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Humanity as the Ground for Universal Human Rights in Islamic Law



Recep Şentürk

Abstract A legal maxim in Islamic law states that “The right to inviolability (*işma*) is due for humanity (*ādamiyya*)”. The right to inviolability includes inviolability of the right to (1) life, (2) property, (3) religion, (4) mind (expression), (5) family and progeny, as well as (6) honor and dignity. Universalist Muslim jurists share this view from different schools of Islamic law. In particular, all jurists from the Ḥanafī school subscribe to this view. From this perspective being human is sufficient to have human rights regardless of innate, inherited and gained attributes such as sex, religion, race and nationality. This article explores the thought of Muslim jurists who took humanity as the sufficient ground for human rights and the arguments they used to justify it by deriving from classical Islamic law books. It will also provide a historical survey about how this view was implemented in Islamic history from India to the Balkans under Islamic law. Following it will discuss the reforms in Islamic law during the late Ottoman period (1839–1918). It will conclude by proposing how the present Muslim legal and political discourse can be re-connected to this universalist human rights tradition to overcome the challenges for human rights in the Muslim world today.

1 Introduction

This article explores the thought of Muslim jurists who took humanity as the ground for human rights and the arguments they used to justify it. *Ādamiyya* and *işma* are the two key concepts in classical Islamic law for human rights discussions. The former (*ādamiyya*) means “humanity” while the latter (*işma*) means “inviolability”. The humanist or universalist Muslim jurists state that “inviolability is due for humanity” (*al-işma bi-l-ādamiyya*). But why? Below, I will address two interrelated questions: What is a human being? Why should he have the right to inviolability? The first question is about Islamic theological anthropology while the second is about Islamic

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157

human rights law. I argue that Islamic anthropology prepares the conceptual ground for the universal human dignity and inviolability. I will demonstrate this by driving from the Qur'ān, the sayings of the Prophet (*ḥadīth*; pl. *aḥādīth*) and the theological classics of Islam. I will then talk about how Islamic human rights law served as the basis for diversity management system in Islamic history, in particular in India during the Mughal period and the Ottoman Empire. I will conclude by drawing attention to the challenges in the present Muslim world before human rights and what needs to be done to overcome them.

Abū Ḥanīfa (d. 767), one of the most prominent jurists in Islam and the founder of Ḥanafī school of law, defined law as the knowledge of the self about his rights and duties.¹ But what is a human being and why should he be entitled to rights and duties? Abū Ḥanīfa does not bother with defining the self. His usage of the self in the definition of law reflects a jurist's approach to the self because jurists take the concept of human being or self as given without discussing it. There is a similarity in the way jurists as well as majority of the social scientists approach the self in Islam and the modern world: they simply avoid facing this difficult question and take it as given but build assumptions on it. The jurists leave the study of self to other disciplines, such as theology and philosophy, which Abū Ḥanīfa called the "greater law" (*al-fiqh al-akbar*).² From this perspective, the self is the subject of the "greater law",³ but the study of its rights and duties is the subject of law.

Besides discipline of the "greater law", there is another branch of Islamic law, the "inner law" (*al-fiqh al-wijdāni* or *fiqh al-bātin*), which exclusively focuses on human ontology, the self and the spirituality.⁴ It is commonly known as *taṣawwuf* or sufism which focuses on the inner side of human existence and the internal dimensions of human actions. Those who specialize in this discipline and practice it are called sufis.

¹"*Al-fiqh ma'rifat al-nafs mā lahā wa mā 'alayhā*", see al-Āqḥiṣārī (2010), pp. 68–69. For a general introduction to Islamic law, see Hallaq (2009).

²Literally translated as the "greatest science". For a reasonable, albeit slightly outdated, translation of Abū Ḥanīfa's treatise *Al-fiqh al-akbar*, see Wensinck (1932), pp. 188–197. For a more recent translation, including extensive commentary, see Ibn Yusuf (2007).

³The Greater Law (*al-fiqh al-akbar*) evolved in later centuries into Islamic philosophical theology (*kalām*). Some Muslim theologians and philosophers share the view that a human being is a thinking animal (*al-ḥayawān al-nāṭiq*) which may be traced back to Greek philosophy. For more on the influence on Greek thought on Arabic philosophy and theology see Gutas's seminal study (1998).

⁴In his book *The Revival of the Religious Sciences (Ihyā' 'ulūm al-dīn)*, al-Ghazālī deals with the human self in great detail. For al-Ghazālī, there are words that are interchangeably used to denote the true self of a human being: *nafs*, *'aql*, *qalb* and *rūh*. These are signifiers which signify the same subject: the knowing and willing subject; the one who is addressed, awarded and punished by God. These words are also used for other meanings to denote other objects. For instance, *nafs* is used for the source of animal desires; *'aql* is used for knowledge and the faculty of knowledge in the heart; *rūh* is used for life. The part of the *Ihyā'* that deals with these themes in detail is translated into English by Skellie (Al-Ghazzali 2010).

