

Justice, Human Rights, and the Quasi-Civil Society in a Muslim Context

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Abstract

Frequently misunderstood and portrayed negatively in the media, Islam and history of Muslims are not duly appreciated in our times. Islam's stance to science, rational thinking, and free thought are more often than not disregarded extensively, if not completely. Efforts to develop a globally valid "human rights" project have produced many useful documents and conventions in the twentieth century; however in many ways Islam's holistic worldview and prescriptions to "why"s and "how"s regarding human existence are not reflected in these documents. This paper aims to present evidence from Islamic code of ethics and justice with an emphasis on universal human rights and to discuss the ulama's influence on the protection of human rights in the history of Islamic civilization. I prefer to call ulama "quasi-civil society," for "civil society" as understood today does not have a fully matching counterpart in pre-modern times, and ulama seems to be the closest instrument balancing the state's authority. I briefly touch on the guilds, which can also be considered as another quasi-civil society, during the Ottoman times, as well.

Keywords: *Justice, Human Rights, Islam, Ulama, Civil Society, Quasi-Civil Society, Dharuriyat*

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Introduction

Social science covers a wide range of scholarly domain which constantly evolves. Concepts of the past are subject to be replaced with new ones and new vocabulary is adopted to fill the vacuum. Meanings are not fixed or static; they differ depending on time and place, culture and society. "Civil society" is such a concept and its emergence dates back to a relatively recent era; thus it would not be an overstatement to claim that its meaning and frame of reference still continue to be processed for a better definition. Likewise, "human rights," is purported as if a rather new concept like civil society, and as if it has reached its perfection in the West in the modern times. Some even claim "that most non-Western cultural and political traditions lack not only the practice of human rights but the very concept. As a matter of historical fact, the concept of human rights is an artifact of modern Western civilization" (Donnelly 1982, 303). "Justice," on the other hand, is generally considered to date as far back as the birth of human history, and, be it by either Christians or Muslims, justice is recognized "as one of the defining characteristics of God," thus believers sought it to fulfill the mandate that have been laid on them as their obligations "toward God and toward the other." So, there seems to be a clash between the so-called duties brought down by "justice" and the supposedly liberating "human rights" the latter of which "appears to embody and presuppose a principle of human autonomy and assertiveness that may fit uncomfortably with a traditional religious orientation" (Ipgrave 2009, ix). The human rights side of the clash stands for the secular worldview in a way to claim rights from God to be emancipated from the divine yoke imposed by religions, which are thought to be teaching us *nothing but duties*.

Reading justice and human rights from the above-mentioned dichotomical conflictual framework does not reflect the perspective adopted in this paper. It is true that it was a different world before the second half of the twentieth century in terms of human rights; but this does not mean there was no sense of rights before either. What we call "rights" today had its meaning reflected in "necessities" (*dharuriyat*, as will be discussed later in the paper); while it is thought that we *claim* our rights today, they were *granted*, so to speak, in the doctrine before. I argue here that however the origins and motivations were different from today, human rights were an important aspect of human life in the past, at least as far as Muslim societies were concerned, expressed quite clearly in the essential doctrine and extensively implemented in real life. Islamic law governs all spheres of a Muslim's life; thus it is not a faith confined within the walls of a mosque only, it is a way of living, culture. Having said that, notwithstanding many on-the-spot clear-cut judgments expounding every detail of a matter (*tafsili*), the universal principles of Islam, especially the Qur'anic injunctions, address the human condition in a

concise (*ijmali*) way, leaving a vast space for believers in general and jurists in particular to engage in intellectual activity and reasoning (*ijtihad*) and to produce legal judgments in line with the zeitgeist.¹ Comparison of what took place in premodern times in an Islamic context with the legal judgments pertaining to human rights today, or comparing a Qur'anic injunction that explains consequences that will be revealed in the afterlife with the modern perception of civil rights or penal code is at best an anachronistic effort, and at worst a cosmic flaw, mixing two different things. Additionally, referring to certain figures of the past and some marginal schools of thought that are brought to the agenda more frequently than the mainstream interpretations fails to give a full account of Islam's perception of rights.²

A fair approach to religion—Islam in this case—from a non-religious perspective that has “human rights” in its axis would be to analyze whether the given essentials speak of our human condition in a way that is compatible with the definition of rights as formulated today, and whether these essentials approve—or do not disapprove—these rights.

