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Islamic Ethics

Special Issue Guest Editors

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Ummah's Rights or Human Rights? Universalism, Individualism, and Islamic Ethics in the Twenty-first Century

Marie-Luisa Frick

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Abstract

Against the background of the trend of Islamizing human rights on the one hand, as well as increasing skepticism about the compatibility of Islam and human rights on the other, I intend to analyze the potential of Islamic ethics to meet the requirements for vitalizing the idea of human rights. I will argue that the compatibility of Islam and human rights cannot be determined merely on the basis of comparing the specific content of the Islamic moral code(s) with the rights stipulated in the International Bill of Rights, but by scanning (different conceptions of) Islamic ethics for the two indispensable formal prerequisites of any human rights conception: the principle of universalism (i.e., normative equality) and individualism (i.e., the individual enjoyment of rights). In contrast to many contemporary (political) attempts to reconcile Islam and human rights due to urgent (global) societal needs, this contribution is solely committed to philosophical reasoning. Its guiding questions are "What are the conditions for deriving both universalism and individualism from Islamic ethics?" and "What axiological axioms have to be faded out or reorganized hierarchically in return?"

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Introduction

The question of whether or to what extent, respectively, Islam and the conception of human rights are compatible is constantly gaining in importance not only in academic circles; it has also become a subject of controversial public discussion. The remarkable attention paid to this issue, as expressed in such questions as "Are human rights a universal idea? Is there any room in Islam for human rights? Were human rights 'invented' by Islam long before?," echoes the post-9/11¹ uneasiness with Islam's² alleged proneness to violence, suppression of women, and totalitarian tendencies.

The most influential trends to date regarding the debate on Islam and human rights, both implicitly or explicitly, state at least a partial irreconcilability between Islam and (classical) human rights. The first one, which can be called the dogmatic-secularist point of view, assumes that the ideological foundations of human rights, as well as their specific material content, is basically alien to Islam's worldview and ethics. This argument is becoming more and more popular, especially in Europe, where tensions between *defenders of the Enlightenment* and Muslim immigrant populations are growing. It seems as if the questions of Islam's future in Europe and potential for integration are ultimately tied to its relation to the idea of human rights. The second interpretation can be described as an Islamization of the idea of human rights. This tactic, which can best be observed in the Cairo Declaration of Human Rights in Islam (1990), claims that the notion of human rights is genuinely Islamic and that the first human rights were granted to humanity by God in the Qur'an. By differentiating between true Islamic human rights and *materialistic, permissive, godless* western human rights, proponents of this trend share the conviction that Islam and the classical concept of human rights, as originated from European and American Enlightenment, are rivals of each other.

The shortcomings of these two positions are obvious: Even though the western concept of human rights has no one-to-one equivalence in Islam, the dogmatic-secularist point of view tends to overlook potential supportive elements in Islamic ethics as regards the idea of universal human rights. In addition, it also disregards Islam's potential to reform, although the latter might not be infinite due to the authority of the Qur'an as God's unspoiled word. The Islamization of human rights, on the other hand, to a large extent constitutes a confusion of moral progress – attributed to the occurrence of Islam and its proclaimed divine law – with human rights, which, as will be pointed out below in more detail, are intrinsically connected to an

unrestricted application (i.e., universalism) and the notion of individual rights. To argue that the Shari'ah "came as a comprehensive system for universal human rights"³ means denying any conflict between universal human rights and, for example, slavery or legal discrimination against women and non-Muslims under classical Islamic law. Such assertions are not only "hopelessly apologetic"⁴ and "a distortion of legal history"⁵; very often they are also born out of anti-western *ressentiment*, which is, *inter alia*, illustrated by Syed Abul A'ala Maududi when he criticizes the *westerners'* claim of human rights parentage and credits to them the "habit of attributing every good thing to themselves."⁶

In this article, I will argue that using the terminology of human rights is valid if and only if we are talking about the individual rights to which every person is entitled by being a member of the human race. To be sure, discourses on human well-being, altruism and charity, love and respect, and so on can overlap; however, they are not necessarily congruent with the genuine human rights discourse. The former are found in all cultural traditions and religions due to a few universally shared ethical principles, such as respect for life and property, utility, and striving for good and avoiding evil, which prove to be universal in principle but relative in respect of their concrete materialization or in the realm of their application. I share with Jack Donnelly the conviction "that most non-Western cultural and political traditions lack not only the practice of human rights but the very concept."⁷ I do not, however, believe that it is impossible for Asian and African traditions or for Islam, which is of special interest here, to fructify their ethical heritage in order to meet the conditions of the possibility of a human rights concept worthy of the name. To identify them, a short excursion into the history and philosophy of human rights is necessary.

The Pluralism of Rationales and the Skeleton of Human Rights

Even though it is not difficult to detect discourses on universal compassion, equality, and human dignity in Greco-Roman antiquity, early Christianity, and the Renaissance, the concept of human rights as such did not emerge until social contract theorists, with Thomas Hobbes (d. 1679) and John Locke (d. 1704) leading the way, argued that the state has to respect certain *natural* rights prior to its existence. Whereas Hobbes adopted a rather positivistic position, claiming that the citizens' rights stem from their original unbound freedom in the anarchic state of nature they deserted in order to

enjoy their rights safeguarded by the public monopoly of force, Locke envisaged a person's freedom and equality in rights derived from God.⁸ Despite their abdication and usage, respectively, of metaphysical axioms, however, they share the conviction that the state is not an end in itself; rather, it is obliged to respect and protect certain fundamental or *natural* rights that belong to every citizen.