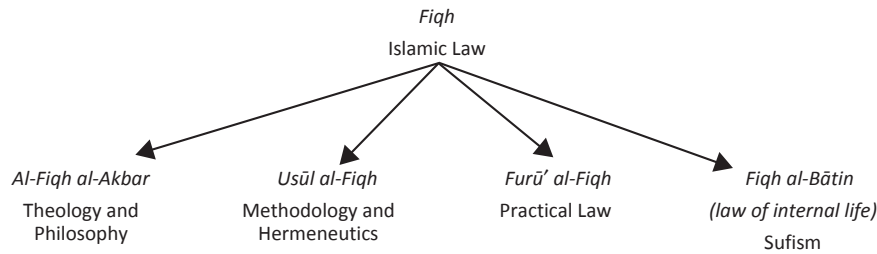


Fig. 1 Four branches of Fiqh (Islamic law)

For sufis, the knowledge of the self is a primary goal in itself. A very rich and detailed discussion exists in the sufi literature⁵ which is beyond the scope of this paper.⁶

There is yet another branch of Islamic law, the methodology of law (*uṣūl al-fiqh*), which focuses on the methodological and philosophical issues of law. The methodology of law literature conceptualizes human beings as the one who is addressed (*mukhātab*) by God and the one who is held responsible (*mukallaf*) by God. Below I will demonstrate how some of the scholars of Islamic law addressed these issues and linked it with the issue of human rights (Fig. 1).

Studying the self comes with its epistemological and methodological difficulties and challenges in particular regarding the subject and object relationship. This is because in the effort of a human being to know himself or herself, both the object and the subject are one. Put more plainly, the knowing and the known are the same. This is inescapable because human beings are reflexive creatures as they always think about themselves.

For Muslims, knowledge of the self is mandatory for every Muslim. The Qur’ān states that lack of the knowledge of self is a punishment from God to those who forget God: “Do not become like those who forgot their Lord and the Lord made them forget their selves.” (The Qur’ān 59:19). One can see that both the Qur’ān and Prophet Muhammad makes a direct connection between knowledge of the self and the knowledge of God. They mutually require each other.

The same way, Muslim jurists argued for centuries, as I will demonstrate below, that the very concept of human being in Islam require human rights. In Islamic law, majority of the jurists agree that *al-‘iṣma bi-l-ādamiyya*. Literally translated it means “right to inviolability comes with humanity”. I translate this into plane English as follows: I am therefore I have rights. From this perspective, being human constitutes

⁵The sufi approach to theological anthropology emanates from a practical concern: the purification of the soul (*tazkiyat al-nafs*). They have a unique way for the knowledge of the self and purifying it which may be called “spiritual anthropology”. It incorporates the traditionalist epistemology based on divine revelation used by *muḥaddithūn* and the rational epistemology used by the *fuqahā*, *mutakallimūn* and philosophers but goes beyond it to reach illumination in the heart (*kashf*) or opening the eye of the heart through pious practices.

⁶For an excellent introduction to sufism see Karamustafa (2007). On specialized sufi literature see particularly chapter four, pp. 83–113.

the sufficient ground for human rights regardless of the innate, inherited and acquired qualities one may have.

This legal maxim⁷ is a proposition with two key concepts: *al-ādamiyya* and *al-‘iṣma*. Because of my interest in human rights I have been focusing on the concept of *‘iṣma* and its legal implications in Islamic law according to various schools of law as well as its implementations throughout Muslim history from India to Andalusia. This was similar to the other scholars of human rights who avoid answering the question of what is a human being. This is a strategic decision they make because they are aware that when they try to address this question they face a great diversity of conflicting answers deriving from divergent secular opinions in philosophy or theological anthropology emanating from different denominations and religions.

Yet strikingly all agree that human beings should be inviolable merely because they are human beings. That means all agree on the ethical and legal implication of being human but they disagree on what is it to be human. In other words, there is an almost universal consensus that being human is a legitimate ground for enjoying human rights despite the fact that each school of philosophy or theology attribute different meaning to being human.

This strategy works very well in the field of human rights because it can successfully bring a Christian, Jew and Muslim who follow Abrahamic religions together with a Buddhist and Hindu as well as secular humanists. These groups agree on the legal maxim that humanity serves as a ground for human rights despite the fact that they all have different opinions about being human. The authors of the UN Human Rights Declaration have also adopted this strategy.⁸ Later declarations by the EU followed the same strategy. It can also be observed in the alternative declarations from Africa, Latin America, Far East, and the Muslim world.⁹

Similarly, there has been another contest among lawmakers about the scope of the concept of a human being. One can say that in the West the scope of the concept of a human being gradually evolved until it became an all-inclusive concept. In Islamic legal discourse, *ādamiyya* has been used as an inclusive concept to indicate all human beings from the very beginning of Islamic law. This is strikingly different than the expanding concept of human in the modern western legal discourse. Prior to the UDHR, all human rights documents and declarations in the West attributed humanity only to a segment of human beings, usually excluding lower classes, women, people in the colonies, and colored people. This is because the privileged classes and groups denied the under-privileged groups and classes' legal personality. It is only in the UDHR, the concept of human meant inclusively all human beings as the UDHR granted legal personality as a human right to all human beings.