Philosophy of Rights

There are two perspectives on the ground through which history and philosophy of rights are discussed: 1) Euro-centric evolutionist and 2) Universal.³ According to the first view, past civilizations were the childhood stage of humankind which attained maturity in the Western world whose roots go as far back as ancient Greek philosophy. For the supporters of this view, human rights were defined best in the West and yielded its fruits in modern times, whereas the rest of the world has never been truly familiar with such a term. Nevertheless, although the Universal Declaration of Human Rights was signed in 1948, since then many countries, or coalition of countries, signed subsequent conventions. This is evidence in a sense that documents developed in the West do not always guarantee a full-coverage of rights for all human beings and societies in other parts of the world. The supporters of the second view approach from a rather eclectic perspective in which they emphasize commonalities among human beings, thus human rights conventions of respective communities should be benefited from.

¹ On the nature of Islamic law covering all spheres of life as a culture and the role of *ijtihad*, see Yilmaz 2005:192.

² Vincent J. Cornell's paper "Religious Orthodoxy and Religious Rights in Medieval Islam: A Reality Check on the Road to Religious Toleration," is an example of this approach. Cornell focuses on some examples like ibn Taymiyya's comments on *dhimmi*s and some *salafi* exponents today to the point of undermining many virtuous principles embraced and exemplified by an overwhelming majority of Muslims.

³ For a broader discussion on these two perspectives, see Şentürk 2006, pp. 109–110.

In this paper, I would like to present how human rights have been formulated in the Islamic experience. I will lay down evidence from the main sources of Islam, i.e., the Qur'an and hadith (the practice of the Prophet, peace be upon him). By this, I aim to show that Islam does not assume a reductionist approach to the cosmos; it engages both with the material as well as the spiritual dimensions of existence. I will bring examples from the history of Muslim societies to reflect how theory was implemented in practice, not least in terms of human rights vis-à-vis state-society relationship. Various Muslim social formations, which I call quasi-civil society, play a significant role in the perception and protection of human rights in relation to the state apparatus. Among these formations I will also touch on the *ulama* experience of past Muslim societies in their role as a leading component of this quasi-civil society.

Pre-Historic Roots of Human Rights

Human rights emerged as a question perhaps first time when Abel was murdered by Cain.⁴ We do not know how Cain was punished by his family (the one and only form of social unit then), for this event is pre-historic and we do not have any information other than the stories mentioned in the Qur'an (Maidah 5:27–31) and the Bible (Genesis 4, 1–9). What makes this story very significant and directly relevant to this paper is that the brief Qur'anic account of this murder is followed by the injunction of the most basic human right, i.e., right to life. Not only did this murder mark the beginning of an evil tradition; but it was also instrumental, at least in the Qur'an, in establishing a legal rule that was also recognized and endorsed globally only as late as twentieth century through a number of human rights declarations and conventions:

He who kills a soul unless it be (in legal punishment) for murder or for causing disorder and corruption on the earth will be as if he had killed all humankind; and he who saves a life will be as if he had saved the lives of all humankind. Assuredly, there came to them Our Messengers (one after the other) with clear proofs of the truth. Then (in spite of all this), many of them go on committing excesses on the earth. (Maidah 5:32)

As far as essentials are concerned, the basic needs, potentials, and desires are almost the same for all human beings. We breathe air, sleep, consume food; we grow, get old and die, leading a life competing or cooperating with others for similar, almost identical ambitions. Jails of the twenty-first century are full of murderers who were tempted to kill, just like Cain's defeat against his carnal soul, for similar reasons:

⁴ These names are mentioned in the Bible. There is no name mentioned in the Qur'anic account.

jealousy, revenge, hatred, etc. Thus, if humankind continues to preserve similar faculties, ambitions, and virtues, which is naturally the case, then human rights have always been a natural component of human existence throughout history and regardless of time and place.

Yet if you stretch out your hand against me to kill me, I will not stretch out my hand against you to kill you. Surely I fear God, the Lord of the worlds. (Maidah 5:28)

Abel's decision not to fight back to kill is a proof that even the first generation of humankind were aware of what is right and what is wrong. Nevertheless, if human beings were to remain faithful to the law, there wouldn't be any need for thousands of messengers to come generations after generations and the mission would have been fulfilled with Adam. As the hadith goes, "Adam forgot, so did his children."

The world would not be a secure place of residence, if evil acts in the form of all sorts of crime were left without response and the criminals did away with. Then, the question is: how are we going to respond to a crime? Who is the referee whether there is a crime or not? Who will decide on the punishment? What is a crime? What is a right and when is it violated? What are duties? Is a full compensation of a violation possible? How is a dead person compensated for his murder? How was Abel compensated?

The number of such questions can go up as many as we can think of, and they in fact explain why there is a need for a law to establish justice.

Rights and Justice

It is indeed very difficult to single out a period in history in which all members of the human family without exception were happy with the state of affairs. "What is happening" might not always correspond to "what should be." There have always been efforts to frame the latter of this duality by devising various formulations of law and the law is expected to serve "justice" which is the ultimate aim of a legal system. Thus, the efficiency of a legal system can be measured by the level of justice it guarantees. Justice, on the other hand, is possible when rights and duties are clearly defined for a society.

