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The Islamic Righting of Human Rights

Message Of Thaqaalayn

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By: Dr. Muhammad Legenhausen

“O you who believe! Fear Allah as is right that He be feared, and do not die except as Muslims.” (3: 102).

The term 'right' is not found in the Qur'an with the modern sense of the 'rights of man', 'consumer rights', and even 'animal rights', that pepper the newspapers of our cities. The sense of 'right' in Islamic sources, the Qur'an and *ahadith*, is of what is due to one or is befitting because of the harmonious hierarchical order of the universe. This is the sense of 'right' in which it is God's right that He be feared, and this is also the sense of 'right' employed in the essay attributed to Imam 'Ali ibn al-Husayn Zayn al-'Abidin ('a), *Risalah al-Huquq* (The Treatise on Rights): [1](#)

The greatest of God's rights against you is the right which He has made incumbent upon you for Himself and which is the root of all rights, then those which He has made incumbent upon you in yourself, from your crown to your foot, in keeping with the diversity of your organs. He has given your tongue a right against you, your hearing a right against you, your sight a right against you, your hand a right against you, your leg a right against you, your stomach a right against you, and your private part a right against

you. These are the seven organs through which acts take place.

Then He gave your acts rights against you: He gave your ritual prayer a right against you, your fasting a right against you, your charity a right against you, your offering a right against you, and your acts a right against you.

Then these rights extend out from you to others who have rights against you. The most incumbent of them against you are the rights toward your leaders, then the rights toward your subjects, then the rights toward your relatives.^{[2](#)}

One of the major challenges posed by the modern Western world for the Islamic world pertains to the issue of rights, particularly, human rights. In what follows, I would like to consider the nature of this challenge and reflect upon how the religious orientation of Islam may provide guidance for the articulation of a response.

The challenge is moral as well as political. The foreign policy of the US during the last decades of the twentieth century has focused on the issues of human rights and democratization. Of course, US policy has not been consistent in this regard. As Samuel P. Huntington remarks, the 'paradox of democracy' has weakened the will of the West to promote democracy in the post-Cold War world. By the 'paradox of democracy', Huntington means that democratically elected governments in non-Western societies may reject Western political domination and refuse to cooperate with Western policy initiatives. Huntington writes:

"The West was relieved when the Algerian military intervened in 1992 and canceled the election which the fundamentalist FIS clearly was going to win. Western governments also were reassured when the fundamentalist Welfare Party in Turkey and the nationalist BJP in India were excluded from power after scoring electoral victories in 1995 and 1996. On the other hand, within the context of its revolution, Iran in some respects, has one of the more democratic regimes in the Islamic world, and competitive elections in many Arab countries including Saudi Arabia and Egypt would almost surely produce governments far less sympathetic to Western interests than their undemocratic predecessors".^{[3](#)}

However, despite the inconsistencies in Western policies, it remains the case that Western governments continue to lean heavily on human rights to justify their policies. The inconsistencies mentioned by Huntington are really a distraction, for they invite an *ad hominem* response that fails to address the deeper moral issues raised by the challenge of human rights.

The moral challenge may be posed by those opposed to Islam as a condemnation of Islam itself: since human rights are trampled by Islamic governments, there is something morally lacking in Islam. A rather superficial sort of response is to be found in the claim that violations of human rights occur no more frequently in societies with Islamic governments than in societies governed by secularist regimes. This response is superficial because it seems to accept the presumption that respect for human rights may be used as a moral criterion by which to justify the condemnation of a religion. Another sort of response is

also unsatisfying: the concept of human rights is foreign to Islam, so all value judgements made on the basis of human rights are to be rejected as un-Islamic. This response is unsatisfying because the consequent does not follow from the antecedent. It is salutary to understand why the entailment does not hold.

First, I should explain what I mean by saying that the concept of human rights is foreign to Islam. Actually, it would be more appropriate to speak of a family of concepts of human rights, because moral and political theorists in the West have developed differing concepts of rights about which there is considerable controversy. However, these concepts have a shared history with roots in Roman jurisprudence and Stoic natural law theory. The concepts that developed in the West from these roots, through Ockham, Hobbes and Locke, to contemporary theorists, such as Wellman, Nozick and Raz, have, until very recently, been completely isolated from comparable ideas discussed in the intellectual world of Islam.