⁷On legal maxims (*al-qawā'id al-kulliyya*), see Kızılkaya (2018).

⁸On how the UDHR was drafted, see Morsink (1999).

⁹See my forthcoming book, *Alternative Human Rights Declarations*.

2 Grounding Human Rights: Legal Reasoning in Classical Islamic Jurisprudence

In this section, I will survey across centuries the ideas of the major Muslim jurists who made humanity the ground for the human rights in Islamic law. This will also help me to demonstrate the justifications they used for it. The attempts to justify human rights in Islam, I will demonstrate, followed the methodology outlined by the methodology of Islamic law (*uṣūl al-fiqh*). The methodology of Islamic law uses both rational evidence and the evidence derived from the Qur'ān and the sayings and practice of Prophet Muhammad (d. 632)¹⁰ which are called *ḥadīth*.

There are four schools of law in Islam: Ḥanafī, Shāfi'ī, Mālikī and Ḥanbalī.¹¹ There are also Shi'ite schools of law. However, I will focus below only on the Ḥanafī view because it clearly subscribes to universal human rights. In my earlier research, I comparatively analyzed the views of Islamic schools of law on human rights.¹²

Muslim jurists from the Ḥanafī school unanimously accepted that “rights are due for humanity”. This doctrine is attributed to a great jurist from the eight century, namely Abū Ḥanīfa (699–767),¹³ the founder of the Ḥanafī school of law. According to this doctrine, all human beings are entitled to the right to inviolability for being human which includes the right to the life, property, religion, mind, family and progeny, and honor.

Some of the Muslim jurists from later generations who shared this universalist vision of Abū Ḥanīfa went even further and argued that protection of these rights is the very objective of Islamic law (*maqāṣid al-sharī'a*).¹⁴ For them, the purpose of Islamic law is to protect human rights and the legitimacy of a legal and political system depends on its ability to produce this outcome.

Abū Ḥanīfa's universalist vision on human rights survived through the jurists from the Ḥanafī school of law who subscribed to this view until the collapse of the Ottoman Empire in 1920.¹⁵ Among the most prominent ones are Abū Zayd al-Dabūsī (d. 1039), Ibn Māza (d. 1141), Abū Bakr al-Sarakhsī (d. 1090), 'Alā' al-Dīn al-Kāsānī (d. 1191), Burhān al-Dīn al-Marghīnānī (d. 1197), Abdulaziz al-Bukhārī (d. 1330), Kamāl al-Dīn ibn al-Humām (d. 1457), Muḥammad Amīn ibn 'Ābidīn (d. 1836), 'Abd al-Ghanī al-Maydānī (d. 1881).¹⁶ Below I will survey their works in chronological order by direct reference to their works.

¹⁰On the life of Prophet Muhammad, see Lings (1983).

¹¹See Ḥaddād (2007).

¹²For a comparative analysis of the views of Muslim jurists on human rights, see Şentürk (2013), pp. 290–314. Also see Şentürk (2002), pp. 39–69.

¹³Abū Ḥanīfa (Nu'mān ibn Thābit ibn Zūṭā ibn Marzubān) lived in Iraq, the city of Kufah. His students recorded his views to preserve as books. See Uzunpostalcı (1994), pp. 131–138.

¹⁴For more on *maqāṣid al-sharī'ah*, see Kamali (2008), particularly pp. 123–140.

¹⁵See Şentürk (2013), pp. 290–314.

¹⁶For biographical notes on these scholars one can consult the *TDV İslâm Ansiklopedisi* published between 1988 and 2013.

Abū Zayd al-Dabūsī (d. 1039) from the eleventh century argued that all human beings are created or born with human rights such as freedom and legal personality among others:

A child of Adam (human being) is created only and only with this covenant with God and the right to legal personality (*dhimma*); it is impossible to think that he could have been created otherwise. A human being is created only and only with a capability to be accorded with legal/public rights (*huqūq al-sharʿ*); it is impossible to think that he could have been created otherwise. Likewise, a human being is created free and with his rights; it is impossible to think that he could have been created otherwise. The reason why these honoring gifts (*karāmāt*) and legal personality (*dhimma*) are given to a human being is because he is responsible to fulfill the “rights of God” (*huqūq Allah*).¹⁷

According to Dabūsī, God’s rights on people (to be worshipped and obeyed) cannot be fulfilled unless human beings are granted human rights in particular freedom and legal personality. Freedom is a prerequisite for worship to God because imposed, enforced or predetermined actions would not count as worship. Because human beings are created to worship God out of their free will, it would be impossible to think that human beings are created without freedom. Likewise, because human beings are responsible towards God in terms of following His will and applying His commands, it would be impossible to imagine that they do not have legal personality which is a prerequisite to have rights and responsibilities. Therefore, according to Dabūsī, human rights are a must for God’s plan to be realized in creating human beings. Without human rights, human existence would be meaningless.

