists and judges, was curbed in mainstream Islam (Mutawalli, *Mabadi Hukm fi'l Nizam al-Islam* (1974). These developments also shows strong similarities with developments in medieval Christianity, for example when it comes to church law and Biblical interpretation.

Criticism of the divine?

To properly respond to the criticism of human rights on Islam, we must realize that Shari'a doesn't mean *Divine law* in Arabic, but 'path to clean water'. It is an allegory for the ways of life that keeps mankind 'viable'. Because the Qur'an contains nearly no detailed legislation, and the ones given are mostly revealed for specific historical situations, techniques had to be developed in early Islam to create detailed legislation for the many new social situations in which Muslims - partly due to the expansion of the Islamic empire - were confronted.. These interpretation and development techniques are called *Fiqh*, and it is this which determines Islamic law. In Islamic societies, no one has or is ruled by Shari'a, but by Fiqh. Islamic law is not divine, and mostly not even based on divine sources, but for the larger part formed through human sources and opinions. The criticism of human rights on Islam is therefore not directed against the divine sources, but our human understanding and application of the human and divine sources. The early jurists were very conscious of their human failings, and warned not to confuse their judgments, including their possible human failings, as being divine. Many classical scholars stressed that the divine sources were revealed 'for the good of the world' (Ibn Aqil (1040) in al-Jauzi's *Muntazam* (1938). Which is expressed beautifully by

Ibn Qayyim al-Jawziyyah: ‘The Shari'a is based on [...] justice, mercy, kindness, and wisdom. Anything that replaces justice with injustice, mercy with harshness, good with the corrupt, wisdom with stupidity, is not part of the Shari'a [...] Islam will always stand for justice, and every path which is taken towards justice and equality is naturally in harmony with the Shari'a.’ (*Miftah Dar al-Sa'ada* (1340).

We already see Abu Hanifa (767), the founder of the Hanafi school of law, arguing for the inviolable rights of man, [al-Ismah bi al-Adamiyyah](#). The Mu'tazilah school (720-1300) centred its theological principles on equal justice (*al-Adl*) and discussed natural law and human rights (*al-Huquq al-Adamiyyah*). Many scholars of the Islamic schools of law made the common good of society (*al-Maslaha al-Mursala*) and the protection of religion, life, property, family and honour as the criteria for the formation of laws (*maqasid al-Shari'a*), which gained its prominence in the works of al-Ghazali (1111) and Shatibi (1338).

The concept of human rights have always been part of the Qur'anic message and early Islamic theology, but never gained a dominance due to despotic rulership maintained by the imperial use of Islamic law and increasing anti-naturalism dogma's in Islamic theology. In a sense, it has always been beneath the surface, within our reach.

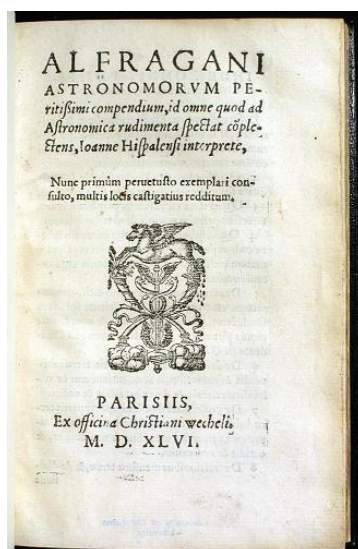
Compass-less values

Human rights as we know them today, were developed over a period of two thousand years, beginning with the Greeks. For early Christianity, Greek philosophy, especially that of Aristotle, was initially difficult to reconcile with their religion, and it were Islamic philosophers and jurists who ultimately brought together the Greek philosophical concepts and principles with Christian and Muslim religious revelation, reason and justice in a form of ‘religious rationalistic humanism’. Famous philosophers who contributed to this were al-Kindi (801), al-Farabi (872), Ibn Sina (980), Ibn Rushd (1198), and rationalistic theologians as Qadi Abd al-Jabbar (1025), Ibn Aqil (1040), al-Ghazali (1111) and Fakhr al-Din al-Razi (1150). Also the scientific knowledge and groundbreaking discoveries produced by Muslims were introduced. Their works came into Europe mostly through Muslim Spain (al-Andalusia), and were translated in large numbers at the monasteries and universities in Italy, Spain, France and England.



A Latin translation of Aristotles'work on Metaphysics with the commentary of Ibn Rushd

They formed the impetus for the Christian philosophers, scientists and jurists who started the Renaissance and Enlightenment. Roman Catholic theologian and philosopher, Thomas of Aquinas (1225), based his ideas as expressed in his seminal *Summa Theologia* on Ibn Rushd's commentaries of Aristotle's philosophy (Thomas called Aristotle 'the Philosopher' and Ibn Rushd 'the Commentator'). Aquinas in turn further developed the basis for the theory of 'Natural Law', the natural rights of man, on which forms the basis for modern human rights. Ibn Rushd's works were banned in many Muslim states, but they were embraced in the West. His work, in combination with the other above mentioned scholars, were the keys used by Western society to transform itself gradually into the prominent proponents of science, civil law, liberty and human rights.



Latin translation of al-Farghani's work on Astronomy

It is therefore legitimate to argue that concepts like democracy and human rights are as much 'Eastern' as 'Western'. They are actually *compass-less* values. A world project which both Western and Eastern civilizations have contributed to. For us Muslims, we now have the task of embracing our Islamic humanism again, to reform our laws so to remain on 'the path to clean water', and to keep authoritarian and imperialist interpretations where they belong: in the history books.