Contemporary political scientists discuss "rights" in three categories: 1) human (natural) rights, 2) civil rights, 3) economic rights. By nature, human beings can discern instantly, unless completely out of his or her mind, that it is wrong to kill innocent people. Life is a natural right, so, unless there is a good cause, it cannot be violated. Human beings are "free from" all sorts of tyranny and violation because of their natural

human rights. Civil rights, which are rather a newly adopted set of rights, are more relevant with modern democracy. Although some of them overlap with human rights, they are less self-evident. They define freedoms to speak and vote and cover issues like press freedom or set up an opposition right. Economic rights, however, is perceived more with a socialist construct and refer to demands for a job, education, and an adequate life.

“Human rights” have come to be perceived as rather exclusively linked to international human rights law in our times. This was mainly an outcome of the transformation of the state in the West to a more liberal, secular, and democratic form starting from the eighteenth through twentieth centuries. Added to that, the entire world had to pay high toll both in terms of life and economy in the two, but especially in the latter, world wars; so, not to suffer from this tragedy another time it was felt necessary to arouse a global human rights consciousness. Nevertheless, a true human rights consciousness can be established only if non-western value systems are also taken seriously into consideration.

According to Jeremy Bentham “right is the child of law,” meaning that a right is a right in the true sense of the word when it is mentioned in a constitution or statutes. This is the reason each state has a set of rules and there are declarations of human rights signed by countries. Nevertheless, the world is not comprised of one nation or family. Each country or group of countries has their own cultural, religious, or philosophical heritage which is reflected either very openly in their scripts of law or is carefully woven into the text in between the lines. This differentiation is not only in legal issues; the cleavage between different societies might be as far deep as to include variations in the perception of the world, human life, and the overall meaning of our existence. As a response to this perception, almost every national, regional, or cultural groupings of countries have produced their own human rights declarations.

Then, how is it possible to establish a peaceful way of relationship between different nations of the world? Şentürk argues that it can be possible by approaching the law at two levels:

In my view, law operates at two levels, universal and communal. Both levels have conceptual and sociological dimensions. The former is characterized by uniformity while the latter is characterized by diversity. In other words, there are certain principles on which there is universal consensus while certain issues vary from culture to culture (Şentürk 2005, 2).

Despite variations in worldviews, there are many dynamics inherent in the nature of humankind which can set the common denominator for peoples of the world to agree. Otherwise, it will not be possible for the global society to reach a “consensus on the rules of exchange, such as reciprocity, for international trade, sports, law and politics” (Şentürk 2005, 2). In a globalized world, political borders have almost remained as symbolic thanks to phenomenal influx of new communications technologies and transportation facilities. Concept of “nation” has transformed from a chauvinistic framework to be more inclusive of differences in language, color, religion; thus, there is a need for axiomatic principles (*müsellemat* in Islamic legal terms) of law that can define the rights and duties of the global society in their mutual relations.

Islam is a religion of scripture and Muslims boast of unchanged script of the Qur'an which has been preserved as revealed to the Prophet Muhammad, peace be upon him. Along with the Qur'an, the hadith is an advanced branch of scholarship that has meticulously recorded and analyzed the practice and sayings of the Prophet, producing a vast source of reliable reference for Muslims. Based on these two firm foundations, Muslims have been able to formulate a universal philosophy of human rights.

Islamic Universality and Justice

Islam claims universality from its onset. Islam is the perfected form of one universal belief that has been revealed to humanity through messengers whose sole mission were to guide their respective communities; this is the point where the Prophet Muhammad, peace be upon him, differs from previous messengers. He did not come for Arabs only, but to all nations:

We have not sent you (O Muhammad) but as an unequalled mercy for all the worlds. (Al-Anbiya 21:107)

Say (O Messenger to all humankind): “O humankind! Surely I am to you all the Messenger of God ...” (Al-A'raf 7:158)

The demographic profile of Muslims reveals that Arabs comprise only twenty percent of the *ummah* which is spread across a vast span of the world (Esposito 2002, 2). Islamic universality is emphasized in all aspects of its message, not least with the following verse which resonates with contemporary perceptions of global society:

O humankind! Surely We have created you from a single (pair of) male and female, and made you into tribes and families so that you may know one another (and so build mutuality and co-operative relationships, not so that you may take

pride in your differences of race or social rank, or breed enmities). Surely the noblest, most honorable of you in God's sight is the one best in piety, righteousness, and reverence for God. Surely God is All-Knowing, All-Aware. (Al-Hujurat 49:13)