Following jurists like Ibn Māza, in Islamic law human rights are extended to after death. This is observable even in the Cairo Declaration for Human Rights in 1980 which states in article four that “Every human being is entitled to human sanctity and the protections of one’s good name and honour during one’s life and death” and “The state and the society shall protect one’s body and burial place from desecration”.¹⁸

Abū Bakr al-Sarakhsī (d. 1090), another well-known jurist from the eleventh century argued that every human being is born with three fundamental rights: inviolability, freedom, and property. It is striking to see the concept of born rights in Sarakhsī who lived during the eleventh century.

Upon creating human beings, God graciously bestowed upon them intelligence and the capability to carry responsibilities and rights (i.e. *dhimmah* or legal personality). This was to make them ready for duties and rights determined by God. Then He granted them the right to inviolability, freedom and property to let them continue their lives in such a way that they can perform the duties they have shouldered. Then these rights to carry responsibility and enjoy rights (*dhimma*), freedom and property exist with a human being when he is born. The insane/child and the sane/adult are the same concerning these rights. This is how the proper person-hood is given to him when he is born for God to charge him with the rights and duties when he is born. In this regard, the insane/child and sane/adult are equal.¹⁹

¹⁷Al-Dabūsī (2001), p. 417.

¹⁸See Organisation of Islamic Cooperation (OIC), *Cairo Declaration on Human Rights in Islam* (1990), accessible through the *University of Minnesota Human Rights Library* (<http://hrlibrary.umn.edu/instree/cairodeclaration.html>, last accessed August 19, 2018).

¹⁹See al-Sarakhsī (1984), pp. 333–334. The Arabic text reads: “*Li-anna Allāh ta’ālā lammā khalāq al-insān li-haml amānatihi akramahu bi-l-‘aql wa-l-dhimma li-yakūna bihā ahlan li-wujūb*

According to Sarakhsī, all human beings must have three rights: inviolability, freedom and property. Otherwise it would be impossible for them to perform the duties God assigned them. God created human beings for a purpose and equipped them with the necessary skills such as intelligence and the rights such as inviolability, freedom and property so that they can achieve this purpose. Sarakhsī makes it clear that there is no difference between human beings regarding these rights, even the children and the insane people have these rights because they are also human beings. Sarakhsī highlights that human rights begin by birth and no human imperfection or disability may be used to usurp them.

Sarakhsī introduced the concept of “born rights” in his writings when he said that “Then these rights to carry responsibility and enjoy rights (*dhimma*), freedom and property exist with a human being when he is born.” This may be considered one of the earliest if not the earliest emergence of the clearly defined and documented concept of born rights. Islamic law goes even further and considers the embryo and the small children also an inviolable human being.²⁰

‘Alā’ al-Dīn al-Kāsānī (d. 1191), a well-known Ḥanafī jurist, argues that rights are due either for their own sake or for the sake of being a means for other desired outcomes. For him the inviolability of a human being is due for its own sake (*hurma li-‘aynihi*²¹). However, he argues that inviolability of property is due for the sake of serving to the inviolability of human life. Therefore, we can conclude that according to Kāsānī, the right to property is justified because it is needed by the right to life (*hurma li-ghayrihi*). From this perspective, no external justification for human inviolability is needed because it is good in itself. However, external justification is needed to justify the right to property as it is needed for the protection of life.

Burhān al-Dīn al-Marghīnānī (d. 1197), another prominent jurist from twelfth century, also states clearly that “the right to inviolability is due to humanity (*al-‘iṣma bi-l-ādamiyya*).²² Marghīnānī is the author of one the most respected books in the Ḥanafī School of Law titled, *al-Hidāyā*.

‘Abd al-‘Azīz al-Bukhārī (d. 1219), from the thirteen century, also follows the same tradition and argues that every human being has the right to three things: inviolability of life (*‘iṣma*), freedom (*hurriyya*), and property (*mālikiyya*).²³ It is evident that Bukhārī reiterates the three human rights his predecessors have been defending since the tenth century onwards.