Since Western ideas of human rights only became familiar in the Islamic world with the constitutional movements of the nineteenth century, and since the concepts dominating contemporary political discussions of human rights in international forums are grounded in Western traditions of political thought, it is fair to say that the concept of human rights is foreign to Islam. From this it does not follow that all value judgements made on the basis of human rights should be considered un-Islamic, if by un-Islamic we refer to that which conflicts with the doctrines and values of Islam. Some judgements made on the basis of un-Islamic systems of thought may be in agreement with Islam. For instance, one may arrive at the judgement that the poor should be helped on the basis of Marxism, Buddhism or Islam; in fact, this is such a trite judgement (although no less important for being trite) that it would be hard to find a system of thought with serious numbers of adherents that did not agree with helping the poor.

So, we have to be careful to distinguish the conceptual systems in the context of which value judgements arise from those value judgements themselves. The refutation of a conceptual system is not sufficient to refute the truth of the judgements based upon it. In order to refute those judgements, one must bring reasons against them from the conceptual resources one accepts. This is why much, but far from all, of what is contained in the Universal Declaration of Human Rights⁴ has been condoned by Muslim thinkers, and restated in the *Islamic Declaration of Human Rights*.⁵ Despite the possibility of agreement about judgements originating from totally different conceptual perspectives, there is a danger that unconscious conceptual leakage can take place when the agreement, and even disagreement, about particular judgements is articulated. Perhaps it can be of assistance to consider a medical prohibition given by a physician to his patient against eating pork because of its high cholesterol content. Suppose the patient is a Muslim and refrains from pork because of the religious sanction. The doctor and his patient agree on the judgement that pork is to be avoided, but the conceptual systems upon which the judgement is based are very different. It may be a point of fact that the Muslim's diet is low in cholesterol even if it is not a matter of principle. The concept of the low-cholesterol diet is foreign to Islam, as the concept of ritual impurity (*nijasa*) is foreign to modern medicine. Of course, the situation

with regard to rights is more complicated than this. To explore the complications, we need to have a clear picture of the Western concept of human rights.

In his *Universal Human Rights in Theory and Practice*,⁶ Jack Donnelly provides a concise, lucid account of the modern Western concepts of rights, and of human rights in particular. In modern legal theory, there is a huge difference between saying that it is right for A to have X, and saying that A has a right to X, but the difference, according to rights theorists, need not show up as a difference in extension, that is, it may turn out to be the case that for all X, it is right for A to have x if and only if A has a right to X.

The difference, rather, concerns the force of the claim, procedures of enforcement and the special social practices brought into play by the rights claim. The special force of the rights claim, according to Ronald Dworkin,⁷ derives from the fact that the *trump* other sorts of considerations, such as utility, that is, rights are normally considered to be inviolable, they cannot be swept aside for the sake of political or social exigency. Secondly, one who makes a rights claim initiates a procedure through which the violation of rights is to be redressed and through which procedures are to be established for the protection of those rights.

Human rights are extralegal rights that ground moral claims made on political systems to establish legal entitlements for individuals. Human rights are held to arise from the essential moral nature of man, (according to the International Human Rights Covenants) from “*the inherent dignity of the human person*” Donnelly writes, “Human rights represent a social choice of a particular moral vision of human potentiality, which rests on a particular substantive account of the minimum requirements of a life of dignity.”⁸ Human rights are rights of individual human persons. Families, corporations, nations and peoples have no human rights.⁹ Human rights, however, can be, and typically are, claimed against institutions rather than individuals, although human rights’ claims against individuals are also made. Those against whom human rights claims are rightly made have a duty to provide for those rights.

Although the modern Western concept of human rights arises from a concept of human dignity and the duties which must be carried out to ensure respect for that dignity, we must be careful to distinguish recognition of dignity-based duties from recognition of human rights. A moral person may consider it a personal duty to assist a beggar because of the human dignity of the beggar, and he may accept that he is duty bound to tell the truth because this is required by the human dignity of those who listen to him, yet his assistance and truth telling is not a response to a human rights claim on the part of the beggar, the listener or anyone else, because there is no question here of entitlement, of the inviolability of this duty in the face of moral conflict, or of the initiation of procedures of redress by the persons to whom those having the duty in question may be obliged.