In further consequence, the political philosophy embedded in the social contract theories, with its discourses on civil rights and sovereignty of the people, led to the first human rights declarations, namely, the Virginia Bill of Rights (1776), the American Declaration of Independence (1776), and the French Declaration of the Rights of Man and of the Citizen (1789). These declarations also mirror the different derivations of human rights from either religious or positivistic argumentation, as used in the theories of Hobbes and Locke. Whereas the American Declaration of Independence affirms "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights," the French Declaration refrains from making a clear reference to God pertaining to the origin of the proclaimed "natural, unalienable, and sacred rights of man"¹⁰ and only mentions that this proclamation takes place "in the presence and under the auspices of the Supreme Being."¹¹

In modern human rights documents, in particular the International Bill of Human Rights, namely, the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948 as well as the two UN Covenants (1966), any reference to *natural rights* is absent. In fact, *human dignity* is now taken to be the basis of the foundation of human rights. The preamble of the UN Covenant on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights underscores that the rights granted in these documents "derive from the inherent dignity of the human person."¹² The "dignity and worth of the human person" is likewise stressed in the preamble of the Universal Declaration of Human Rights.¹³

Upon examining the genesis and development of the human rights idea with its different rationales found in (positivistic or metaphysical) natural laws or human dignity, what is evident so far is that this idea is open to a plurality of rationales. This is even truer when one considers the different conceptions of human dignity, ranging from the Kantian understanding of human dignity as rooted in humanity's faculty to rationality and moral autonomy to the theocentric notion of a common genesis of humanity (e.g., the Judeo-Christian belief that humanity is created in God's image). In principle, this plurality of rationales allows different cultural traditions, reli-

gions, and worldviews to accommodate the idea of human rights. Thus it is not true, as, for example, Louis Henkin states, that "universal human rights cannot rest on theistic foundations."¹⁴ When he argues that "such supports are not available, or acceptable to those who cannot share theistic assumptions," he seems to presuppose that what is needed is the same rationale of human rights for each person. As a result, he overlooks the fact that each rationale for human rights rests upon assumptions that are relative insofar as they depend upon a framework of ideological premises. From a more inclusive perspective, it is no disadvantage that there is more than one gate to the anchorage of human rights, as long as we share (the knowledge about) the *meaning* of human rights, which shall be explicated below.

Reflecting on the history of the development of human rights, one can easily see that what has been granted as a right has fluctuated over the course of time. Women's suffrage, the right to education, or the right to enjoy just and favorable working conditions are not contained in the original human rights declarations of the eighteenth century. And even today, dispute accompanies all sorts of debates on the meaning or extent of the right to life (e.g., the debates on abortion and capital punishment), the right to free speech (e.g., debates on blasphemy), or the right to freedom from torture (e.g., the debate on interrogation tactics in the so-called "war on terror"). From this, it follows that human rights as such are – despite the effort of some of their historic as well as contemporary advocates to present them as eternal laws independent of human reasoning and practice – not carved in stone, simply because they are not the laws of nature but of culture. Human rights always mirror the needs and worldviews of a specific society, culture, or age.

In our globalizing world, we cannot but observe that different traditions and cultures often possess diverse needs and, sometimes, even antagonistic worldviews. The attempt to integrate this plurality of viewpoints into a common and truly universal human rights document has not yet succeeded. The discomfort of Asian, African, and Arab countries with the western-centric International Bill of Human Rights was expressed not least in the form of additional, and to some extent effectively competitive, human rights declarations such as the Organization of the Islamic Conference's (OIC) Cairo Declaration of Human Rights in Islam (1990), the African [Banjul] Charter on Human and People's Rights (1981), and the Arab Charter on Human Rights (2004).

Against this background, the material content of human rights appears to be more relative than universal. Indeed, it is one of human rights' paradoxes that as long as advocates of universal human rights are not prepared for a sin-

cere dialogue with those who threaten the claimed universality by insisting upon their ethical and axiological conditions, no true universal acceptance of human rights will be achieved. Nevertheless, human rights are unthinkable without certain axioms detached from the relativity of cultural traditions and worldviews. The skeleton with which no genuine human rights concept can do without is composed of the two premises of universalism and individualism. The former, in this context distinguished from universal acceptance (universality), stands for the realm of applying human rights, whatever their content might be. This realm has to be universal; it has to include all human beings without exception. The latter principle refers to the individual, the holder of human rights. Classical human rights have explicitly been drafted to protect the individual from the violation of his/her life, property, and security by others and the state. Even if some rights, such as the right to free assembly, cannot be exercised without the society of others, they were nonetheless granted to the individual.¹⁵

This focus on the individual, however, is criticized by many non-western people as dangerously specific to western civilization.¹⁶ Whereas the complement of classical individual human rights with group rights (e.g., the right of all peoples to self-determination, as proclaimed in the UN Covenant on Civil and Political Rights¹⁷) has little potential to undermine the individuals' rights, on the contrary any general primacy of a collective (e.g., the family, society, and state) would corrode the very idea of human rights. What it means to allow collective interests or group *rights* to trump individual human rights becomes comprehensible when we recall the rationale provided for torturing suspected terrorists; envision the enslavement of child brides, in many parts of the world, who are then denied any other purpose in life except caring for their families by means of ceaseless (sexual) *corvée*; or hear that the practice of forced abortion and compulsory sterilization, still pertinent in China,¹⁸ is justified by the state as a way to reduce poverty. These are just a few examples of what shifting from the individual enjoyment of human rights to group rights inevitably entails. In general, collective rights are, as Donnelly points out, "directed against the individual in their operation" and reduce the individual's entitlement to a certain treatment to a useless abstraction.¹⁹

After the two components of a sufficient condition of any human rights concept have been identified, the core question of Islam's contribution can be tackled. Referring to Donnelly, who assumed the "real question" in the discussion on the universality of human rights to be the one of "whether the concept of human rights has contemporary relevance outside the West,"²⁰ I would like to investigate how the concept of human rights *could* have rele-

vance within the framework of Islam and Islamic ethics by referring to selected viewpoints of contemporary Islamic ethics. By highlighting their potential to embrace the idea of universal human rights as well as exposing their shortcomings in this regard, the path to reconciling Islamic ethics and human rights will gradually come to the fore. It is important, however, to notice that the question of whether or not Muslims should choose to follow that path is beyond the concern of this article, for it would be overbearing to adopt such a position as well as an overstepping of the proper bounds of a scientific examination of this issue.

