

Relativism vs. Universalism: Islam and the Human Rights Debate

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Abstract

This paper addresses the issue of “universality” in the human rights discourse by engaging in two basic tasks: linking the UNDHR to a specific political evolution and juxtaposing this evolution with a different distinct Islamic tradition. The paper argues that, while the liberal tradition maintains “rights” as a construct that has evolved to be considered inalienable by virtue of an individual’s humanity, the Islamic tradition asserts its own values and guidelines on human behavior as an outgrowth of an individual’s duty to God and community. Yet, despite basic differences, the issue is not one of achieving universalism in the discourse of rights, but rather in realizing that despite conceptual and ideological differences, the social and political destinations that each tradition arrives at are so consistent, that the conceptual differences are not in and of themselves sources of divisiveness or compromise in the quest to achieve universal standards.

Our common humanity transcends the oceans and all national boundaries. Let it never be asked of us, “What did we do when we knew another was oppressed?”

Nelson Mandela

When it was officially adopted without a dissenting vote in 1948, the United Nations Declaration of Human Rights was defined as a universal charter. Eighteen years later, it was given more precise legal form in the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol to the latter Covenant. All these rights were articulated as being universal in character. It was believed by many that the international community had arrived at a

consensus as to the basic requirements that characterized a universally accepted notion of how the international community could view human relations and how a state could construct for its citizens fulfilling and dignified lives.

More than half a century later, the UNDHR remains a controversial document. Simply, the question persists in the international community: In the process of regulating the lives of individuals from a multitude of cultures with often conflicting systems of beliefs, is there anything that can truly be held as universal? Underpinning this debate is the assertion by many that despite its characterization, the very history of the development of the rights articulated in both the UN Declaration and the discourse it has generated indicates that human rights have been consistently articulated within the intellectual construct of the liberal democratic state. Due to its monopoly on political organization in the developed world, this conceptualization has popularized the assumption that the liberal articulation of human rights is universal, and has been presented as universal in such documents as the UNDHR.

Arguing in this vein, cultural relativists contend that, at the very root, the concept of human rights differs with cultural understandings of the individual and collective, and more fundamentally, with definitions of what a right is or is not. It is this debate between universalism and relativism that has generated the basic research question of this study: *Are there universal human rights?*

While ideally a survey of all cultural articulations of human rights would serve to fully answer this question, it is simply not within the scope of one research essay to attempt to conduct such a survey. However it is within its scope to analyze a different system, with a different intellectual legacy, for the purpose of documenting how fundamental differences in worldview, particularly of the individual and collective, can contribute to differing articulations of "human rights".¹ In this respect, the Islamic political and social system, as expressed by the contemporary works of both Maududi and Qutb, will be analyzed and articulated. The image generated from this analysis can be subsequently juxtaposed with the issue of universality, with the intention of illustrating how a differing intellectual framework expresses the concept of human rights, and of determining whether the claim to universality within the contemporary human rights debate is legitimate or erroneous. It should be stressed that while all positions, both relativist and universalist shall be reviewed, it is to the latter position that the conclusion of this study shall lean, albeit with some major qualifications.

To begin, it will be argued that the contemporary rights discourse, as expressed in the UNDHR, is an essentially liberal exercise. To illustrate this,

the liberal framework will be briefly discussed and the concept of rights will be reviewed and traced in western philosophy with the purpose of indicating how rights in general and the rights as they are expressed in the UNHCR have been, from their conceptual infancy, destined to arrive at the liberal democratic state.

The discussion that emerges and the conceptual image that is formed from this research will be held up as a mirror to the Islamic worldview.² It will be illustrated how the Islamic worldview generates an image both similar and different, and how an ensuing dialogue of 'rights' between the two traditions can be instigated. Specifically, it will be shown that despite conceptual differences that arise between the God-centered Islamic worldview and the secular legalistic contemporary liberal tradition, the letter and practical application of some kind of Islamic 'human rights discourse'³ is strikingly similar to the liberal discourse. Simply, despite divergence in starting point of definitions of the individual and community, of right and duty, of obligation to the rule of law and obligation to God, the two traditions compliment each other more than they conflict. Part of the key to understanding how these two traditions compliment each other is to recognize that both traditions offer universal standards defining what it means to be human, what it means to treat other individuals as human beings, and what it means to establish a society upholding these universal standards; neither tradition can be subsumed by the other and both exist as equal systems by which to guide social and political organization. Despite this independence, the proposition will emerge from this research that these systems offer to arrive at social and political destinations of such striking similarity, that the prospects for a prevailing universalism within the human rights discourse seem quite promising.⁴

Locating the Right—What is Liberal Democracy?