While it is typical among Muslim writers on human rights to attempt to show how various human rights established by modern conventions may be supported by religious sources, these writers tend to ignore the specific philosophical foundations of human rights concepts, and the differences between the recognition of rights and recognition of duties. Donnelly writes:

Many authors even argue that contemporary human rights doctrines merely replicate 1,400-year-old Islamic ideas. But these claims prove to be almost entirely without basis. Muslims are regularly and forcefully enjoined to treat their fellow men with respect and dignity, but the bases for these injunctions are divine commands that establish only duties, not human rights. In Islam, in the realm of human rights (read: human dignity) what matters is duty rather than rights. And whatever rights do exist are a consequence of one's status or actions, not the simple fact that one is a human being. One might even argue that "there is no aspect of human need but Islam, in its ethical, social and liturgical precepts, has made provision for it"¹⁰ The social and political precepts of Islam do reflect a strong concern for human good and human dignity. Such a concern is important in itself, and even a prerequisite for human rights notions. But it is in no way equivalent to a concern for, or recognition of, human rights.¹¹

So, it seems that we have a human number of Muslim authors who do not distinguish between deserving X and having a right to X, and who claim that important human rights are recognized in Islam. The question for these authors then becomes one of sorting out the differences between what rights humans have according to Islam and what rights they have according to Western liberal theories. Tabandeh, for example, is careful to point out that many rights accorded to women by the Universal Declaration of Human Rights must be rejected or modified to conform to Islamic law, but it is assumed that there is a recognition of rights in Islamic law.

If, as Donnelly claims, there is no recognition of human rights in Islamic law, why do so many Muslim authors mistakenly assume the contrary? Donnelly himself suggests one reason: "the social and political precepts of Islam do reflect a strong concern for human good and human dignity." Another reason is that in traditional Islamic jurisprudence we do find the expressions *haqq Allah* and *haqq al-'abd* or *haqq al-nass*, which are naturally translated as 'the right of Allah' and 'the right of the servant' or 'right of the people'. While these expressions do not allude to the Western concept of a right, but rather to what is due to God or a person because of the stipulations of religious law, nevertheless they facilitate the assimilation of the Western concept of rights to Islamic culture. Take, for example, the right to life. Recognition of the moral right to life in the context of Western culture is taken to justify the enactment of legal entitlements and protections together with procedures of redress. Cases in which killing is held to be justified, such as war, capital punishment and abortion, must be demonstrated to be warranted exceptions to the general prohibition against killing that follows from right.

The reasoning in Islamic jurisprudence takes a reverse course, that is, the jurist begins with particular statements of the Qur'an and narrations attributed to the Prophet and Imams and comes to the conclusion that in Islam there is a general prohibition against killing, since cases in which killing is permitted seem to require some justification as a deviation from the general rule. On the basis of this general rule, any violation of the rule may be said to be a violation of what is due to the person, even if the matter would not normally be put this way in traditional jurisprudence. Finally, since a general rule against killing may be taken to imply that it is due to every person not to be killed (except in cases of defense, war or capital punishment), it is natural to put this by saying that the right to life is recognized in

Donnelly would no doubt protest that the result of this process is still not the Western concept of a right to life because the Islamic right to life does not provide moral support for the sorts of entitlements and protections found in Western law. But this is a question for Islamic legal theory. Contemporary Islamic laws contain many procedures not found in traditional *shari'ah* introduced in order to accord with the needs and expectations of contemporary Muslim society. There seems no reason why the recognition of Islamic rights by Muslims cannot play the role of grounding the sorts of legal entitlements and protections emphasized by Donnelly.

In conclusion, the precise concept of human rights common in the West has its own history in Western moral and political thought and has legal ramifications not found in traditional Islamic law. Nevertheless, there is fertile ground in contemporary Islamic legal thought for the development of Islamic theories of rights with similar sorts of legal implications to those emphasized by Donnelly. So, even if Donnelly is right to claim that Islam does not contain within its traditions the Western concept of human rights, it is consistent with the introduction of a human rights concept analogous to that common in the West. This consistency helps to explain why so many Muslim authors have attempted to show how to derive various rights from Islamic sources, and why the Islamic Conference has been willing to draw up its own declaration of rights.