This diversity in cultures, religions, and tribes is indeed retold in the Qur'an as evidence to God's existence and one of the manifestations of His will and signs of creation:

And among His signs is the creation of the heavens and the earth, and the diversity of your languages and colors. Surely in this are signs indeed for people who have knowledge (of the facts in creation, and who are free of prejudices). (Ar-Rum 30:22)

The universality of a message is proportional to the level of justice it purports for all humanity. Justice is one of the four pillars of the Qur'anic message which are:

1. Tawhid. Demonstrating God's existence and unity
2. Prophethood
3. Proving and elucidating afterlife with all its aspects and dimensions
4. Promulgating the worship of God and the essentials of justice (Ünal 2008, xvi-xvii).⁵

This concise summary regarding the purpose of the Qur'an is interesting in the sense that worship is considered together with justice. Justice in Islam does not only cover issues that are confined to this world and human relationships whose consequences are dealt with in this worldly lifetime. While there are some legal sanctions in countries which applies *shariah*, fulfilling religious duties and other human's responsibilities toward God (*huququllah*) or failure to do them will be rewarded or punished in the Hereafter. The story of Salman al-Farisi and Abu ad-Darda is exemplary about God's rights over humanity:

Narrated by Abu Juhaifa: The Prophet established a bond of brotherhood between Salman and Abu ad-Darda'. Salman paid a visit to Abu ad-Darda and found Um Ad-Darda' dressed in shabby clothes and asked her why she was in that state.? She replied, "Your brother, Abu ad-Darda' is not interested in the luxuries of this world." In the meantime Abu ad-Darda came and prepared a meal for him

⁵ See also Bediüzzaman Said Nursi, *İşaratü'l-İ'caz*, Istanbul: Şahdamar Yayınları, 2007, p. 9.

(Salman), and said to him, "(Please) eat for I am fasting." Salman said, "I am not going to eat, unless you eat." So Abu ad-Darda' ate. When it was night, Abu ad-Darda' got up (for the night prayer). Salman said (to him), "Sleep," and he slept. Again Abu-ad-Darda' got up (for the prayer), and Salman said (to him), "Sleep." When it was the last part of the night, Salman said to him, "Get up now (for the prayer)." So both of them offered their prayers and Salman said to Abu ad-Darda', "Your Lord has a right on you; and your soul has a right on you; and your family has a right on you; so you should give the rights of all those who have a right on you. Later on Abu ad-Darda' visited the Prophet and mentioned that to him. The Prophet, said, "Salman has spoken the truth."⁶

Islamic worldview assumes the purpose of law to provide guidelines for humankind so that they are able to recognize their reason for existence, to pursue a life in accordance with the divine will of the Creator, to make this divine will rule over their selves (*nafs*)—for their selves are created with a potential to incline both to right and wrong⁷—in order to attain God's good pleasure and to qualify in this world of trials where opportunities for goodness and risks of error exist at the same time.⁸ Higher objectives of Islamic law (*maqasid al-shariah*) set the legal dimension of Islam into three main tangible categories: 1) Daruriyyah 2) Hajiyyah 3) Tahsiniyyah. Daruriyyah deals with unavoidable necessities, while Hajiyyah covers general needs and Tahsiniyyah is about conditions to lead a decent life.

Among these, the first one Daruriyyah is more directly relevant to the inalienable rights of all human beings. It overlaps with the natural rights concept in the West in the sense that Daruriyyah emphasizes five essential rights to be "free from" any kind of violation: 1) Protection of life (*nafs*), 2) Protection of religion (*din*), 3) protection of family (*nasl*), 4) protection of reason (*aql*), or freedom of speech, 5) protection of property (*mal*).

Definition of rights are in fact based on the overall worldview of a society. What is human? What are they supposed to do in this world? What is life about? Answers given to such questions provide the starting point and main guidelines for understanding of human rights in a given society. Many Qur'anic verses and records from the sayings of the Prophet give clear answers to these questions. According to Islam, humans are superior because they are human:

⁶ Bukhari, *Adab*, 86, *Sawm* 51, *Tahajjud* 15; Tirmidhi, *Zuhd*, 64. See also Abu Dawud, *Salat*, 317.

⁷ "And the human selfhood and that (All-Knowing, All-Powerful, and All-Wise One) Who has formed it to perfection, and Who has inspired it with the conscience of what is wrong and bad for it, and what is right and good for it" (Qur'an, Shams 91:7-8).

⁸ "And We have shown him the right way, whether he be grateful (and follow this way) or ungrateful (and follow the way opposed to the right one)" (Qur'an, Insan 76:3).