The idea that Islam should integrate the concept of human rights is by no means without controversy. One could argue, for example, that due to its assumed perfect divine law Islam has no need for this particular concept. When the Shari'ah is perceived as a perfect system that balances duties and rights and prevents any conflict between the state and the individual by binding both,²¹ the question arises as to why such a concept should be brought into play. In this case, it would be less misleading simply to speak of Islamic divine law or Islamic political ethics instead of Islamic human rights. An example of this sort of honesty is Muhammad Legenhausen, who opposes the Islamization of human rights and suggests that Muslims "eschew the language of human rights" because it "smuggles concepts from Western liberal tradition into the political discourse of Muslims" and "stifles balanced consideration of community and institutional values in favor of insistence on individual freedom."²²

(Internal) Universalism in Islamic Ethics

As distinct from moral universality, which describes the universal acceptance of certain moral norms and values, moral universalism stands for the universal validity of moral norms. Its opposite would be an internal universalism, which effectively constitutes a moral particularism and no universalism at all. For example, in many pre-modern societies it was common to restrict the prohibition of killing in relation to the members of one's own (in-)group, whereas killing members of the out-group usually was not condemned.²³ Moral universalism cannot be achieved without developing the principle of equality. According to Charles Darwin, historically our *instinct of sympathy* or *moral sense*, for example, the faculty of empathizing and acting altruistically, originally was confined to small tribes and, over time, expanded to larger groups, thereby constantly increasing humanity's standard of morality.²⁴ In this tradition, Edward Westermarck points out that "[t]he expansion

of the commandments regarding to neighbours coincide with the expansion of the altruistic sentiment."²⁵

As part of its self-conception, Islam claims credit for overcoming various forms of group differentiations and discrimination based on nationality, race, or color from its very beginning in sixth-century Arabia until today. The ummah, the global community of people adhering to the Islamic faith, embodies the Muslims' ideal of inclusion that refers back to first Muslim community in Madinah. In his farewell speech, Muhammad is reported to have said: "Every Muslim is the brother of every Muslim, and the Muslims constitute one brotherhood."²⁶ The Qur'an declares: "The believers are but a single brotherhood" (Qur'an 49:10). To a large extent, this ideal of brotherhood among the believers also explains Islam's attractiveness to people who were/are suffering from social marginalization, such as victims of the Indian caste system or Afro-Americans in the times of racial segregation. The feeling of belonging to a world family of fellow believers from different countries with different cultural backgrounds is experienced by many Muslims every year during their hajj. Hasan Hanafi explains:

One senses this unity immediately while traveling in Muslim countries [...]. The universal *umma* ideal may have little political significance today, but it is alive at the ethical and spiritual level, which unites individuals into a greater whole transcending their own often unrepresentative states.²⁷

Contemplating the contributions of the great religious traditions, including Islam, to humanity's well-being, Hilary Putnam puts forward the historical thesis that it is their peculiar merit to have overcome previous in-group boundaries by the "prioritization of compassion."²⁸ This thesis is contested by those who are skeptical about the ability of religions in general – and of Islam in particular – to meet the criteria of equality and non-discrimination, especially when it comes to the non-discrimination on the grounds of religion. Henkin states: "Religions [...] have accepted – indeed mandated – distinctions between one religion and other religions, between the faithful and the infidel."²⁹ Likewise Sulayman Nyang: "All religions, no matter how universalistic their claims, are in the final analysis boundary maintainers, not just in the physical domain [...] but also in the metaphysical realm."³⁰ In Islam, the *shahādah* (the confession of faith), fulfills the function of establishing boundaries between believers and outsiders.

The thesis that the fundamental normative distinction between one's own religious group and others' is inherent to monotheistic religions has recently been put forward most prominently by German Egyptologist Jan

Assmann.³¹ According to him, the *Mosaic distinction* (viz., the distinction between *true* and *false* religion) is characteristic of Judaism, Christianity, and Islam in contrast to *cosmotheistic* religions, which are, in general, less prone to violence against adherents of other creeds because there is no regulative idea of truth and falsehood in matters of religion. Following this understanding, a fundamental barrier would exist for Islam as regards universal compassion and morality in general in the form of its claim to absolute truth. In the manner of Assmann, Abdulaziz Sachedina attributes to all Abrahamic traditions a momentous exclusivism when he writes:

There is one true faith represented by the religious body, and all else is false. Hence, the tendency for people to be divided among the confessional religious body, belonging exclusively and decisively to one or other of them, is strong.³²

Indeed, the criticism that Islam is largely incapable of universal morality, in the sense of which rules to apply irrespective of the counterpart's faith, has a long tradition in the western perception of Islam. In particular, the practice of *taqiyyah* (the approval of lying vis-à-vis a hostile [non-Muslim] environment) has suggested a moral particularism to European cultural anthropologists who were conducting research in Islamic countries.³³ Reading the Qur'an, one cannot but come across verses that apparently relativize God's repeatedly stressed boundless compassion and mercy. The fundamental disparity – not least due to their contrarian eternal destiny – of those people pleasing God and submitting to His will and command on the one hand, and those who deny His authority or *tawhīd* on the other, is a dominant Qur'anic motif.³⁴

Nevertheless, this difference of human beings in regard to the pleasure they give to God by doing good and worshipping His majesty contrasts with their original equality as being created by God "from a single pair of a male and a female" (49:13)³⁵ and their original dignity as God's vicegerents on Earth.³⁶ According to Nyang, due to the tension between the "Adamic criterion" (humanity's common ancestry from Adam and Eve) and the non-Muslim's lack of belief that, in effect, would constitute a lack of gratitude vis-à-vis God, many Muslims find it hard to view non-Muslims as "reliable associates" in this world: "Even though they all would be traveling partners on the highway of life, [t]he Muslim's destination is heavenward, whereas that of her unbelieving neighbor is earthbound."³⁷