Donnelly draws the conclusion that in Islam, there is no concern for or recognition of human rights because he is careful enough to notice the differences between the peculiarities of the Western concept of rights and the moral categories enshrined in traditional Islamic law. These differences are important and often overlooked, not only by those who seek to defend Islam by showing how Islamic rights can be derived, but also by liberals who argue for the universal applicability of human rights.

Perhaps the most important American political philosopher of the twentieth century is John Rawls, and the concept of rights is central to his liberal theory of justice. In his Oxford Amnesty lecture of 1993, Rawls argues that the concept of rights he has defended is not peculiar to the liberal tradition, but that any well-ordered non-liberal society must honour basic human rights. [13](#)

Given the peculiarities of the Western consent of western rights, Rawls' claim is astonishing. Certainly, it would seem plausible to acknowledge the possibility of a well-ordered non-liberal society in which there are universal obligations and legal protections but from which the specific concept of human rights with all its legal ramifications is notably absent. Indeed, it would seem that this was the sort of society to which many people aspired in the medieval period, whether Christian or Muslim.

Rawls begins by stating three requirements for a well-ordered non-liberal society:

- (1) it must be peaceful and gain its legitimate aims through diplomacy and trade;
- (2) the system of law must be sincerely and not unreasonably believed to be guided by a common good

conception of justice, taking into account people's essential interest and imposing moral duties and obligations on all members of society;

(3) it must repeat basic human rights.

Rawls claims that the third requirement follows from the second as follows:

The argument for this conclusion [i.e., that a well-ordered non liberal society must respect human rights] is that the second requirement rules out violation of these rights. To satisfy it, a society's legal order must impose moral duties and obligations on all persons in its territory and it must embody a reasonable consultation hierarchy which will protect human rights. A sincere and reasonable belief on the part of judges and other officials that the system of law is guided by a common good conception of justice has the same result. Such a belief is simply unreasonable, it is not irrational, even those rights are infringed. [14](#)

Rawls makes the mistake of assuming that when rights are not infringed, they are honoured or respected. This is like the mistake of one who claims that Smith respects the religious prohibition against pork, when Smith abstains from pork to keep his cholesterol count low. Philosophers are familiar with the distinction between *conforming* to a rule and *following* a rule. An analogous distinction should be made between mere conformity with rights and respect for rights.

Conformity to rights means that the outcome of the legal, moral and social arrangements in a society is that rights are not infringed. Conformity to rights in this sense does not require possession of the concept of rights or knowledge that conformity has been achieved. Obviously, there need be no conscious desire to conform. Conformity to rights does not imply anything about the concepts involved in maintaining this conformity; it merely implies the absence of violations. To honour rights, however, as distinct from just conforming to them, one must be conscious of rights as such, that is, one must employ the concept of rights. This requires more than a mere absence of violations. To honour rights is to conform to rights intentionally, to conform to rights by trying to conform to them, to conform to rights because of acting on the basis of a desire to achieve conformity. [15](#)

The sort of protection of human rights required of a well-ordered non-liberal society by Rawls' argument is nothing more than conformity to human rights, or an ideal absence of violations. But violations of human rights may be avoided without any conscious employment of the concept of human rights in the precise sense discussed by liberal theorists. One may be horrified by torture without seeing torture as a violation of human rights. The effective prohibition of torture in a society does not require the currency of a human rights concept in that society. So, Rawls is plainly mistaken when he jumps from the need for protection of human rights in a well-ordered non-liberal society to the conclusion that human rights must be honoured in such societies.

Rawls' mistake is like the mistake attributed by Donnelly to Muslims who find a basis for human rights in Islam. The fact that many human rights are protected by Islamic law does not entail that Islamic law

respects these human rights, because the precise concept of a human right with the legal ramifications of rights claims in modern Western societies is strikingly absent from traditional Islamic law. Of course, Muslims are free to adapt and modify the Western concept of human rights in such a way as to become consistent with the teachings and rulings of Islam, and the concept of Islamic rights might then play a legitimate role in the formulation of civil law in Muslim societies, expositions of Islamic international law, and Islamic versions of what Rawls calls 'the law of peoples'.¹⁶

Muslims are driven in this direction by Western accusations that there is no respect for human rights in Islam. It is difficult for Muslims to disagree with the concept of human rights without being accused of condoning violations of human rights. Violations of many human rights are so abhorrent that it is quite natural for Muslims to respond to criticism by pointing out that such violations are as inconsistent with the moral and political values of Islam as they are inconsistent with liberal values. From there it is a very short step to the adaptation of the concept of rights with various modifications to bring the concept into conformity with Islamic thought.