In contemporary political discourse, the 'right' is expressed as a legal concept. A right is a claim advanced by an individual or group, enforceable by law.⁵ Generally however, rights are expressed as social norms based on commonly accepted principles that operate within social frameworks and are possessed by individuals within these social frameworks. It follows from this that talking of rights presupposes the existence of a community in which rights claims are advanced and rights are possessed.⁶ A human right then is a claim advanced within the human community; a right that is possessed by virtue of being human and advanced to all other humans: "Thus the existence of human

rights depends on the cogency of conceiving a human community; and the nature and extent of human rights depends upon the character of that community."⁷ Evidentially, to talk of rights presupposes a particular view of human relations, a view that, in contemporary political discourse, arrives at the liberal democratic state as the form of political organization which fully realizes and locates human rights within its framework.

Dissecting this term uncovers nothing dramatic. Democracy refers to the location of state power in the hands of the people, whereas 'liberal' refers to the limitation of that state's power in the name of preserving individual autonomy and liberty.⁸ A liberal democracy is thus the ideal political system in which people make the basic political decisions but in which there are limitations on what decisions they can make.

Accordingly, a liberal democracy is a political system in which (a) the whole people positively or negatively make and are entitled to make the basic determining decisions on matters effecting their lives, but (b) they make such decisions in a restricted sphere since the legitimate sphere of public authority is limited.⁹ The central idea here concerning why public authority should be limited is that it is necessary to ensure individual freedom and liberty. To be free is to be unrestrained by others in the pursuit of one's ends. Different theories contribute to and express this central idea. Historically, the most important have been theories about individual rights. These maintain that individuals have basic rights: it is held that every individual has a fundamental moral right to be able to do as he or she wishes in certain areas of life. The grounds for these rights, following from the Greeks and articulated by modern theorists such as Locke, were originally seen as being provided by natural law - a universal moral code binding on all people, perhaps ordained by some higher power. Having shifted to the use of the term 'human rights', the insistence remains in the discourse that all individuals whatever their social or cultural differences have essential basic human qualities in common by virtue of which they have certain basic rights. As long as the exercise of these rights does not infringe on the rights of others, the state must uphold and defend these rights through such avenues as the rule of law.

Hyland notes, and it is evident from the logical flow of the rights discourse, that the concept of rights is inextricably linked to the liberal democratic state in that the very basis of these rights is the liberty of individuals not only to act and live according to whatever conception of the good they feel relevant, but to *participate* in the political process. Hence, the contemporary formulation of economic and social standards as components of human rights, are seen as

necessary for the total inclusion of all individuals in the political process. As such, human rights are articulated at least in the contemporary discourse as linked fundamentally to liberal democracy¹⁰—human rights are best realized within the liberal democratic state because it is the liberal democratic state that seeks to entrench their recognition as a fundamental component of its framework: social and political equality. To be blunt, it would seem human rights are the intellectual property of the liberal democratic state. It is not mere semantic analysis of the terms “right,” and liberal “democracy,” that generates this conclusion, however. The very historical development of the concept of the right, while predating the liberal state, nonetheless concludes with a Fukuyama type conclusion. That is, the maximization of the realization of the principles understood as human rights is more likely to occur in the liberal democracy - for it is the liberal democracy that provides us with an end of history to the development of the concept of the right.