We have honored the children of Adam. (Isra 17:70)

Surely We have created human of the best stature, as the perfect pattern of creation. (Tin 95:4)

Humans are honorable, thus they are blessed with inalienable rights:

Each human being is the worth of an entire human family: Killing one person unjustly is like slaughtering the whole of humanity; saving one of them is like saving all humanity (Maidah 5:32)

Harming oneself or committing suicide is also forbidden (Nisa 4:29)

Human rights are also mentioned extensively in the famous Farewell Sermon of the Prophet⁹:

- Inalienable rights: “Your life, property, and chastity (honor) are sacred and inviolable to each other.
- Economy: Injustice caused by interest-usury is abolished
- Vendetta: Blood-feud is abolished
- Women: “Just like you have rights over your women, they also have rights over you. Do treat your women well and be kind to them.”
- Rights of one's soul and other needs: “Do not commit injustice to yourselves (*nafs*), your selves have rights over you too.”
- Equality: “Your Lord is one, and your father is one; all of you are of Adam, and Adam was of soil. An Arab has no superiority over a non-Arab—except by piety and good action.” (In another hadith, it is reported: “You will obey your ruler, even if he is a black Ethiopian slave”¹⁰)

Another example of Islam's universal nature is found in the letter Ali the fourth Caliph wrote to the governor he assigned to Egypt. Ali warns his governor, saying “There you are going to meet two kinds of people: brothers and sisters in faith, and your equals in humanity.”

In Islam, the entire universe, that is to say, everything other than God Himself, is a manifestation of His Beautiful names and attributes. From this perspective, all conceptualizations about human rights are in a sense derivations from one of the divine names al-Haqq, which denotes “right” while literally referring to a wide frame of connotations including the Ultimate Truth, true faith, true knowledge, etc.¹¹ Mentioned 247 times in the Qur'an, the plural form of this word is *huquq*, which has been used to correspond “justice” since the early decades of Islam. In Islamic terminology, all rights originate from God's will and are each a blessing entrusted

⁹ See, *The Farewell Sermon of the Prophet Muhammad*, New Jersey: The Light, Inc., 2004.

¹⁰ Muslim, *Imara*, 37.

¹¹ For a broader discussion on this term, see Şentürk 2002, 8.

involuntarily and as a sign of His grace (*cebri-lutfi*) to humanity. Rights, therefore, are granted to every human in their creation and they cannot be purchased or traded, reduced or increased, or exchanged; they cannot be transferred to the discretion of the sovereign nor can they ever be used as a commodity (Yeni Ümit 2004, 2–7).

Al-Adl is another divine name regarding Islamic vision for justice. Meaning All-Just, this divine name is considered to be one of the names of God having all-comprehensive manifestations (*ism-i azam*) (Nursi 2008, 472) and it does not refer only to legal affairs between humanity, but rather to all forms of balance and justice in the universe. It is best interpreted together with “*mizan*” which means balance, measure, and order that govern all the activities in the universe. *Mizan* is used repeatedly in the Qur’an, but especially in chapter Rahman; Rahman is an attribute of God, meaning “All-Merciful”:

And the heaven He has made it high, and He has set up the balance; so you must not go beyond (the limits with respect to) the balance; and observe the balance with full equity, and do not fall short in it. (Rahman 55:7–9)¹²

From a true Islamic perspective, all sorts of rights pertaining to humanity as well as the rest of creation can only be truly appreciated in relation to the parameters God Almighty enjoined through religion. Principles drawn from religion cover both legal and moral rights with equal importance, and sanctions can be due both in this world and hereafter. For instance, the following hadith describes a set of moral rights Muslims are expected to observe in their relations:

Every Muslim has five rights over every other Muslim: the right to a reply, should he greet him; an acceptance, should he invite him; a visit, should he fall ill; a prayer, should he sneeze; a presence at his funeral, should he die. (Mazrui 2005, 26)

The universalistic school of jurisprudence, which is represented by Abu Hanifa, assumes these rights to be valid for all human beings. “I am therefore I have rights” (Şentürk 2005, 1) philosophy governs in this context. Drawing on from the discussion above, this aphorism-like motto can also be rephrased as “There is God, therefore there is justice” from the Islamic worldview in which God is believed to be actively present since time-eternal, constantly creating and administering all affairs, and everything is in fact the manifestations of His names and attributes.

¹² Nursi’s treatise on the name All-Just gives an extensive interpretation of this name in relation to *mizan* concept in chapter Rahman. See Nursi 2008, 432–435.