Kamāl al-Dīn ibn al-Humām (d. 1457), from the fifteenth century, also accepts that every human being has the right to inviolability. However, there is something striking

huqūq Allāh ta‘ālā ‘alayhi, thumma athbata lahu al-‘iṣma wa-l-hurriyya wa-l-mālikiyya li-yabqā fa-yatamakkana min adā‘i mā hummila min al-amāna, thumma hādhihi [al-hurriyya wa-l-isma wa-l-malikiyya] al-amāna wa-l-hurriyya wa-l-mālikiyya thābita li-l-mar‘i min hīnin yūladu, al-mumayyiz wa ghayr al-mumayyiz fīhi sawā’un, fa-kadhālika al-dhimma al-ṣāliḥa li-wujūb al-huqūq fīha thābit lahu min hīnin yūlad yastawī fīhi al-mumayyiz wa ghayr al-mumayyiz”.

²⁰On the rights of children in Islamic law, see al-Ustrūshānī (2013).

²¹See al-Kāsānī (1996), VII, p. 349.

²²See al-Marghīnānī (2000), II, p. 852. For more on Marghīnānī’s conception of the inviolability of rights (*al-‘iṣma*), see Şentürk (2013), pp. 299–302.

²³See al-Bukhārī (1997), XV, 322.

in his thought that universal human rights are justified by the rational arguments but not by the scriptural evidences from the Qur'ān and the *ḥadīth*. He writes: “The idea that human beings have the right to inviolability because of their humanity is a rational argument (*dalīl ma'qūl*)”.²⁴ In order to better understand this, we need to have a look at the types of arguments used in Islamic law. The methodology of Islamic law accepts two types of argumentation: scriptural and rational. They are not mutually exclusive as they are simultaneously used side by side in Islamic legal reasoning.

Muḥammad Amīn ibn 'Ābidīn (d. 1836), from the nineteenth century Damascus, stated clearly that “every human being has sanctity (*karāma*) even if he is a non-Muslim (*al-ādamī mukarram shar'an wa law kāfiran*).²⁵ With this statement Ibn 'Ābidīn makes it clear that religion is not a ground for discrimination with regard to human rights because humanity is commonly shared by the members of all religions.

Ibn 'Ābidīn makes a distinction between the ways in which the right to life and the right to property are justified. He argues that the right to the inviolability of property is grounded on necessity. He argues that initially no one had the right to property. However, later it was accepted as a universal human right because without the right to property economic life is impossible.²⁶

'Abd al-Ghanī al-Maydānī (d. 1881), a jurist from the late-nineteenth century Damascus, also stated that “a human being is inviolable by virtue of her existence” (*al-hurr ma'sūm bi-nafsihi*).²⁷ By stating this, he means that the universal human inviolability is good in itself and thus does not need any other external justification. It also means that being human alone is sufficient to be qualified to have the right to inviolability; human beings would not need any other qualification to enjoy human rights other than being human.

Thus far, I surveyed in chronological order until the late nineteenth century the views of Muslim jurists from different parts of the Muslim world who accepted the universal human rights and developed arguments to justify them. In the next section, we will have a look at the practice of Prophet Muhammad (571–632) whose sayings and practice laid the ground for Islamic law.

3 Grounding Human Rights: Scriptural Reasoning from the Qur'ān and the Ḥadīth

Above I have demonstrated how Muslim jurists approached the issue of universal human rights. Here I will explore the roots of universal human rights in the Islamic scriptures, the Qur'ān and the *ḥadīth*, the sayings and practice of Prophet Muhammad.

²⁴ Al-Humām (1315), IV, p. 356.

²⁵ Ibn 'Ābidīn (1994), V, p. 58.

²⁶ Ibid., IV, pp. 159–165.

²⁷ Al-Maydānī (1963), IV, p. 128.

3.1 *The Qur'ān on Universal Human Rights*

The Qur'ān is the primary source of Islamic law to be followed by all Muslims. Therefore, it is important to highlight the role of the Qur'ānic scripture in providing a solid ground for human rights in Islamic law. The issue of human rights in the Qur'ān is a very large issue but here I will briefly draw attention only to three most important rights mentioned in the Qur'ān: right to life, right to property and right to freedom of religion.

The Qur'ān makes it repeatedly clear that human life is sacred and inviolable. “And do not take any human being’s life—[the life] which God has willed to be, sacred—otherwise than in [the pursuit of] justice” (Qur'ān 17:33). The following verse in the Qur'ān makes killing a person equal to killing humanity as a whole: “Because of this did We ordain unto the children of Israel that if anyone slays a human being—unless it be [in punishment] for murder or for spreading corruption on earth—it shall be as though he had slain all mankind; whereas, if anyone saves a life, it shall be as though he had saved the lives of all mankind” (Qur'ān 5:32). The Qur'ān allows killing only in a defensive war or for punishment to murder. Other than that, violating the right to life and killing a human being is considered a cardinal sin and crime punishable in this world by retaliation or in the Hereafter by eternal Hellfire.