Tracing the Concept of the Right¹¹

Though it would be inaccurate to cast the entire development of the right in western thought as one monolithic movement, the research on the development of the human rights tradition in western philosophy uncovers some basic trends. In his book *Human Rights in International Relations*, R.J. Vincent stresses five major trends in the development of the western tradition of human rights. First, he notes, are the Stoics, “who started off the process by dismantling the classical Greek notion of the ‘polis’ and upholding the idea of a single city of mankind in which the equal worth and participation of all individuals was recognized on rational grounds.”¹² Second was the fortification of this doctrine in the Christian Gospel, which both upheld the inherent dignity of all “God’s children” and the equality of these children in a unified community under Christ. Third is the development during the Renaissance and Reformation: the Renaissance humanists’ view of man which saw him capable of the responsibility of bearing rights; and the reformists’ view of the obligation of conscience which led eventually to the establishment of an individual’s right of resistance. Fourth, these transitions culminated in the French Revolution and the Declaration of the Rights of Man and of the Citizen, which politicized the emerging theory of natural rights. Finally the contribution of Romantic thought is significant with the addition of group rights. Vincent notes that these basic stages contributed to the development of the modern theory of human rights. Each merit brief analysis.

The Greeks allowed two kinds of distinctions that were important in the subsequent development of the theory of natural rights. Billings notes them as such: "In the first place an ideal world constructed on rational principles from a theory of nature could be set alongside the real one permitting criticism of the mundane and not mere conformity to what was customary; second, it meant that what was general, common to all societies because common to all natures could be set apart from what was particular, relative, to the societies of the world."¹³

In treating justice as a quality that existed in a whole community, a *polis*, Plato and Aristotle had subordinated the good of the individual to that of the state, and allowed no appeal beyond the *polis* to any wider notion of community.¹⁴ The Stoics, who greatly influenced the Roman notion of a universal system of laws, broke open the enclosed community of the *polis* and upheld the individual as an independent moral agent.¹⁵ This was linked to the Stoic ideal of "living agreeably to nature"; this ideal supposed that there was a natural order in the world at large, governed by reason, and that it benefited individuals to discover and live in conformity with this order.¹⁶ The individual belonged to a universal community which existed by nature and whose rules were apprehended by the use of reason. These are the rules of natural law, which Cicero described as "of universal application, unchanging, and everlasting... one eternal and unchangeable law... valid for all nations and for all times."¹⁷ This assumption of the equality of men, a single definition applying to all men because all have received the gift of reason, has been identified as the "beginning of a theory of human nature and society of which the 'liberty, equality, and fraternity' of the French Revolution is the modern expression."¹⁸

From this the contribution of Roman law emerges, as each of its three divisions had a part to play in the foundations upon which natural rights were constructed.¹⁹ The *ius naturale*, not as a body of law so much as a way of interpreting it, kept alive the idea of a universal and rational standard of justice. The *ius gentium* as a body of law, which applied in cases that might involve foreigners as well as citizens, "provided something like the fact of universality to accompany the theory of natural law."²⁰ Finally the *ius civile* – "Roman law in this form was the law of an international civilization and was relatively universal."²¹ All three helped the formulation of some notion of a universal standard of justice by which human actions and relations were guided according to some bare minimum definition of what it means to treat an individual fair-

ly and with justice. Thus the influence of each of these branches shaped the trend in Roman law towards the formulation of universal standards of justice.

Christianity's establishment as the official religion of the Roman Empire synthesized the Roman notion of rights with the Christian Gospel. As Billings notes, Christian beliefs - "The existence of God as Creator - human beings created in the image of God - our value coming from His likeness - God's nature as loving, free, and just - God's purpose to liberate human life from inhuman conditions which existed because humans with free will have chosen behavior that disturbs the intended harmony - God's justice as the guide for human relationships - the Kingdom of God wherein free men and women will live in peace, justice, and freedom" - shaped the emerging concept of natural rights.²² By placing duty to God at the head, the idea that humans have rights as creations of God flowed logically from this discourse. As such, natural rights were not only a reflection of God's image, but there was a direct duty to God to uphold these rights. In this context, while Christianity influenced the developing paradigm of a set of inalienable rights given to man by his nature that was itself endowed by God, it also shifted the focus from right to duty. Our natural rights depended first upon the duty of all men to God. Once this duty was fulfilled, the rights of men naturally flowed from this, and were directly upheld and honored. Thus the link between duty and right was fortified. It will be noted later that this emphasis on duty impressed by Christianity also appears in the Islamic discourse and is one of its key features.