The universalistic philosophy differs from the communalistic philosophy, which is represented by Imam Shafii and other imams of the Islamic schools of jurisprudence, in its interpretation of human rights. The communalistic school approach rights more from a state-citizen perspective. Thus, rights are granted by the state to its subjects and services are provided in exchange of taxes. While on the other hand, the universalistic school assumes the *Daruriyat al-hamsa* to be valid for all humans, regardless of citizenship; they are God-given and cannot be traded for. This difference in their perspectives shapes the nature of politics an Islamic state should adopt. From the universalistic perspective, an Islamic state has to intervene human rights violations even outside its borders, perhaps without further legal enforcement; however, according to communalistic school, intervention or protection arise from a contract between the state and its citizens; when there is no such a contractual relationship, the state does not intervene outside its borders, for they have no power of enforcement. Similarly, while the communalistic school offer protection for the minorities in an Islamic state in return for the *jizya*, the capitation tax, whereas the universalistic school assumes responsibility to protect them even without taxes paid, for all human beings are entitled for protection as a birth-right.

The Charter of Medina

While justice is frequently emphasized in the overall Islamic message, there are other concepts like *ihsan* (goodness, excellence), mercy (*rahma*), forgiveness. The Arabic word for the society is *ummah*, which is derived from Umm, meaning "mother." "Mother" is distinguished with her mercy towards the child. *Rahma* (mercy) also comes from "*rahim*" which means the womb. Thus it can be argued that an ideal society in Islam is the one in which values like mercy, forgiveness and goodness dominate in all levels of human relations. The Charter of Medina is a good example of how Islam recognizes differences and respects rights arising thereof. This charter provides an interesting field of research especially in our time where it has been clearly seen that it is not possible to define other communities with a uniform set of regulations developed according to a set of paradigms that originate from one particular culture. This might result in self-alienation and intellectual dependence on other cultures.¹³

The Medina Charter, which is considered by some scholars as one of the first human rights conventions in human history, lays down legal principles in order to fairly administer a society that comprised of diverse communities. Early seventh century

¹³ For more discussion on "self-alienation" see Introduction in Recep Şentürk. *İbn Haldun: Güncel Okumalar* (İbn Khaldun: Contemporary Readings), İstanbul: İz Yayıncılık, 2009.

Medina (then Yathrib) was a chaotic city with a severely damaged social structure due to endless warfare between various tribes. The importance of this Charter is that these tribes legally recognized the existence of other tribes and agreed with their claim for certain rights. When this Charter was signed Muslims were only 15 percent of the entire population of the city (1,000), whereas Jewish and polytheist Arabs were the majority. Thus, non-Muslims were not considered under *dhimmi* status; all parties to this Charter participated in equal terms. Each tribe was distinctly mentioned in order to give them the opportunity to be represented in the charter and to voice their conditions; “participation” rather than “domination” marked the nature of this agreement. As agreed upon in this charter, Prophet Muhammad, peace be upon him, was chosen as the higher seat of rule, for warring tribes did not trust one another and the Prophet was notable for his justice.

Another importance of this charter was its emphasis on multiple legal systems. In a pluralistic society as in Medina, several private laws were stipulated in this contract. Thus, it is understood that Islamic law was binding only upon Muslims, while non-Muslims were bound by their own religious legal systems.¹⁴

Quasi-Civil Society in the Muslim Context

According to The Federalist Papers, No 51, written by James Madison in 1788, the purpose of civil society is justice (Dreisbach and Hall 2009, 316). What kind of conceptualization Madison had in mind back in the eighteenth century regarding civil society, we cannot be certain in absolute terms, for the term civil society has been defined in a variety of ways. Civil society is more commonly used to describe institutions that are “private” in that they are independent from government and organized by individuals in pursuit of their ends. It, therefore, refers to “a realm of autonomous groups and associations, including businesses, interest groups, clubs, families, and so on” (Heywood 1997, 8).

Certain attitudes, like “tolerance of differences in opinions and behaviors, willingness to cooperate with others, propensity to negotiate in order to approach consensus and to avoid violence in the resolution of differences, and a sense of shared identity with others,” are centrally associated with the existence of civil society. An effective community and democracy is not possible, even though a society can still be considered developed, without a civil society (Danziger 2003, 245–6). So, these autonomous groups “mediate between private and public life.”

¹⁴ For more information on the Charter of Medina, see Ali Bulaç, 2006, 85–106.

Civil society, for some other scholars, is largely identical with constitutional democracy, thus all of these mediating institutions preserve a balance of power between the ruling class and ordinary citizens (Kelsay 2002, 3).