This sort of ambivalence is not only echoed in many weighty contributions to Islamic ethics,³⁸ but also in one of the most famous efforts to elab-

orate genuine Islamic human rights, namely, that of Syed Abul A'ala Maududi. On the one hand Maududi, who explicitly dissociates Islam and its acclaimed universalism from the Talmud's moral particularism, emphasizes the common origin of all human beings, who are without exception children of Adam and Eve: "Islam makes clear to all men that they have come from the same parents and are therefore brothers and equal as human beings."³⁹ On the other hand, a fundamental difference is asserted between a Muslim and an unbeliever in so far as "God likes a Muslim and dislikes a *Kāfir*. A Muslim will get salvation from God while a *Kāfir* will not. – A Muslim will go to Paradise and a *Kāfir* will go to Hell."⁴⁰ Even though both of them are equal in their humanity and disposition as slaves to God, according to him the Muslim's knowledge and obedience result in his/her higher rank because "one human being becomes superior for the reason that he recognizes his Master, obeys His orders and fears the consequences of disobeying Him, while the other human being falls from the high rank because he does not recognize his Master and does not carry out his orders."⁴¹ Yet Maududi warns Muslims against arrogance, because "even this superiority based on piety and pure conduct does not justify that such people should play lord or assume airs of superiority over other human beings."⁴²

This ambivalence in regard to the (non-)equality of non-Muslims is perpetuated in Maududi's catalogue of Islamic human rights. In large part, they are universally applied to all human beings without discrimination:

[...] Islam [...] lays down some rights for man as a human being. In other words it means that every man, whether he belongs to this country or that, whether he is a believer or unbeliever, whether he lives in some forest or is found in some desert, whatever be the case, he has some basic rights simply because he is a human being.⁴³

According to him, the rights granted to humanity by God include the right to life, the safety of life, respect for the chastity of women, a basic standard of life, freedom [from slavery], justice, the right to cooperate and not to cooperate,⁴⁴ and equality.⁴⁵ Apart from these in fact human rights, Maududi describes the special rights of citizens in the Islamic state. These, in part, turn out to be the *ummah's rights* rather than human rights, which is best illustrated by the right to participate in the affairs of the state. According to him, "it is the right of every Muslim that either he should have a direct or indirect say in the affairs of the state or a representative chosen by him and other Muslims should participate in the consultation of the state."⁴⁶ Other rights granted to non-Muslims in the Islamic state (*dhimmis*), such as the right to

life, property, honor, and freedom of religion, should be protected "in exactly the same way as that of a Muslim citizen"; however, they can be withdrawn if they "renounce the covenant which grants them citizenship."⁴⁷

That the human rights of Muslims sometimes differ greatly from those granted to non-Muslims can also be seen in the Islamic human rights declarations, such as the OIC-drafted Cairo Declaration of Human Rights in Islam and the Islamic Declaration of Human Rights in Islam framed by the Islamic Council of Europe (1981). The latter, preceding the former by nearly a decade, in general grants truly universal human rights but restricts the right to participate in the conduct and management of public affairs to Muslims.⁴⁸ In its preamble, the Cairo Declaration underscores the precedence of the "Islamic Ummah which God made the best nation."⁴⁹ The ummah is stated to have the purpose of guiding "a humanity confused by competing trends and ideologies and to provide solutions to the chronic problems of this materialistic civilization."⁵⁰ The human dignity and equality assured in Art. 1 (a) indicates no difference between members of the ummah and non-Muslims, except for the last sentence: "True faith is the guarantee for enhancing such dignity along the path to human perfection."⁵¹ Just like Maududi, the elemental equality of human beings stemming from their unity in submission to God and their descent from Adam and Eve appears to be vulnerable due to the individual conduct of life. This interpretation is also backed by Art. 1 (b) of the Cairo Declaration, which states that the people loved by God "are those who are most useful to the rest of His subjects, and no one has superiority over another except on the basis of piety and good deeds."⁵²

That the rights declared in this text are not all truly human rights becomes evident as soon as one reads with care articles 5, 10, and 19. The former deals with the right to marriage, and whereas no restrictions stemming from "race, color or nationality" shall prevent men and women from enjoying this right, any reference to restrictions deriving from religious, in particular Islamic, regulations is lacking. The reason for this can be found in classical Islamic law's prohibition of Muslim women marrying non-Muslim men.⁵³ In respect thereof, Art. 5 establishes a male Muslim's right to marry a woman of the People of the Book (i.e., Christians and Jews), but fails reciprocity by prohibiting a non-Muslim man from marrying a Muslim woman. Thus the right to marriage, as contained in the Cairo Declaration, is not a human right in the proper sense.

The same holds true for the right to freedom of religion addressed in Art. 10: "Islam is the religion of unspoiled nature. It is prohibited to exercise any

form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism."⁵⁴ Again, the right to freedom of religion is only granted in relation to Islam insofar as no non-Muslim is allowed to alienate a single member of the Islamic ummah. In contrast, Muslims are not prohibited from converting others to their religion. In consideration of such imparity, it comes as no surprise then that Art. 19 reduces the right to equality to that of equality between the ruler and the ruled.⁵⁵

It is exactly this kind of Islamic human rights reasoning that attracts many observers' criticism and the accusation that these are the ummah's rights as opposed to human rights, as expressed, for example, by Bassam Tibi: "In short, one cannot be sure whether Islamic rights schemes, as they are based on pre-modern doctrines, are addressing universal human rights or are just talking about the rights of Muslims, yet in the meaning of the duties of believers."⁵⁶

Reconciling Universal Dignity with the Primacy of the "True Religion"

Evident from the exposition above, the tension between including all humanity in an Islamic human rights ethics and Islam's claim to superiority is not easily eliminated, not least due to the apparent ambiguity in this regard of Islam's foundational text: the Qur'an. A few Muslim scholars, however, have tried to dissolve the conflict of moral universalism and particularism in previous concepts of an Islamic human rights ethics through a hierarchization that allows the equality of all human beings to override any religious discrimination.