In light of this, it is to Renaissance humanism that is owed the complete emergence of the individual as a possessor of rights - rights not passively dependent on the notion of duty.²³ Against the humanist view of the dignity of man was placed, in the early Reformation, Luther's idea of his total unworthiness, his fallen nature, and his inability to escape sin except by the Grace of God.²⁴ This idea was sharpened by Luther to enjoin the obedience of Christians to secular authorities. It was this doctrine of obedience that legitimized the absolutist state. Yet it was the attack on this doctrine that propelled the individual into the center of rights discourse. While Hobbes placed the individual as the basic unit of society, it was Locke who was the chief philosopher responsible for the transformation of the individual from subject to an active possessor of certain rights other than the Hobbessian "right to everything" (which Hobbes used to justify absolutism).

Locke argued that political authority is not mere power, but power plus right.²⁵ Because right can only originate with a grant of already existing rights, and because humans have no right to grant away their duty to preserve them-

selves, they could not logically or morally grant rightful power to an absolutist authority.²⁶ In other words, political authority is vested in the rights of the individuals under that authority to resist any attempts to override their rights. While Locke did not argue that there is no such thing as absolutist governments, he did claim that they could never be legitimate. It is because the absolutist claims more rights over individuals than individuals themselves possess under the law of nature that their regimes cannot be legitimate. Thus *political society* is important to ensure the realization of rights. There is a subtle yet significant shift from viewing only nature as the defining mechanism of rights, to recognizing the influence and need of political organization. Political society hence represents a concentration and greater effectiveness of inalienable natural rights, rights celebrated in the individual (which, according to Locke, were centered on the individual's right to property). For him, human beings are primarily centers of rights and duties, and as such Locke's work is considered the foundation of modern rights theory.

It is important also to recognize the influence of Kantian morality. Kant argued that according to the categorical imperative, individuals could determine which actions were "good" and which "bad" by virtue of the test of universalization. That is, by asking a simple question of whether "I would have others do the same to me", all actions would be revised and tested according to this golden rule. For Kant, if every action was judged by the golden rule "would I want others to do the same to me," then men could essentially create an order that was just and harmonious. This order was the Kingdom of ends, and could only be achieved by individuals actively employing their own reason. For Kant, reason was equivalent to morality. In this context it was possible for individuals to use their own reason, independent of everything, to create a just and equitable order.

It is this radical individualism, together with rationalism, that was at the base of the theory of natural rights that underpinned the French Revolution. The theory was individualist, both in its assumption that individuals came before communities in "the imagined history of the state of nature and the origin of civil society, and in its assertion of the priority of the moral claim that individuals had over groups."²⁷ Rationalism, in the context of this modern rights theory, meant two things for the French Revolutionaries: "The idea that reason can act alone in political life without the assistance of authority, tradition or God; and the notion of the constructive power of rational thought."²⁸ In this trust in the constructive power of thought to produce social change lay part of the radicalism of the French Revolution's theory of rights. The doctrine

took the failure to observe the rights of man to be the cause of "all public misery."²⁹ The Preamble to the *Declaration of the Rights of Man and of the Citizen* announced that "ignorance, neglect, or contempt for human rights are the sole causes of public misfortunes and corruption of government."³⁰ In fact, this diagnosis of social ills has remained an important theme in liberal political theory down to the present day.

From the Stoics to the French Revolution, the theory of natural rights, rights endowed to individuals by virtue of their humanity, has persisted in the western tradition and as such by this account, human rights can be viewed as the contemporary expression of the natural rights debate. In this analysis, it is not necessary to accept human rights as the working out of some divine or natural law, but it is necessary to understand that the entire discourse began with the discussion of human nature. As such, the UN Declaration opens with the preamble "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world" – strikingly similar to the natural rights discourse set off by the Greeks centuries before.

What Kind Of Rights Emerge?

In the contemporary discourse these human rights have been classified into three interrelated categories. First, there are those human rights associated with traditional liberalism: freedom of speech, conscience, and association, etc.³¹ These rights imply a correlative duty on the part of all individuals and the state in particular not to interfere with individual behavior. Second, to these rights are often added certain specifically political rights: the right to vote, the right to fair treatment in courts of law, the right to travel or emigrate, etc.³² These operate within the concept of citizenship – that it is citizenship in a political community that maintains these rights, and as such citizenship itself emerges as the basis around which these political rights revolve. Finally, outside of specific political or legal organization, human rights have also been forwarded as "a common standard of achievement for all peoples" that articulate basic human needs, socially and economically, such as the right to social security, to a standard of living adequate for health and well-being, etc (United Nations Declaration of Human Rights [UNDHR] – Articles 1 and 2).