For an efficient enforcement of human rights, the existence of a middle class and civil society which are “educated about and committed to human rights is a prerequisite”:

Even if human rights exist in a culture on the conceptual level, if there is no civil society to vigilantly defend them for all, they will be violated by the governments on the ground. In countries where there is no middle class, we cannot expect human rights to be implemented in a continuous manner because there will be no deterrent and punishment if the state violates them. (Şentürk 2005, 6)

The *ulama* circle within the Islamic community seems to be the closest analogy to civil society. In Kelsay's words:

Through the associated institutions of the *masjid* (mosque, place of communal gathering), the *madrassa* (religious school), and eventually the *jami'a* (university), the *ulama* established a kind of sphere of influence, politically relevant but not quite “governmental,” that limited the power of government officials. (Şentürk 2005, 10)

The power of the *ulama* rested mainly in their knowledge, not in their political expertise. Although the caliphs were the political leader and they also assumed religious authority, they could not compete with the *ulama* in matters related with the presumption of legitimacy in knowing the sources of Islam. Even at times, when the caliph willed to intervene with the scholarly field, they were refuted back, as in the case of Ahmad ibn Hanbal, who was noteworthy for his insistence on financial independence from the government. When Caliph al-Ma'mun wanted to test scholars with the question whether the Qur'an was created or not, Imam Hanbal argued that al-Ma'mun went the beyond the rights of a Muslim ruler (Şentürk 2005, 11). Imam had sensed the intention of the Caliph to regulate the influence of the *ulama* by imposing on them to answer his question the way he wants them to.

Imam Malik's refusal of the Abbasid Caliph al-Ma'mun to make his book *al-Muwatta* the only book of legislation is also very significant in the sense that he did not

want to prevent free-thinking by declaring his legal principles as the only overarching corpus of law.¹⁵

Especially in the eleventh century, when the Islamic state was ruled by Turkish military elite, who were in fact alien to the local community in Baghdad, and there were constant political upheaval, the *ulama* were the sole civilian elite capable of bridging the gap between the indigenous population and the administration. The *ulama*, then, enjoyed an autonomous role in the public sphere. The political rulers did not intervene in the *qadi's* court except in matters relating to public order, even though *qadi* was very much dependent upon the rulers for his employment. Al-Ghazzali explains in detail why the *ulama* have to abstain from any connections with officials. Al-Ghazzali himself was a personal example when he resigned from his prestigious teaching position in the Nizamiya Madrasa of Baghdad (Ephrat 2000, 125–135).

The authority of the *ulama* was maintained in the Ottomans as well. Halil Inalcik notes that “according to Muslim theory political authority was merely a means for the application of the *şeriat*. The state is subordinate to religion. For this reason the *ulema* class regarded the secular authority as its subordinate and strove to put this theory in practice” (Inalcik 2000, 171).

Along with the *ulama*, another form of quasi-civil organization were craft guilds. Although the origins of guild organizations date back to pre-Islamic periods, they emerged with somewhat unique form and nature in the Islamic civilization. Inspired by Sufi orders and *futuwwa* ethics, guilds performed a number of public functions and became a political force in the cities. They acted independently in many ways and always resisted government interference in the election of *kethüda*, the most important member of the Ottoman guilds who represented it to the outside world. They rejected *kethüdas* whom the governor or *qadi* wished to impose on them. So, the central government recognized the autonomy of the guilds and *qadis* registered as independent once their *kethüda* is elected. Like the trade unions of modern times, guilds discussed and decided on fixing prices and quality among themselves and negotiated with the representatives of the government, who “intervened mainly to ensure tax revenues from this source” (Inalcik 2000, 150–153).

Conclusion

“Human rights” is an essential field of study which necessitates a holistic approach. Human beings are not comprised of a biological form only; moral faculties make up a significant part of human nature (*fitrat*). They have needs and desires that

¹⁵ TDV *İslam Ansiklopedisi*, Vol. 27.

have extensively been the same since the first human. While they have many similarities in these needs and desires, they also differ from one another in terms of culture, language, color, etc.

Although many Muslim societies, which are under the yoke of authoritarian regimes, are unable to represent many universal values they are normally obliged to observe by their faith, Islam offers many useful contributions both in theory and practice to the human rights efforts at the global level. This potential seems to be latent presently, but it was realized throughout long centuries in the past. Islam offers a philosophy in which the rich is enjoined to pay *zakat* from his wealth, not as a favor for the poor, but in order to redeem their natural right. It offers social structures like *shura* and *biat* which are the principles that define what we call political participation today. It urges the society to keep vigil against the violation of their rights, while ordering them to take care of their neighbors. An ideal Islamic administration honors justice over anything else with the consciousness of the hadith, just like the Ottomans who raised the Tower of Justice as the tallest building in the Topkapı Palace in Istanbul and hung on its entrance this hadith of the Prophet: "Observing justice for one hour is more rewarding than eight-years of worship."