Traditionalists might respond with a wholesale rejection of the concept of rights as foreign to Islam. This seems somewhat of an overreaction. Even if the concept of rights is not to be found in medieval formulations of Islamic law, this does not mean that a contemporary jurist will not be able to derive an Islamic concept of rights consistent with the religious sources.

There is a need for caution here. The result of the widespread introduction of a concept of rights analogous to the Western concept but based on Islamic sources may be insidious in its own way. When the concept of rights gains common currency in the political discourse of a society, this has profound effects on the ways in which people think about morals, law, the self and society, and the relations among them. Muslims need to begin to consider whether these changes are in harmony with the basic values of Islam. Even if the concept of rights can be completely Islamicized, when the language of rights is used in international political forums there will be a tendency to assimilate the Islamic concept to the accepted usage governing the Western liberal concept.

Although the contemporary Western liberal concept of rights is typically traced to the eighteenth century, particularly to the American and French revolutions, it is only in the last thirty or forty years that rights have come to dominate social-political thought in the West. Indeed, this domination has reached the extent that virtually all political claims today are made in terms of rights. Arguments against interference by others are made as claims that we have a right that protects us from such interference. Arguments in favour of interference, with actions undertaken by others are made as claims that we have a right that protects us from such interference. Arguments in favour of interference with actions result in a violation of our rights. Those who smoke claim that laws against smoking violate their rights to pursue happiness by smoking. Those who do not smoke claim that smokers violate their rights to fresh air. The resolution of such conflicting rights claims requires moral argument that is often lacking because rights claims come to be seen as fundamental.

When rights are taken to be fundamental, political discourse becomes extremist and fanatical. There is no room for argument when competing rights claims are taken to express basic rights. Liberals might be surprised to find themselves accused by Muslims of fanaticism and extremism, but Islam provides a framework for thinking about the law in terms of the sorts of textual support needed to back a legal decision, and the ways in which rational considerations must be assessed. Islamic rights claims can never be taken as absolute and fundamental.

If political controversy among Muslims is put in the language of Islamic values, scholars can debate relative priorities and importance of various particular rulings and judgements in an attempt to formulate policies most harmonious with Islam. The introduction of the language of rights, however, even Islamic rights, will have a tendency to stifle debate, because it is assumed that rights are (nearly) irrevocable. Without the doctrine that rights are inviolate, or nearly so, the authority of rights in contemporary Western political discourse would evaporate, for it is by reason of their inviolability that rights provide such a strong advantage to those who are recognized to possess them. One contemporary critic of liberalism, Ronald Beiner, suggests that “we should consider dispensing with the whole language of rights, for it is simply that way of speaking about what is politically desirable that disposes us to assert claims that are taken as absolute and inviolate.”^{[17](#)}

Beiner continues by pointing out another disadvantage of rights that might make Muslims want to hesitate about wholesale adoption of the concept of rights:

A further drawback of the rhetoric of rights discourse is that all rights, as rights, tend to be treated as occupying an equal level, in abstraction from the heterogeneous and differentiated considerations that lead us to describe something as good or as advantageous. The attraction of this rhetoric, indeed, lies precisely in its abstractness, its lack of differentiation with regard to the substance of various entitlements (we might call it the leveling effect) rather than inquiring into what is actually at stake in a given argument, the very fact that a supposed right is in jeopardy introduces an extra measure of passion and intemperance into the debate, regardless of what is being debated. This problem derives from the formalism of rights discourse, in contrast to the substantive character of deliberation conducted in the language of good.^{[18](#)}

Rights are taken to be inviolable, or nearly inviolable. Considerations of utility or the needs of the community as a whole are supposed to be trumped by rights claims.