Similar to the right to life, the Qur'ān states clearly that the right to property is also inviolable: “O you who have attained to faith! Do not devour one another’s possessions wrongfully—not even by way of trade based on mutual agreement—and do not kill one another: for, behold, God is indeed a dispenser of grace unto you!” (Qur'ān 4:29). The Qur'ān allows trade but bans interest because it sees it as a violation of the inviolability of property.

The Qur'ān perceives freedom of religion as a universal human right and bans compulsion in religion: “There shall be no compulsion in [acceptance of] the religion. The right course has become clear from the wrong. So, whoever disbelieves in false deities and believes in God has grasped the most trustworthy handhold with no break in it. And God is Hearing and Knowing” (Qur'ān 2: 256).

Islamic law was founded on these as well as other similar verses in the Qur'ān which laid the ground for universal human rights. This is because, needless to say, the Qur'ān is the primary source of Islamic law before the *ḥadīth* (the sayings of Prophet Muhammad) and the Sunna (the practice of Prophet Muhammad). Now we can have a brief look at this second source.

3.2 *The Medina Document or the Medina Constitution*

Prophet Muhammad signed a treaty or a pact with the tribes in the city of Medina after his immigration to Medina from Mecca in 622. This pact, which was signed by all the tribes from different religions including Jews and polytheists, is also known

as the Constitution of Medina and is claimed to be the first written constitution in the world.²⁸

This treaty may be seen as a prototype for a modern constitution because it brought together all the existing groups in Medina and built consensus among them regardless of their tribal and religious affiliation and granted them equal human rights at the individual level. At the communal level, each community was granted complete freedom in its internal legal and religious affairs. Yet they agreed to act together in their external affairs in particular in making peace and declaring war.

The Medina treaty established a legal model which may be characterized as “legal pluralism” because it allowed each community to practice its civil law in regulating its internal affairs. This was parallel to religious pluralism including Muslims, Jews and polytheists.

One of the extremely significant contribution of the Medina treaty is that it created a “nation” (in Arabic *umma*) out of the diverse people who lived in Medina despite their racial, tribal and religious differences. This was invention of a new identity above the existing conventional tribal and religious identities in Arabia around that time. The prerequisite to become a member of the ummah was nothing other than accepting the terms of the Medina treaty or constitution as there was no racial or religious precondition.

There is another striking feature of the treaty as it operates at three levels: individual, community and the state. These levels may be called micro (individual), meso (community) and macro (state) levels. It talks about the rights and duties of individuals at the individual level. At the communal level, it talks about the rights and duties of communities and their relations with the state. It is important to draw attention to the meso-level rights or the community rights which is missing in the modern western discourse of rights today.

The pluralist political, legal and religious model Prophet Muhammad established in Medina is extremely significant to understand how Muslim states practiced human rights at the individual and communal levels throughout history in a large geography expanding from India to Balkans and Andalusia. This is because later Islamic states followed the Medina model Prophet Muhammad set up as an example (Sunna) to be followed by the subsequent generations of Muslims.

3.3 *The Farewell Sermon of Prophet Muhammad*

The well-known Farewell Sermon of Prophet Muhammad (571–632) laid the foundation of universal human rights in Islam.²⁹ Prophet Muhammad gave this sermon at

²⁸For an overview of various approaches to the Medina Document, see Lecker (2004), Wellhausen (1889), pp. 65–83, Gil (1974), pp. 44–66, Hamidullah (1975), Denny (1977), pp. 39–47, Serjeant (1964), pp. 3–16, Goto (1982), pp. 1–17, Rubin (1985), pp. 5–23, Arjomand (2009), pp. 555–575 and Rose (2009), pp. 1–29.

²⁹On the Farewell Sermon and its relations to human rights, see Şentürk (2013), pp. 293–295.

the top of his camel in 631 at the square of Arafat in the desert of Arabia near Mecca to a large group of believers who gathered there for annual pilgrimage. Three statements in this sermon constituted the very foundations of Islamic law pertaining freedoms. They are very relevant for human rights even today:

1. The first statement on right to life, property and honor:

O People, just as you regard this month, this day, this city (i.e. Mecca) as inviolable (haram), so regard the life, property and honor of every one as inviolable (haram).

The first and the most important statement in the Farewell Sermon is about universality of human inviolability. It makes it clear that all human beings have right to life, property and honor. Prophet Muhammad explained the inviolability of life, property and honor by bringing to the minds of his audience the sacredness of the pilgrimage time and the holy places where the pilgrimage took place. This is because it was the age-old custom of Arabs to respect the life, property and honor of everyone during the time of pilgrimage and also in the sacred temple, the Ka'ba, in Mecca.

Prophet Muhammad used an excellent strategy by expanding the existing limited concept of human inviolability to all times and spaces. He made all the times equal to the times of sacred pilgrimage times and all the spaces similar to the sacred Ka'ba (presently called *al-Masjid al-Ḥarām*) regarding human inviolability. He emphasized three most fundamental rights (life, property and honor) which are considered still the most important rights among human rights.

