



musawah

For Equality in the Family

THE HUMAN RIGHTS COMMITMENT IN MODERN ISLAM

Khaled Abou El Fadl

THEORETICAL PAPER SUMMARY*

This paper discusses the tensions between the Islamic tradition and the human rights system of belief and explores the possibilities for achieving reconciliation between them. It focuses on the concepts within Islam that could legitimise, promote, or subvert the emergence of human rights practice in Muslim societies. The author believes that even if Islam has not known a human rights tradition, it is possible to build such a tradition with the right amount of intellectual determination, analytical clarity and social commitment.

The main points of the paper are:

1. **Human rights have become a significant part of international relations.** They are also used as a medium for expressing dissent and making demands on national governments. This is the case particularly for women's rights activists.
2. However, even though Muslim countries were involved in drafting several international human rights documents, **in today's world the humanistic tradition in Islam has been systematically undermined and devalued.** There is also a considerable tension between traditional Islamic law and human rights norms, especially regarding personal status laws, equal rights for women, freedom of religion, and harsh Islamic criminal penalties for offences such as theft, adultery, and apostasy.
3. Partly due to the colonial experience where concepts related to human rights were used to justify imperialist policies, **Muslim societies have responded to the challenge of human rights in two broad ways:**
 - **The 'apologists' argue that any worthwhile modern institution was first invented by Muslims.** According to the apologists, Islam liberated women, created democracy, endorsed pluralism, and protected human rights, long before these institutions ever existed in the West. Unlike the complex discussions of rights in premodern Islam, the apologist approach has led to false confidence and a lack of systematic philosophical and theological debate of the issue of human rights in Islam.
 - **The 'exceptionalists',** such as the puritan Wahhabi and Salafist movements that emerged during the colonial period, claim that all the challenges of today's world can be resolved by a return to the original sources—the Qur'an and the *Sunnah*. The main aim of the puritans is to highlight Islamic uniqueness, **reject all universalisms except the universals of Islam and to use this to oppose the West.** Since international human rights are seen as distinctly Western in origin, they are opposed on these grounds alone. So there has been no examining of what could be both genuinely Islamic and consistent with human rights.
4. **Religion and human rights are both systems of conviction,** which believe certain opinions to be right and good because that is so. Some individuals do not see any irreconcilable conflicts between their commitment to human rights and their religious

* This is a summary prepared by Musawah. For direct quotes, please refer to the original paper in the Musawah resource book, *Wanted: Equality and Justice in the Muslim Family*, edited by Zainah Anwar.

convictions. The potential tension between religion and human rights lies in each system's analysis of reality and the related rules humans develop.

5. **Some attempts have been made to reconcile Islam and human rights.** Some try to identify basic Islamic values such as tolerance, dignity, or self-determination, and utilise this as a door by which the human rights tradition may be integrated into Islam. Others take the view that God's original intent was consistent with a scheme of greater rights for human beings but that human sociohistorical experience has failed to fulfil this intent. The paper argues we need to go further. One path towards a human rights commitment in Islam, is to visualise God as beauty and goodness, and to engage in a collective human enterprise of beauty and goodness as a way of realising the divine in human life.
6. For the premodern jurists, *Shari'ah* was not the law of the state but the law that limited the state. But **reliance on *Shari'ah*, or on Islamic texts, is not a sufficient guarantee of human rights. What is needed is a commitment by the interpreters of the law in favour of such rights.** A government could faithfully implement the technical rules of *Shari'ah* (about criminal penalties, usury, rules of modesty etc), but still violate the rights of human beings and be a government of unrestrained powers against its citizens. This is because saying a government should be bound by *Shari'ah* is vague; instead people must identify what they believe is the core moral purpose of *Shari'ah* and introduce a process that limits the ability of the government to violate those core moral values.
7. **Those who insist that God is the sole legislator and the only source of law seem to imagine that humans can access the mind of God and can carry out the divine will without inserting their own human subjectivities in the process. Also, this assumes that God seeks to regulate all human affairs.** Is it not possible that God leaves it to human beings to regulate their own affairs as long as they observe certain minimal standards of moral conduct? Such standards would include the preservation and promotion of human dignity and honour because, according to the Qur'an, humans are the most valued among God's creation.
8. There is a tension between the obligation to live by God's law and the fact that this law is manifested only through subjective rules. This leads to the question: is there a correct legal response to all legal problems? There are two schools of thought on this. The *mukhatti'ah* argued that ultimately there is a correct answer to every legal problem. However, only God knows what that is, and the truth will not be revealed until the Final Day. The *musawwibah* argued that there is no specific, correct answer and that if there were a correct answer, God would have made the evidence indicating a divine rule conclusive and clear. The first school suspends knowledge until we are done living, and the second school hinges knowledge on the validity of the process and ultimate sincerity of belief. Either way, **a state law cannot be said to be God's law. At most, it is potentially God's law** (either because correctness proved on Final Day) or depending upon the sincerity of the belief of the person who decides to follow it.
9. **Thus, a code is simply a set of commandments that are informed by an ideal (the *Shari'ah*), but do not represent the ideal.** Once Muslims are able to assert that morality is divine but law and rules are mundane, this will represent a major advance in the attempt to justify a human rights paradigm in Islam.
10. **The Qur'an does not define what constitutes justice and this has not been explored in Islamic doctrine.** However the Qur'an regards achieving justice as a unique human responsibility and something that can be recognised through intuition, reason, or human experience. Given that responsibility for justice has been delegated to humanity (in its role of viceregent or *khilafa*), justice ought to control and guide all human efforts at understanding *Shari'ah*. **In the author's view, justice and whatever is necessary to achieve justice is the divine law and is what represents the supremacy and sovereignty of the Divine.**
11. What are the possibilities for individual rights in Islam? According to the premodern jurists, the welfare of the people is divided into three categories: necessities (*daruriyyat*), needs (*hajjiyyat*), and luxuries (*kamaliyyat* or *tahsiniyyat*). State law and policies must fulfil these in

descending order of importance—first, the necessities, then the needs, and then the luxuries. The necessities are further divided into five basic values: religion, life, intellect, lineage or honour, and property. However, Muslim jurists did not develop the five basic values as conceptual categories and then explore their theoretical implications. Instead they took a simplistic, rule-bound approach and for example contended that the prohibition of murder sufficiently served the basic value of life. **Today, the basic five values of necessities (*daruriyyat*) could act as a foundation for a systematic Islamic theory of individual rights.**

12. God will most certainly vindicate God's rights in the Hereafter in the fashion that God deems most fitting, but, on this earth, our primary moral responsibility is the vindication of the rights of human beings. Thus, **a commitment in favour of human rights is a commitment in favour of God's creation, and ultimately, it is a commitment in favour of God.**