What these three categories have generated are a series of rights that are labeled as 'inalienable' – they exist by virtue of our humanity and must be honoured and upheld if we are to live our lives as human beings within. Without

extensively listing all these rights, some major and significant ones can be listed here for the purpose of future comparison with the Islamic discourse. To this end some of the rights articulated in the United Nations Declaration on Human Rights can be noted.

The first, articulated in Article 3 of the UNDHR is that "Everyone has the right to life, liberty, and security of the person." This comprises three rights: the right to life in a biological sense (i.e. the ability to survive), in a wider sense the right to personal freedom with respect to such things as movement and migration, and the right of personal security, i.e., the right of being protected against certain intensive interferences from the State or nonstate actors.³³

Second, "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms" (Article 4 UNDHR). As Lassen notes, freedom from slavery was one of the first human rights to become subject matter of international law.³⁴

Third, "Everyone has the right to protection everywhere as a person before the law" (Article 6 UNDHR). This entails fair treatment and equality before the law and is fundamental in the human rights framework as it is the law that legislates and defines what is and is not a violation of rights. While they are articulated as separate rights, the rights not to be subject to arbitrary arrest or detention, and the right to a fair trial with an impartial jury can be brought under this category.

Fourth, "Everyone has the right to own property alone as well as in association with others" (Article 17 UNDHR). The right to earn a livelihood can be subsumed under this category as well.

Fifth, "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community... to manifest his religion..." (Article 18 UNDHR). This is considered one of the most basic rights in any liberal democracy and one of the fundamental freedoms.

Sixth, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media..." (Article 19 UNDHR). This is also one of the fundamental freedoms. This freedom is of course not to be seen as absolute and is constrained by the qualification that freedom of expression cannot be inflammatory or incite/initiate the violation of the rights of others.

Seventh, "Everyone has the right to freedom of peaceful assembly and association" (Article 20 UNDHR). This is linked to the eighth right, namely that

“Everyone has the right to take part in the government of his country, directly or through freely chosen representatives” (Article 21 UNDHR). Key here is the insurance that the political process remains open and reachable for all members of a community.

Finally, “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family...” (Article 25 UNDHR). The inclusion of social and economic rights in the discourse has been contested and yet the thrust to enshrine some kind of enforceable standard by which to judge how a state treats its citizens, for example, has persisted such that social and economic rights have been accepted and articulated alongside political ones.

While this list is by no way inclusive, it illustrates the basic thrust of the rights discourse that has emerged from the liberal tradition – that the individual is the possessor of these rights and it is the responsibility of both particular states and the international community to uphold them and subsequently defend them. It is in this way that these articulated rights are universal. However the question emerges as to where these rights came from. The research indicates that the term ‘human rights’ itself has emerged from an evolution within the context of a particular paradigm of political thought, *a particular political culture*. While this in and of itself does not exclude claims to universality, the questions persist: *if* the starting point of the rights discourse has been located within a particular political culture, are the rights that emerge from this, such as the rights listed briefly above, applicable only within that political culture and the forms of political organization that emerge as dominant from this culture? Is a claim to universality thus a guise for ethnocentrism?

While a survey of all cultures and traditions would be overwhelming, for the purpose of this study the research question has been limited to a comparison with the Islamic tradition. Thus the universality of the human rights discourse, and of these rights in particular, will be judged according to their compatibility with what a study of Islam uncovers. It must be stressed that this study is by no way extensive and is limited in scope, as will be noted below. However, with this limited amount of research, some conclusions can be drawn concerning (a) whether the origin of the rights discourse sacrifices the universality of the actual rights that emerge from this discourse (b) more significantly, if these human rights as they are articulated are best located within the liberal democratic state, is it possible that they can be articulated such that they can be located beyond the liberal democratic state? In other words, can the essence

of the rights listed be universal and not necessarily their wording or conceptualization? It is with these questions in mind that the study of Islam begins.