2. The second statement on the rights of women:

O People, it is true that you have certain rights with regard to your women, but they also have rights over you.

This statement is about gender equality regarding the rights and duties between men and women. It is still considered as one of the most fundamental human rights.

3. The third statement on equality and abolishing racism:

O People, all mankind is from Adam and Eve. An Arab has no superiority over a non-Arab, nor does a non-Arab have any superiority over an Arab; a white has no superiority over a black, nor does a black have any superiority over a white; [none have superiority over another] except by piety and good action.

This statement is about equality of races. During the time of Prophet Muhammad Arabs saw themselves superior to blacks. However, Prophet Muhammad opposed this well-established racial supremacy and abolished it. He did so by reminding that all human beings are the children of Adam and Eve.

The Farewell Sermon includes details references to rights and duties. However, we wanted to draw attention to the most important ones manifested in three statements. The first statement may be seen as the very core of human rights in Islamic law while the remaining two statements may be seen as explanations of it as the second statement is about gender equality and women's rights while the third statement is about racial equality.

From the three quotations from the Farewell Sermon, we can conclude three major constitutional or legal principles for today's law and policy makers: First,

Islam recognizes the right to inviolability of life, property and honor of all human beings without any distinction based on inherited or innate qualities such as race, gender, class or religion. Second, Islam grants men and women equal fundamental rights; it sees them equal before the law and accepts that they have rights on each other. Third, Islam strictly bans racial discrimination.

These statements are legally binding statements for Muslims. This is because Muslims call the sayings of Prophet Muhammad *ḥadīth* (pl. *aḥādīth*) which has binding power in Islamic law. *Ḥadīth* is the second source of Islamic law after the Qur'ān. Thus, the Farewell Sermon of Prophet Muhammad is not an ordinary speech or preaching.

The statements in the Farewell Sermon of Prophet Muhammad are not alone as they are repeatedly confirmed and supported by his many similar antecedent and subsequent statements and actions. They are today recorded in the *ḥadīth* literature and easily available to researchers. Furthermore, as I demonstrated above, the first source of Islamic law, the Qur'ān, also has many verses to the same effect. My purpose here is not to provide a complete survey of the Qur'ānic verses and all the relevant *ḥadīth* but merely to draw attention to the contemporary implications of the Medina Constitution and the Farewell Sermon on human rights discourse and practice in history and today.

4 The Practice: Classical and the Late Ottoman Experiences

The concept of human rights outlined in the Qur'ān, the *Ḥadīth* and the classical texts of Islamic law did not remain as a utopia but it has been put in practice by Muslim states throughout history in a large geography expanding from India to the Ottoman Empire to Andalusia and Balkans.

The Ottoman Empire (1299–1920), which ruled a myriad of ethnic and religious groups in Europe, Asia and Africa for several centuries, was a cosmopolitan empire. So was the Mughal Empire (1526–1761) that reigned most of India and Pakistan as it ruled Hindus and Buddhists. Thus, these two experiences are excellent examples for the universalism of human rights in Islam.

The Ottoman experience—along with the Andalusian experience—provides us with an excellent example about how Jews and Christians were treated, and by extension how they would be treated today, under Islamic law. Likewise, the Mughal experience in India provides an example about how Buddhists and Hindus were treated, and by extension how they would be treated today, under Islamic law.

It is commonly known that Muslims respect Christians and Jews as the People of the Book (*Ahl al-Kitāb*) and see them as part of the Abrahamic family of religions. Therefore, they are treated favorably by Islamic law. What is less known is the status of the non-Muslims who do not belong to Abrahamic religions and thus are not part of the People of the Book. There are abundant studies on the rights of People of the

Book under Islamic law but the rights of the non-Abrahamic religious communities are understudied if not completely neglected.

Therefore, I think the Mughal experience demonstrates beyond doubt the universalism of Islamic law and human rights in Islam because Hindus and Buddhists are not from People of the Book, i.e. they do not belong to a monotheistic Abrahamic religion. Yet they were given the same rights as Christians and Jews were given in other parts of the Muslim world at that time. Similar to Hindus and Buddhists, Zoroastrians in Iran from the very beginning were also granted the same human rights although they did not follow an Abrahamic monotheistic religion.

Ottomans established a “diversity management system” called the *millet* system³⁰ which may serve as a source inspiration even today because, in my opinion, at the age globalization the most pressing problem is diversity management today. The *millet* system was based on semi-autonomous religious communities brought together under Ottoman Caliph-Sultan. These religious communities included in the classical period three major *millets*: Islamic *millet* under the Caliph-Sultan, Orthodox *millet* under the Orthodox patriarch, and the Jewish *millet* under the Chief Rabbi. It is striking that the leaders of all these major religious communities lived in Istanbul. The followers of these *millets* were called *dhimmī* and the tax they paid was called *jizya*.