Abdullahi Ahmed An-Na'im decidedly states that according to classical Islamic ethics, moral universalism only exists in regard to male Muslims: "Being consistent with its own historical context, *shari'a* restricted the application of the principle of reciprocity in relation to women and non-Muslims."⁵⁷ This kind of particularism, he emphasizes, is not unique to Islam, but is rather "a common feature of all historical cultural traditions and is also reflected in the attitude and policies of modern nation states."⁵⁸ By granting a lower status to women and non-Muslims, Islamic law would deny human beings equal dignity and thereby violate what An-Na'im considers the very basis for human rights: the Golden Rule. Aside from his concern over the Shari'ah's violation of women's rights – catchwords polygamy, divorce, inheritance – and the discrimination against non-Muslims in the fields of marriage and inheritance, An-Na'im also identifies slavery as a cru-

cial issue in the discourse on Islam, moral universalism, and human rights.⁵⁹ He says: "Although the vast majority of contemporary Muslims abhor slavery, it remains part of their religious law."⁶⁰

To reconcile Islamic ethics and law, respectively, with universal human rights, An-Na'im calls for reinterpreting the Qur'an and the Sunnah in favor of the principle of reciprocity, which could sustain universal human rights if it were "construed in an enlightened manner" and extended to all human beings.⁶¹ He describes this strategy as follows:

[T]o cite sources in the Qur'an and Sunna which are inconsistent with universal human rights and explain them in historical context, while citing those sources which are supportive of human rights on the basis of the legally applicable principles and rules of Islamic law today.⁶²

Another path to overcome the moral exclusivism in traditional Islamic ethics has been put forward by the Egyptian philosopher Hasan Hanafi, who holds an extended ummah notion, having in mind especially the primal ummah of Madinah: "The Islamic umma is not composed exclusively of Muslims, but it is a confederal umma composed of many communities bound together by a treaty of nonbelligerence and mutual respect."⁶³ In this way the antagonism between *us* and *them*, Muslims and non-Muslims, gets smoothened and the normative equality of "[a]ll human beings [...] in birth and death, equal in life and worth" is ensured.⁶⁴

One of the very few Muslims daring to ask about the status of atheists and agnostics in Islamic human rights ethics is Seyyed Hossein Nasr.⁶⁵ To this Iranian philosopher, moral exclusivism is a "sign of a lack of understanding of our full responsibilities as creatures standing before God."⁶⁶ Nasr argues that the responsibilities of Muslims toward others go beyond their own religion: "Respect for the life of a human being, whether we are speaking of a person who follows our religion, another religion, or no religion whatsoever, should be the same [...] because the religious person believes that the divine spark is in everyone."⁶⁷ He even declares that the life of those who consciously deny God is sacred "because of the presence of the spirit that God breathed into man, because of the centrality of human beings in creation demonstrated in the trust that God has put on our shoulders, because of the freedom God has given us [...]."⁶⁸ Even an atheist, says Nasr, "has been created by God and potentially can always return back to God."⁶⁹

Another adversary of moral particularism, Malaysian activist Chandra Muzaffar, calls this kind of mentality "a bane upon society as a whole."⁷⁰

Those who cling to it, among them Islamic extremists, "are ideologically incapable of committing themselves to an inclusive, universal vision of justice that embraces the disadvantaged and deprived of the entire human family, irrespective of religious affiliation."⁷¹ As a basis of universal Islamic ethics, Muzaffar identifies five dimensions to Qur'anic universalism: the unity of humanity; universal justice, even against enemies; belief in God and good deeds as prerequisites of salvation, regardless of religion; and righteousness, not religion, as hallmark of our humanity.⁷² To him, God's unity ultimately indicates humanity's unity: "Segregating, and worse still, subjugating, people on the basis of caste and colour, community and culture, religion and ancestry violates Divine Unity."⁷³ In the face of the various challenges humanity as a whole is undergoing in the course of globalization, he pleads for a global consciousness based upon universal love and compassion. From his point of view, humanity is but one global family and "we are all [...] human communities struggling to live together on the same planet."⁷⁴

In light of this approach, one could ask if a faithful Muslim who still is convinced that his/her religion is superior and that adherents of other faiths are in error could accept this theoretical primacy of human equality. This begs the question: In order to rise up to the concept of universal human rights, do Muslims perhaps have to overcome their distinction between true and false belief? The example of the following approach shows that such an assumption is far from correct. According to Khaled Abou El-Fadl, the judgment of people's behavior and quality of faith is first and foremost up to God,⁷⁵ for He alone punishes, rewards, or shows mercy in the hereafter. But why should Muslims leave it up to God to judge and punish those who they view as evildoers or unbelievers, respectively?

For that, two rationales could be derived from the Qur'an. First, if God is conceived of as all-knowing and all-aware in contrast to people, who are prone to various weaknesses and deficits of perception, only He can rule on whether a person is following His commands and worshipping Him duly and honestly. In this reading, "Verily the most honourable of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted" (49:13) not unfoundedly adds to the notion of hierarchy among people (due to righteousness) the reference to God's omniscience. A second possible rationale for letting humanity's unity and equality triumph over moral exclusivism without abandoning one's conviction of Islam as the only true religion is often referred to as the Islamic justification of pluralism. The plurality of nations, cultures, and even religions

from this point of view appears to be an expression of God's will.⁷⁶ In the same verse stated above, the Qur'an declares: "O humanity, We created you from a single pair of male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other" (49:13). Another *sūrah* proclaims: "If Allah had so willed, He would have made you a single people, but (His plan is) to test you in what He hath given you: so strive as in a race in all virtues" (5:48).⁷⁷

Individual Responsibility, Individual Judgment – Individual Rights?