Since individuals make rights claims against institutions, the result is a tendency toward individualism. Even if it is legitimate to identify the rights given to individuals by Islam, a political discourse dominated by such rights claims would still be unbalanced from the point of view of Islam because it would place community interests at lower priority without scriptural justification. It is worthy of note that Hegel also objected to the individualist tendency of rights claims.

Not only does the contemporary political discourse of competing rights claims promote individualism, it

promotes a perception of the citizenry as a body of competing claimants for the recognition of conflicting rights. In fact, individuals usually do not advance rights claims alone, but as members of interest groups. Each group pursues its interests through the advancement of rights claims as inviolable or nearly inviolable. This makes compromise or an attempt to find a solution best for all competing parties detestable to those who consider their rights to be infringed. The climate of political debate thus becomes adversarial and confrontational. The courts become mired in the adjudication of competing rights claims as each group pursues its own interests in the attempt to win favourable interpretations of the law. This has profound effects on the tone of social-political intercourse. As Muslims embrace Islamicized rights, we need to ask whether the sort of polity that will emerge from competing claims to Islamic rights accords with the values promoted by Islam.

Rights are valued because they protect interests. As different groups in society organize to compete for winning their conflicting interests, rights come to be viewed as goods to be divided among the competitors. Just as scarcity provides the occasion for programmes of distributive justice with respect to material goods, conflict provides the occasion for programs of distributive justice with regard to rights. Rights cannot be given freely to all who claim them because rights conflict. Not all claims to rights can be honoured.

As a result, those who seek to win them consider rights to be good that can and should be distributed by the state. The sort of attitude produced seems incompatible with the reliance on God emphasized in Islam. Muslims should not look to the state as the means for the solution of all their problems. The attitude of the pious Muslim should be one of trust in God and submission to His will. Muslims tend to conform to human rights because this is required of them by Islam, but the dominant consideration of the pious (*muttaqi*) is care to see to it that duties are performed. By contrast, the attitude of the Westerner who seeks to advance his own interests with claims to be corresponding right seems selfish, or at least self-centered.

The idea that there are some things that are due to one by right is not foreign to Islamic law. As mentioned earlier, the expression *haqq Allah* (the right of Allah) and *haqq al-'abd* (the right of the servant) or *haqq al-nass* (right of the people) do occur in medieval texts of Islamic jurisprudence, and modern Muslim defenders of the idea that Islam contains its own concept of rights often make reference to these expressions.¹⁹ But what is meant by these terms is that it is due to Allah or a person according to Islamic law. For example, the paying of *fitriyah* at the end of Ramadan is the right of God, and the right an heir has to his inheritance is an instance of the right of the servant, but the term right (*haqq*) is not used here in the modern sense of rights as moral trumps on the basis of which legal arguments and proceedings can be initiated. The point is not a mere quibble over words. Someone might object by saying, "OK. I admit that there is this narrow technical sense of right current in Western political philosophy, and that this concept is foreign to Islam. But there is a broader, more inclusive sense of right, in which we can say that the sorts of entitlements that are the subject of discussion by Western theorists and those protected by Islamic law are both rights. Why insist on the narrow meaning,

especially given the fact that in discussions of rights among Muslims, this narrow meaning does not seem to be intended.”

We cannot simply muddle along with a sloppy inclusive meaning because the meaning of *human rights* dominant in international political discussion is the Western liberal one. It is this notion that is used when mention is made of human rights organizations, when various governments are censured because of their supposedly poor human rights records, and when Western governments claim to be promoting human rights through their foreign policies.

Muslims do a disservice to their own societies and to Islamic law if they try to fend off objections to their human rights records by answering the charges against them with the claim that they are proponents of Islamic human rights. Consider, for example, the problem of child labour. Human rights organizations condemn governments for permitting child labour with the charge that the rights of the children are being violated. If we respond by saying that the Islamic concept of human rights does not provide for any right violated by child labour, we give the impression that in our view, there is nothing wrong with it, and implicitly we endorse the idea that the sole standard of just government is the protection of human rights, albeit Islamic human rights.