Understanding Islam—Defining Important Concepts

Uncovering any sort of parallel development in Islamic philosophy begins with the fundamental question of purpose. That is, what is the purpose of Islam, what is its mandate, and as such what kind of so-called rights discourse can be said to emerge from this? It is upon analysis of the Islamic worldview that any Islamic conception of human rights can be ascertained and properly understood. To begin there are some preliminary issues to discuss. First, it must be stressed that the wealth of Islamic philosophy at the disposal of such kind of research is overwhelming, and choosing which intellectuals to cite, and as such which articulations of Islam to elaborate, is an inevitable task. Secondly, because the articulation of any 'rights' discourse by Islamic intellectuals is guided by interpretations of the Islamic sources of knowledge, the Qur'an and the Sunnah of the Prophet, choosing whose interpretation will of course temper the analysis somewhat. Moreso, it must also be kept in mind that the sources of Islamic philosophy are the Qur'an and the Sunnah. The intellectuals who have sought to elaborate on Islamic conceptions of justice or liberty, for example, do so with the implicit assumption that their contribution is based on interpreting the divine text as it exists and has existed since the advent of Islam. As such, Islamic conceptions of philosophical principles or ideas such as 'human rights' cannot be studied as evolving concepts over the course of Islam's intellectual legacy. There can be no linear 'tracing of the concept of the right' in Islamic philosophy, so to speak. What can be noted, however, are the different ways in which certain verses and themes in the Islamic sources of knowledge have been interpreted by various Islamic scholars situated in different social and temporal contexts. Thus it is in twentieth century Islamic thought that the major focus of concepts such as human rights, freedom and justice emerges as eminent in the discourse of Islamic scholars and intellectuals.

To this effect, the works of two twentieth century Islamic intellectuals, Sayyid Qutb and Abul Ala Maududi, have been selected. The reasons for choosing these two in particular are twofold. First, as authors and activists, the works of these two men are unparalleled in the contemporary Islamic world. As Esposito notes, "it is difficult to overestimate the impact of Qutb and Maududi. The ideas and strategies of these modern pioneers continue to be major ideological influences on the worldview and development of Islamic

organizations today.”³⁵ They are considered among the most influential intellectuals the Islamic world has produced in the twentieth century, both in terms of their prolific writing and the movements they helped form and influence. Secondly, the context within which each was writing necessitated their almost continual response to what they saw as the continued cultural imperialism of western philosophy. As such, the need to respond with a uniquely Islamic voice to the problems generated by cultural and economic domination of the Muslim world emerges in their writings. In particular, the need to articulate Islamic perspectives on contemporary social issues, such as social justice and human rights, is a major focus of much of their works. It is in their writings that the debate as to the applicability of western political concepts such as human rights is most pronounced. As such the main thrust of this section of the essay will be guided by the writings of Qutb and Maududi.

What is Islam?

Islam is derived from the Arabic word ‘*salam*’, meaning peace. Islam has thus been translated as meaning the attainment of peace through submission to God. The goal of the Islamic way of life is to achieve peace at all levels – spiritual social, political and economic. The Islamic system and laws thus seek to promote, protect, and sustain peace.³⁶ This peace is realizable through the act of worship. As Qutb notes in *Social Justice in Islam*, the purpose of creation in the Islamic world-view is worship. “I have only created jinn and men that they may worship Me” (51:56). The Arabic word ‘*ibadat*’ here encompasses more than the mere act of prayer – it also entails service, and thus means the active pursuit of anything commanded by God and the avoidance of anything forbidden by God. Hence worship is the “enjoining of what is just and forbidding what is wrong”. Thus the most basic building bloc, the *reason for being* in Islam, is the subservience of the individual to the worship of Allah: a worship, which is articulated as the pursuit of what is just. It follows from this that justice is the focus of being. Its pursuit being the purpose for why we are here.