To sum up, it can be said that the hierarchization of moral universalism as the first condition of universal human rights above religious exclusivism does not have to be conducted via intellectual force. Such a view can find support in God's ultimate responsibility to segregate believers and non-believers as well as in the Qur'an's appreciation of religious pluralism. Moral universalism, however, is but one necessary and not yet sufficient condition for the concept of human rights. This is perfectly illustrated by Nasr who, despite his desire for an inclusive universal Islamic ethics, is skeptical about the idea of human rights because it seems to implicate an absolutization of humanity.⁷⁸

This kind of reluctance vis-à-vis human rights as individual entitlements to certain actions (positive human rights) or omissions (negative human rights) is prevalent among most contemporary Muslim scholars. The West's notion of individualism has always been – and remains – a provocation to many cultural traditions. It was opposed by socialist countries in the twentieth century and is increasingly being challenged today by the Global South. It is – and this is often overlooked – also contested in western countries, where some hold the individualistic worldview responsible for all sorts of alarming societal developments.⁷⁹

Frequently, the enmity against individualism is nourished by rather flawed ideas of what individualism actually means. In general, the individualistic paradigm emphasizes the individual's autonomous role in (and therefore responsibility for) matters of existential and ethical decisions, intellectual and spiritual self-fulfillment. Individual rights, combined with moral universalism as a sufficient condition for the concept of human rights, are intended to secure this self-responsible existence. This need not result in a denial of the social nature of human beings, however, which has been stressed by all (western) proponents of individualistic philosophies. Thus,

painting a monochrome dichotomy of individualism and collectivism is not really appropriate, for no one would deny that the individual cannot self-actualize – still less survive – without other human beings teaching, sheltering, and enabling him/her to shape his/her identity; that the individual's freedom has to find its end somewhere. This is why laws are vital to every society.

On the other side, most people would agree that, in principle, it is wrong to sacrifice without much ado the life and well-being of individuals for the sake of their community's well-being. The need to balance the interest of the individual and that of the collective (e.g., the family, society, nation, or religious community) is expressed even in the thinking of the most prominent representatives of individualism and liberalism, such as John Stuart Mill (d. 1873), who objected to unlimited liberty for the people. The individual, he states, "must not make himself a nuisance to other people. But if he refrains from molesting others in what concerns them, and merely acts according to his own inclination and judgement in things which concern himself," his individuality should assert itself.⁸⁰ Despite this fact, prejudice against western individualism remains. A telling example in this regard is former Malaysian prime minister Mahathir bin Mohamad, who is convinced that "[t]he West's interpretation of human rights is that every individual can do what he likes, free from any restraint by governments [...]."⁸¹

The opposition between Islam and individualism and individual rights is often explained with reference to Islamic anthropology. Islam, as a communitarian religion, states that humanity exists to serve God.⁸² By submitting to God, Muslims guard against of "placing the individual at the centre of the universe – by elevating man to God."⁸³ Thus, the separating line between the *West* and *Islam* is mostly drawn according to their different perception of the status of the individual.⁸⁴ In respect to Islamic human rights declarations, it is clear that individual rights are regularly accompanied by duties. This holds true especially for the Universal Declaration of Islamic Human Rights, which proclaims in its preamble "that by the terms of our primeval covenant with God our duties and obligations have priority over our rights [...]."⁸⁵ But sometimes it is not clear whether a right declared therein is a right or a duty: "It is the right and duty of every person to defend the rights of any other person and the community in general." Thus it is not surprising that Donnelly and others heavily criticize Islamic human rights declarations for their duty-centered character: "However, when we look at these alleged human rights, we find that virtually all of them are only duties of

rulers and individuals, not rights held by anyone."⁸⁶ In his view, Islamic human rights do not establish genuine rights but "deal only with right in the sense of what is right."⁸⁷ According to Henkin, from a religious point of view the "other" never owns a right but "is only a third-party beneficiary of my duty to God."⁸⁸

The crucial question as to the initial point of this contribution is whether Islam or Islamic ethics could, in defiance of its basically communitarian orientation, support the notion of individual rights. That this notion is not totally alien to Islam's law and worldview is exemplified by Sirajul Islam in regard to marriage: "Husband and wife are free to maintain their individual rights – each can hold, acquire and dispose of their own property according to his or her will."⁸⁹ According to Tibi, the conflict between Islam and (individual) human rights will persist until "drastic religious-cultural reforms"⁹⁰ are enforced and "Muslims change their world view and the cultural patterns and attitudes related to it."⁹¹

For El-Fadl, the obstacles for developing individual rights do not stem from Islam's (legal) tradition: "Rather, in my view, the most serious obstacle comes from modern Muslims themselves."⁹² He argues that the notion of individual rights can be derived from Islam's sources more easily than a collectivist orientation: "God created human beings as individuals, and their liability in the hereafter is individually determined as well. To commit oneself to safeguarding and protecting the well-being of individuals is to take God's creation seriously."⁹³ That the individual as such is of "paramount significance" in Islam is also stressed by Muzaffar: "The individual is God's vicegerent on earth with a tremendous responsibility to the whole of creation. It is the individual, as an individual, through a process of faith and reflection, who becomes a God-conscious human being, capable of ethical conduct. It is the individual who initiates reform within himself and within his community."⁹⁴

From this it follows that the notion of individual rights in Islamic ethics could be derived from the following axioms: The final judgment of individuals as opposed to groups; individual responsibility for salvation; and the creation of human beings as individuals and not as, for examples, double creatures, as described in the ancient Greek myth narrated in Plato's symposium. The possibility of individual rights in the context of an Islamic human rights ethics, however, says nothing about the precise content of those rights. These still would have to be differentiated materially.

Conclusion

In this contribution I tried to answer the question of the theoretical compatibility of Islam and human rights according to the thesis that the concept of human rights rests upon the principles of moral universalism and individual rights. If and only if combined do these principles constitute a sufficient condition for genuine human rights. It has been demonstrated that there are, in fact, premises at hand in Islam that could be (and sometimes have already been) embraced to support a reconciliation of Islam and human rights. In the context of universalism, some of these are God's unity and humanity's vicegerency and common descent.

Nevertheless, a fundamental tension has been observed between universalism and a regime of religious boundaries inherent to and typical of many religions, Islam being no exception. To allow for universalism trumping religious exclusivism, the Qur'anic pluralism in regard to other religions and God's final responsibility and omniscience have been identified as fertile principles. The notion of individual rights in Islam, on the other hand, might be promoted with reference to God's creation of human beings as individuals, the individual responsibility of each person for his/her own salvation, and God's judgment, which is conducted individually as opposed to collectively.