On the other hand, the very same impression is made by the respond that the Islamic concept of human rights does contain protections against child labour. It does not matter very much whether we insist that the philosophy behind Western liberal human rights is very different from that supporting Islamic conceptions of human rights, whether the basis for rights is in human nature or divine justice and compassion or both or neither. No matter which of the responses mentioned is presented, the political discourse of rights is endorsed, and since this discourse is dominated by Western liberal conceptions of rights together with the adversarial use of rights claims, the way is opened for the encroachment of liberal political culture in Islamic thought. This is the mechanism by which cultural invasion takes place.

More importantly, the Islamizing of human rights concepts shifts the focus of attention from the victims of practices often forbidden by Islam to debates over which rights deserve the Islamic stamp of approval and debates over humanism and theologically oriented philosophies. The poverty and masses of uneducated people in their societies certainly is no less distressing to Muslims than to Western advocates of human rights. Often, however, even the best Islamic government is simply unable to eradicate these problems. Muslims, in concert with their religious and governmental institutions, need to develop strategies to combat the offenses against God's law that take place in their societies. They do not need the distraction of diplomatic, economic and military pressure to adopt the general programme of Western liberal human rights. Such pressure really is cultural imperialism, although it seems to be accepted as morally permissible even by such sensitive thinkers as Rawls, Donnelly, and too many others to mention.

The real need is to develop Islamic norms and institutionalized procedures to protect them. The Muslim family needs protection from erosion no less than the poor and underprivileged in Muslim societies need

protection from legal abuses. It is time to admit that we have not yet discovered an effective strategy for the implementation of Islamic law and the protection of Islamic values in modern society. This should not be cause for shame or embarrassment, unless Muslims react by either closing their eyes to the difficulties they face or abandoning divine guidance in favour of the ways of the West, may Allah protect us from these twin devils: the failure to recognize our own shortcomings and the attempt to remove our shortcomings by casting aside what God has given us.

In conclusion, I would suggest that Muslims eschew the language of human rights because:

- (1) it invites the evaluation of Islam according to the standards of the Western liberal tradition,
- (2) it smuggles concepts from the Western liberal tradition into the political discourse of Muslims,
- (3) it promotes litigious adversarial competition among various interest groups in society,
- (4) it fosters the idea that it is the responsibility of the state to satisfy individual interests through the distribution of rights,
- (5) it stifles balanced consideration of community and institutional values in favour of insistence on individual freedoms,
- (6) it stifles reasoned political discussion because it presupposes that rights must be nearly absolute and fundamental,
- (7) when Muslim intellectuals glorify the 'Islamic human rights' protected by traditional Islamic law,^{[20](#)} this belies the need for the development of legal procedures and protections in modern Muslim societies to prevent abuses and injustices that were never imagined by medieval *fuqaha*, so that instead of genuine *ijtihad* on the new problems, Western solutions are simply adopted without comment,
- (8) it shifts attention from the need to take steps to eliminate injustice to differences over which rights are to be recognized and the philosophical foundations of rights.

At the same time that I advocate rejection of the language of human rights, I call on Muslims to resist Western claims to the universality of human rights, claims for which serious theorists have failed to provide serious arguments. Muslim resistance to these claims requires a greater familiarity on the part of Muslims with Western rights theories in social-political philosophy as well as jurisprudence. To counter the Western political pressure for the enforcement of human rights, Muslims need to stand strong and ready to defend Islamic values, but at the same time, greater efforts must be made to explain Islamic thought about rights in the West.

These comments may be considered rejectionist or anti-modernist, but on the other hand, I advocate the recognition of deficiencies in traditional Islamic law for dealing with modern problems, particularly with regard to how to control the nation state, how social institutions independent of the state may function in

Islamic society, and how to deal with such mundane problems as widespread unemployment, educational deficiencies and widespread poverty.

While liberals would introduce the machinery of Western human rights to deal with these problems, and traditionalists seem to think medieval Islamic legal rulings are sufficient for the task, I suggest that more work needs to be done to find solutions to contemporary problems consonant with the teachings and values of Islam. Traditional legal procedures are not sufficient for this task. Although I urge resistance against Western pressures to adopt the programme of liberal human rights, I also recognize the benefit to be gained through cooperation with some international human rights advocacy groups to develop strategies for the elimination of injustices recognized as such by Muslims and liberals alike. The struggle against injustice must be so prominent among Muslims that they become famous for such concerns, for it is only in this way that we can hope to provide the religious moral conscience so much needed in today's world.