The *millet* system was based on equality of citizens at the domain of universal human rights but not at the domain of legal rights. This system worked very well until the nineteenth century. In the second half of the nineteenth century, the ‘*ulamā*’ raised a new question: Would it be possible to expand the equality at the domain of human rights to the domain of legal rights as well? The answer of the religious scholars was positive.

Consequently, in 1856 the *millet* system was brought to an end as the Ottoman Sultan abolished the *dhimmi* status and the *jizya* tax by a royal decree and introduced universal citizenship for everyone under Ottoman rule.³¹ Earlier, the slavery was also abolished in 1847 by Sultan Abdülmecid. These reforms in Islamic law and political system were based on a policy advice from a group of scholars headed by the Ottoman Shaykh al-Islām.

In 1879 Ottomans adopted the constitutional and the parliamentary system with the approval of the Ottoman ‘*ulamā*’ and had several elections prior to the defeat of the Ottoman Empire in 1918. The Ottoman parliament was closed by the British army after it invaded Istanbul. Some of the parliament members were non-Muslims such as Christians and Jews.

More specifically, the nineteenth century Ottoman legal reforms in Islamic law established the following norms: (1) Slavery is abolished and it is no longer legitimate and applicable; (2) Dhimmi status is no longer legitimate and applicable: all citizens are equal; (3) *Jizya* tax is no longer applicable: all citizens pay equal amount of taxes regardless of their religion; (4) Constitutional system is compatible with Islam;

³⁰On the Ottoman Millet System, see Braude and Lewis (1982).

³¹See Yıldız (2002), pp. 75–117.

(5) Parliamentary system is compatible with Islam; (6) Non-Muslims may be elected to parliament in an Islamic state; (7) Electoral democracy is compatible with Islam.

Because this legacy of Ottoman practice and reforms have been forgotten by the Muslims today, the question about what to do with the dhimmi status and the *jizya* tax linger around in the modern Islamic discourse. For the contemporary Muslim thinkers and policy makers, there is a lot to learn from the late Ottoman legal reforms.

5 Challenges Muslim World Face Today

The human rights heritage I outlined above—both at the theoretical and practical levels—has little manifestation today in the Muslim world. There is a rupture and discontinuity in the human rights discourse and practice in the Muslim world since beginning of secularization, westernization and modernization which resulted in replacing the Islamic human heritage with the western human rights discourse. Muslims no longer produce human rights discourse but import it from the West without any grounding in the Islamic legal culture. I call this phenomenon “human rights dependency”. Some Muslims are aware of it and they seek to rejuvenate Islamic discourse on the human rights but they face many challenges today.

The first challenge is that the long and rich conceptual and practical legacy of universal human rights in Islamic law and history are not known today to Muslim intellectuals and policy makers. This deprives human rights discourse from getting grounded in Islamic worldview. In particular, the Ḥanafī jurisprudence is very valuable in this regard.

The second challenge is that there is no middle class in some of the Muslim majority countries. If there is no middle class in a society, there would be no group to stand for human rights. The third challenge is that there is no rule of law and due process in some of the Muslim countries.

The fourth challenge is that some Muslim countries are economically and politically dependent on other countries. The fifth challenge is that some of the powerful Western countries disregard human rights violations and at times even support them in the Muslim world at times when it conflicts with their interests. By doing so, not only they undermine human rights practice in the Muslim world but also they make human rights discourse lose its convincing power and legitimacy in the eyes of Muslim populations. Consequently, they weaken any Muslim effort to advocate human rights in the Muslim world.

6 Conclusion

Human rights in Islamic law are characterized by three features. First, Islamic law recognizes human beings as the subject to whom rights are accorded solely by virtue of being human. Second, these rights are not contractual as they are not granted by

the state in exchange of fulfilling citizenship duties. Third, these rights are enforced by the state power and there is remedy in case of violation of these rights. These three features make the concept human rights in Islamic law very similar to the concept of modern human rights. It is rooted in the Qur'ān, and the sayings and practice of Prophet Muhammad which were used by Muslim jurists in subsequent generations as the sources of Islamic law.

This vast and long heritage, which is not commonly known today, was elaborated in the works of great Muslim jurists and was put in practice by Muslim states from the tenth to nineteenth centuries. It was Ottoman ulama and rulers who reformed the concept and practice of human rights in Islam by introducing equal citizenship to make it on par with the modern western norm during the second half of the nineteenth century.

Yet in the Muslim world today, there is little manifestation of the Islamic heritage of human rights neither in discourse nor in practice. This is due to the westernization of law in the Muslim world. Even the Islamist intellectuals and politicians are disconnected from the concept of universalist human rights outlined above. In the present Muslim world, it is a great challenge to bring back humanity as the ground for human rights.

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