Thus in principle Islam's potential to embrace the idea of universal, individual human rights cannot be denied. Islamic human rights need not necessarily be the ummah's rights, namely, the exclusive, collective rights of the Muslim community and its subsequent disregarding of the dignity of those people who adhere to other belief systems as well as the legitimate interests of the individual vis-à-vis the collective. Of course challenges remain. The fact that a minority of Muslim scholars has demonstrated the willingness to take on these challenges indicates not only the promising dynamics of Islamic ethics in the twenty-first century, but also its potential to make essential contributions to the global discourse on human rights that has only just begun.

Endnotes

1. Even though the events of that tragic day have still not been investigated satisfactorily, it is beyond doubt that since then the global interest in and animosity toward Islam have both escalated and led to a comprehensive problematization of the Muslim presence, especially in Europe.
2. An acknowledgement of, as well as a differentiation among, Islam's various facets, its regional and cultural specifics, and its polyphonic representatives is

too often neglected in favor of the simplistic essentializing of Islam. This is not only the fault of a largely uneducated western public or one-sided scholars, at least as regards Islam and Muslims, but also of those who claim to speak in the name of 1.5 billion Muslims and mirror western essentialism in regard to Islam by portraying it, according to their wishful thinking, as a unified and enclosed bloc.

3. Prince Saud Al-Faisal, "Speech at Human Rights Conference in Vienna," 15 June 1993, www.saudiembassy.net/archive/1993/speeches/page3.aspx, accessed 24 April 2010.
4. Sohail H. Hashmi, "Islamic Ethics in International Society," in *Islamic Political Ethics: Civil Society, Pluralism, and Conflict*, ed. Sohail H. Hashmi (Princeton: Princeton University Press, 2002), 163.
5. Ann Elizabeth Mayer, "Current Muslim Thinking on Human Rights," in *Human Rights in Africa*, ed. Abdullahi Ahmed An-Na'im and Francis M. Deng (Washington, DC: The Brookings Institution, 1990), 138.
6. Syed Abul A'ala Maududi, "Human Rights in Islam," www.islam101.com/rights/index.htm, accessed 26 April 2010.
7. Jack Donnelly, "Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights," *The American Political Science Review* 76 (1982): 303.
8. Cf. Thomas Hobbes, *Leviathan* (Middelsex: Penguin Books, 1978); John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1976), 289.
9. [United States of America], "Declaration of Independence 1776," www.ushistory.org/Declaration/document/index.htm, accessed 26 April 2010.
10. [French National Assembly], "Declaration of the Rights of Man and of the Citizen 1789," www.hrcr.org/docs/frenchdec.html, accessed 26 April 2010.
11. Ibid.
12. [United Nations Organization], "Covenant on Civil and Political Rights/Covenant on Economic, Social and Cultural Rights 1966," <http://www2.ohchr.org/english/law/>, accessed 26 April 2010.
13. [United Nations Organization], "Universal Declaration of Human Rights 1948," www.un.org/en/documents/udhr/, accessed 26 April 2010.
14. Louis Henkin, "Religion, Religions, and Human Rights," *The Journal of Religious Ethics* 26 (1998): 233.
15. This also holds true for Art. 27 UN Covenant on Civil and Political Rights, which is often quoted as an example of established group rights in international law. Art. 27 reads: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language," ([United Nations Organization], "Covenant on Civil and Political Rights.").

16. A telling example is the African [Banjul] Charter on Human and People's Rights, which adds to individual human rights special rights of peoples, such as the right to existence, the right to development, or the right to national and international peace and security ([Organization of African Unity], "African [Banjul] Charter on Human and People's Rights 1981," <http://www1.umn.edu/humanrts/instree/z1afchar.htm>, accessed 26 April 2010).
17. [United Nations Organization], "Covenant on Civil and Political Rights, Art. 1.
18. Cf. Michael Sheridan, "Women rebel over forced abortions," *Times online*, www.timesonline.co.uk/tol/news/world/asia/article5733835.ece, accessed 26 April 2010.
19. Donnelly, "Human Rights and Human Dignity," 311-12.
20. Ibid., 313.
21. Cf. Mustafa Köyle, "Human Rights: An Islamic Approach," in *The Dialogue of Cultural Traditions: A Global Perspective*, ed. William Schweiker et al. (Washington, DC: The Council of Research in Values and Philosophy, 2008), 71.
22. Muhammad Legenhausen, *Contemporary Topics of Islamic Thought* (Tehran: Centre for Cultural and International Studies, 2000), 189, 189, and 183, respectively.
23. William Graham Sumner has described the in-group/out-group differentiation as follows: "The insiders of a we-group are in a relation of peace, order, law, government [...] to each other. Their relation to all outsiders, or others-groups, is one of war and plunder, except so far as agreements have modified it." William Graham Sumner, *Folkways* (Boston: Ginn & Company, 1940), 12.
24. See Charles Darwin, *The Descent of Man* (London: Watts, 1936), chapter 5.
25. Edward Westermarck, *Origin and Development of Moral Ideas* (New York: Books for Libraries Press, 1971), 2:744.
26. Cited in Hashmi, *Islamic Political Ethics*, 155-56.
27. Hasan Hanafi, "Alternative Conceptions of Civil Society," in *ibid.*, 62-63.
28. Hilary Putnam, "Monotheism and Humanism," in Schweiker et al., *The Dialogue of Cultural Traditions*, 26.
29. Henkin, "Religion," 232.
30. Sulayman Nyang, "Religion and the Maintenance of Boundaries," in Hashmi ed., *Islamic Political Ethics*, 107.
31. Cf. Jan Assmann, *The Price of Monotheism* (Stanford: Stanford University Press, 2009).
32. Abdulaziz Sachedina, "Human Vicegerency: A Blessing or a Curse?" in Schweiker et al., 47.
33. Westermarck, *Origin and Development*, 94.
34. See Qur'an 3:110, 14:28-29, 98:6, 15:2, 19:69-98, 2:165, 3:116 and 151 2:217, 39:7, and 7:72. Khaled Abou El-Fadl, who holds that the Qur'an "does not differentiate between the sanctity of a Muslim and that of a non-Muslim, dissents. (Khaled Abou El-Fadl, *Islam and the Challenge of Democracy* (Princeton: Princeton University Press, 2004), 29.