“And struggle for Allah as is right that you struggle for Him. He has chosen you and has not laid upon you any hardship in religion, the faith of your father Abraham. He named you Muslims before and in this, that the Apostle may be a witness over you and you be witness over the people; so, establish prayer and pay the Zakah and hold fast by Allah. He is your master. How excellent the master and how excellent the helper” (22:78).

¹. The translation is included as an appendix to William C. Chittick's translation of Al-Sahifah al-Sajjadiyyah, The Psalms of Islam (London: Muhammadi Trust, 1987), p. 279–292.

². The translation is included as an appendix to William C. Chittick's translation of Al-Sahifah al-Sajjadiyyah, The Psalms of Islam (London: Muhammadi Trust, 1987), p. 282.

³. Samuel P. Huntington, The Clash of Civilizations and the Remaking of the World Order (New York: Simon & Schuster, 1997), p. 198.

⁴. The Universal Declaration of Human Rights was adopted without dissent by the General Assembly of the United Nations on December 10, 1948.

⁵. The Islamic Conference ratified an Islamic Declaration of Human Rights in December 1989 in Tehran, and then finalized it at a meeting in Cairo. See Muhammad 'Ali Taskhiri, “The Analysis and Development of the Concept of Human Rights,” Message of Thaqaalayn, Vol. 3, No. 4, Winter 1998, p. 61–74.

⁶. Jack Donnelly, Universal Human Rights in Theory and Practice, (Ithaca: Cornell, 1993).

⁷. Ronald Dworkin, Taking Rights Seriously (Cambridge: Harvard University Press, 1977).

⁸. Donnelly, 17.

⁹. However, there are recent official statements holding the right to self-determination to be a human right of states. See U.N. documents number E/CN.4/1987/SR. 10, pp. 7 (Ukraine) and 10 (Cuba); Donnelly, 17., SR. 11, pp. 13 (U.S.S.R.) and 14 (Morocco); and Donnelly, 17., SR. 14, p. 5 (Argentina), cited in Donnelly, p. 148, fn. 3.

¹⁰. Tabandeh 1970, p. 10.

¹¹. Donnelly, 51–52. The reference to Tabandeh is Sultanhussein Tabandeh, A Muslim Commentary on the Universal Declaration of Human Rights (London: F.T. Goulding and Company, 1970).

¹². See Mahdi Muntazir Qa'im, “Life and Liberty,” Message of Thaqaalayn, Vol 4, No 1, Spring 1998/1418, 79–102.

¹³. John Rawls, “The Law of Peoples,” in Stephen Shute and Susan Hurley, eds., On Human Rights: The Oxford Amnesty

Lectures 1993 (New York: Basic Books, 1993), p. 41–82.

[14.](#) Rawls, p. 63.

[15.](#) This paragraph is modeled on Philip Pettit’s explanation of the difference between conformity to a rule and following a rule in his article, “Problem of Ruling–Following,” in Jonathan Dancy and Ernest Sosa, eds., *A Comparison to Epistemology*, (Oxford: Blackwell, 1992), p. 388.

[16.](#) “By the law of peoples, I mean a political conception of right and justice that applies to the principles and norms of international– law and practice.” Rawls, p. 42.

[17.](#) Ronald Beiner, *What's the Matter with Liberalism?* (Berkeley: University of California Press, 1992), p. 91.

[18.](#) Ronald Beiner, *What's the Matter with Liberalism?* (Berkeley: University of California Press, 1992), pp. 91–92.

[19.](#) See “Human Rights” by Ann Elizabeth Mayer in John L. Esposito, ed., *The Oxford Encyclopedia of the Modern Islamic World* (New York: Oxford University Press, 1995), pp. 143–148. Also see Ann Mayer, *Islam and Human Rights: Tradition and Politics* (Boulder: 1991).

[20.](#) As in the essays on rights in Islam by Tuhami Negra (Tunis) and 'Abd al-'Aziz Kami' (Cairo and Kuwait) in A. Boudihiba, ed., *The Different Aspects of Islamic Culture: The Individual and Society in Islam* (Paris: UNESCO Publishing, 1998).

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