Universal Islamic Declaration of Human Rights which was declared by the Islamic Council of Europe (est. 1973 by Salem Azzam) in 1981 and The Cairo Declaration on Human Rights in Islam adopted by the Organization of Islamic Conference in 1990 were significant attempts which were developed mainly from Islam's universal teachings. Most of the clauses adopted in the conventions overlap with UN Human Rights Declaration in many issues like free association, political participation, family, etc., and they are useful contributions to the efforts devoted for defining human rights in a way that can be acceptable by all peoples in the world. With these declarations the Muslim world engages with the human rights project which it was not fully involved in the beginning. and they present the potential for a distinctively Islamic perspective on human rights seeking to apply global values which Islam already embraces inherently. An unprejudiced approach to the rich heritage produced across the globe could help us work out an ideal formulation of human rights that can reflect both universal and communal dimensions of human nature.

References

Bulaç, Ali. 2006. "Medine Vesikasında Dinler ve Topluluklar Arası Diyalog" (Dialogue among Religions and Communities in the Charter of Medina) in *Diyaloğun Dini*

- ve Tarihi Temelleri* (Religious and Historical Foundations of Dialogue), İstanbul: Yeni Ümit Kitaplığı.
- Cornell, Vincent J. 2009. "Religious Orthodoxy and Religious Rights in Medieval Islam: A Reality Check on the Road to Religious Toleration," in *Justice and Rights: Christian and Muslim Perspectives*, Washington D.C.: Georgetown University Press.
- Danziger, James N. 2003. *Understanding the Political World: A Comparative Approach to Political Science*, Longman.
- Donnelly, Jack. 1982. "Human Rights and Human Dignity: An Analytical Critique of Non-Western Conceptions of Human Rights" *The American Political Science Review*, Vol. 76, No. 2, 303–316.
- Dreisbach, Daniel L. and Mark David Hall. 2009. *The Sacred Rights of Conscience: Selected Readings on Religious Liberty and Church-State Relations in the American Founding*, Indianapolis: Liberty Fund.
- Ephrat, Daphna. 2000. *A Learned Society in a Period of Transition: The Sunni 'Ulama' of Eleventh-Century Baghdad*, New York: Suny.
- Esposito, John L. 2002. *What Everyone Needs to Know About Islam*. New York: OUP.
- "Hak Kelimesi ve Ötesi" (Al-Haqq and Beyond). 2004. *Yeni Ümit*, No. 63.
- Heywood, Andrew. 1997. *Politics*. New York: Palgrave.
- Hunter, Shireen T. and Humma Malik (editors). 2005. *Islam and Human Rights: Advancing a US-Muslim Dialogue*. Washington D.C.: Center for International and Strategic Studies (CSIS), Significant Issues series.
- Inalcik, Halil. 2000. *The Ottoman Empire: The Classical Age 1300–1600*. London: Phoenix Press.
- Igrave, Michael (edited by). 2009. *Justice and Rights: Christian and Muslim Perspectives*. Washington D.C.: Georgetown University Press.
- Kelsay, John. 2002. "Civil Society and Government in Islam," in Sohail H. Hashmi (edited by), *Islamic Political Ethics: Civil Society, Pluralism, and Conflict*, New Jersey: Princeton University Press.
- Mazrui, Shaykh Al-Amin Ali. 2005. (translated by Hamza Yusuf). *The Content of Character*, USA: Sandala LLC.
- Nursi, Bediüzzaman Said. 2007. *İşaratü'l-İ'caz*, İstanbul: Şahdamar Yayınları.

-
- . 2008. *The Gleams: Reflections on Qur'anic Wisdom and Spirituality*, New Jersey: The Light, Inc.
- Şentürk, Recep. 2002. "Adamiyyah and 'Ismah: The Contested Relationship between Humanity and Human Rights in Classical Islamic Law." *İslam Araştırmaları Dergisi*.
- . 2005. "Sociology of Rights: 'I Am Therefore I Have Rights': Human Rights in Islam between Universalistic and Communalistic Perspectives." *Muslim World Journal of Human Rights*, Vol. 2, No. 1, Article 11.
- . 2006. *İnsan Hakları ve İslam: Sosyolojik ve Fıkhi Yaklaşımlar*, İstanbul: Etkileşim.
- . 2009. *Ibn Haldun: Güncel Okumalar* (Ibn Khaldun: Contemporary Readings), İstanbul: İz Yayıncılık.
- The Farewell Sermon of the Prophet Muhammad*. 2004. New Jersey: The Light, Inc.
- TDV İslam Ansiklopedisi*, Vol. 27.
- Ünal, Ali. 2008. *The Qur'an with Annotated Interpretation in Modern English*, New Jersey: Tughra Books.
- Yılmaz, İhsan. 2005. "Inter-Madhab Surfing, Neo-Ijtihad, and Faith-Based Movement Leaders," in *The Islamic School of Law: Evolution, Devolution, and Progress*, edited by Peri Bearman, Rudolph Peters, Frank E. Vogel. Cambridge: Harvard University Press.