35. See also 4:1 and 39:6.
36. See 2:30 and 6:165.
37. Nyang, "Religion," 111.
38. A quite telling example is al-Qaradawi's explanation regarding Islam's prohibition of murder. Indeed, he stresses that "truly, in Islam, every human being has a dignity and a place," but nevertheless asserts – by referring to 4:93 – that before [t]he crime [of murder] is more serious if the slain is a believer in Allah" (Yusuf Al-Qaradawi, "The Lawful and Prohibited in Islam," www.witness-pioneer.org/vil/Books/Q_LP/, chap. 3, accessed 26 April 2010).
39. See also Syed Abul A'ala Maududi, "The Islamic Way of Life," www.al-islamforall.org/litre/englitre/Islawayoflife.htm, accessed 26 April 2010.
40. Ibid.
41. Maududi, "Let us Be Muslim, witness-pioneer.org/vil/Books/M_foi/index.html," accessed 26 April 2010.
42. Maududi, "Human Rights in Islam," www.islam101.com/rights/index.htm, accessed 26 April 2010.
43. Ibid.
44. "This means that the man who undertakes a noble and righteous work, irrespective of the fact whether he is living at the North Pole or the South Pole, has the right to expect support and active co-operation from the Muslims. On the contrary he who perpetrates deeds of vice and aggression, even if he is our closest relation or neighbour, does not have the right to win our support." Ibid.
45. Ibid.
46. Ibid.
47. Maududi, "The Islamic Way of Life."
48. [Islamic Council of Europe], "Universal Declaration of Islamic Human Rights, Art. 11," www.alhewar.com/ISLAMDECL.html, accessed 26 April 2010.
49. [Organization of the Islamic Conference], "Cairo Declaration of Human Rights in Islam," www.oic-oci.org/english/article/human.htm, accessed 26 Apr. 2010.
50. Ibid.
51. Ibid.
52. Ibid.
53. For a rationale for this rule, see al-Qaradawi, *ibid.*
54. [Organization of the Islamic Conference], "Cairo Declaration."
55. Ibid.
56. Bassam Tibi, "Islamic Law / Shari'a, Human Rights, Universal Morality and International Relations," *Human Rights Quarterly* 16 (1994): 291.
57. Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse, NY: Syracuse University Press, 1996), 165.
58. Ibid.
59. Ibid., 172f.
60. Ibid., 177.

61. Ibid., 63-65.
62. Ibid., 171.
63. Hanafi, "Alternative Conceptions," 63. Even though the Constitution of Madinah granted security and religious freedom to Madinah's Jews, whether they were considered part of the one ummah or kind of a sub-ummah is not clearly indicated in its text. For a discussion about the meaning of ummah in this Constitution, see Frederick M. Denny, "Ummah in the Constitution of Medina," *Journal of Near Eastern Studies* 36 (1977): 39-47.
64. Hanafi, "Alternative Conceptions," 61-62.
65. See Seyyed Hossein Nasr, "Religion, Human Rights, and Secularism," in *The Dialogue of Cultural Traditions*, Schweiker et al., 312f.
66. Ibid., 314.
67. Ibid., 313.
68. Ibid., 310.
69. Ibid., 313.
70. Chandra Muzaffar, *Global Ethic or Global Hegemony? Reflections on Religion, Human Dignity and Civilisational Interaction* (London: ASEAN Academic Press, 2005), 54.
71. Ibid., 37.
72. Chandra Muzaffar, "Accommodation and Acceptance of Non-Muslim Communities," *American Journal of Islamic Social Sciences* 13 (1996): pp. 327f.
73. Muzaffar, *Global Ethic or Global Hegemony?*, 45.
74. Ibid., 61.
75. Khaled Abou El-Fadl, *Islam*, 29.
76. See, for example, Muzaffar, *Global Ethic or Global Hegemony?*, 31f. Sohail H. Hashmi dissents: "There is no objective basis for ethical diversity, only willful human distortion." Sohail H. Hashmi, "Islamic Ethics in International Society," in *Islamic Political Ethics*, 155.
77. See also 10:99 and 10:100.
78. See Nasr, "Religion," 316f.
79. The criticism of the West's alleged relativistic individualism is most prominently voiced by Pope Benedict XVI. See, for example, Joseph Ratzinger and Marcello Pera, *Without Roots: The West, Relativism, Christianity, and Islam* (New York: Basic Books, 2006).
80. John Stuart Mill, *On Liberty* (London: Watts & Co., 1948), 68.
81. Cited in Muzaffar, *Global Ethic or Global Hegemony?*, 68.
82. Cf. Mustafa Köyle, "Human Rights," 70.
83. Muzaffar, *Global Ethic or Global Hegemony?*, 84.
84. See Muzaffar, who observes "a strong and enduring ties of family and community" against "alienation [...] and other tragic maladies that plague the life of the lonely individual in the West." Ibid., 45. To Hanafi, the West is defined by its imbalance of the individual's rights and duties at the expense of its duties, whereas an imbalance of the individual's rights and duties at the

expense of its rights is characteristic of Islam (Hanafi, "Alternative Conceptions," 74).

85. [Islamic Council of Europe], "Universal Declaration."
86. Donnelly, "Human Rights and Human Dignity," 306.
87. Ibid., 307.
88. Henkin, "Religion," 233.
89. Sirajul Islam, "Human Dignity and Human Rights: An Appraisal from the Viewpoint of Present-day Indian Islam," in *The Dialogue of Cultural Traditions*, Schweiker et al., 114.
90. Tibi, "Islamic Law / Shari'a," 290.
91. Ibid., 296.
92. Abou El-Fadl, *Islam*, 28.
93. Ibid., 29.
94. Muzaffar, *Global Ethic or Global Hegemony?*, 45-46.