The word for justice in the Quran is *Adl*. As Siddiqui notes in her essay *Choosing Reconciliation over Retribution*, the term incorporates the concept of *Sidq* (truth), *Qist* (Equity), and *Marūf* (Good): “To strive for justice in Islam is to attain truth, equity, balance and harmony.”³⁷ More over, the concept of justice is propelled by two interrelated notions: *huqūqullah* and the *huqūqulibad* – translated to mean the rights of Allah on His servants, their

obligation to Him, and the rights of believers over each other, their obligations and duties towards each other (Qutb 1953). *Huqūq* here is not the legalistic right of the western discourse but a right to be the recipient of certain duties – duties that form the basis of the Islamic understanding of human relations and political and social organization. As such there is a subtle conceptual difference here. *Huqūq* is not a right in the liberal legalistic sense of the word. It is more comparable to the notion of duty and obligation. It is more comparable, and more or less the same, to what emerged in early Christian discourse as the obligation both to God and the community under Christ.

With respect to the first, it is interesting to note that the foremost of the obligations to Allah is that Muslims be custodians of Justice – “O Ye who believe, stand up for Justice as witnesses to Allah, even against yourselves, or your parents or your kin and whether it be against rich or poor... and if you distort justice or decline to do justice, verily Allah is acquainted with all that you do” (4:135). This struggle for justice is universally incumbent upon Muslims whose actions are guided and defined by certain commands that constitute what many be termed the ‘rights of Allah’ on his servants. These also include the performance of prayer, fasting, the pilgrimage to Makkah – those individual actions regarded as fundamental to the development of a personal relationship between the individual and God.

The Islamic concept of ‘Ummah’ is rooted in the idea that the common belief in Islam necessitates the membership of Muslims in a global community: the *Ummah* is a community united in its universal struggle to establish justice. As such the *Ummah* is the international community of believers – a community that has obligations each member must fulfill towards each other, and towards humanity at large (including non-believers) - obligations defined by Islamic Law such as the paying of a poor due, respecting private property etc. Central here is the notion that it is Allah and the community that are the focus. Thus Qutb argues that justice is shaped by the interplay of these two and the Islamic worldview is guided by this dual focus.

From this three types of justice can be identified in Islam: economic, political and social. With respect to the first, through the principle that Allah alone is the owner of everything in creation (2:116), the notion that humans are merely the managers of resources instills the obligation to distribute resources and establish an economic system that reflects Islamic principles of fighting poverty, destitution and indebtedness: “And there are those who bury gold and silver and spend it not in the way of Allah; announce to them a most grievous penalty” (9:34). Through the institution of zakat, which distributes wealth

(making it obligatory for all earning Muslims to give 2.5% of their yearly income to charity), and the prohibition of interest and usury which seeks to prevent the accumulation of wealth, Islam seeks to establish justice in the economic sphere.³⁸

With respect to political justice, there are two guiding principles. The first, mentioned earlier, the *Ummah*, impresses the idea that the community must be rooted in a belief in Allah as the source of authority and power. Moreover, within the community, all Muslims are described as *khulafaah*, God's representatives, and as such the head of the state must rule according to Islamic Law to fulfill this capacity. The second principle is that of *Shura* (consultation) which seeks to exclude despotism of one person, family, class or party by implying that all Muslims must participate in the decisions concerning their political life. Thus popular consensus, when realized, is a basic thrust behind conceptualizing political justice in Islam.³⁹

Finally, the objective of social justice in Islam is to "maintain social order, harmony, balance and general welfare. It is a comprehensive system that balances the private with the general good, so that the one compliments the other."⁴⁰

All these types of justice are incorporated within Shariah (Islamic Law), which seeks to establish them guided by four basic principles⁴¹ – which also serve as a basic definition of justice in Islam:

Benefit to humans: Islam seeks to provide humans with guidance in order to ensure for them a lifestyle, individually, that will generate a collectivity defined by justice and committed to the worship of Allah.

Flexibility of religious obligations: The Prophet has stated, "Allah did not make any difficulty for you in religion". This is enforced by a basic law of necessity allowing Muslims to make exceptions to certain religious injunctions when warranted (5:3).

Public Welfare: Both Qutb and Maududi stress that social laws in Islam are intended to protect public welfare. Thus a parallel conception of community rights emerges which will be discussed further in the analysis of Maududi's *Human Rights in Islam*.

Realization of Universal Justice: It can be noted that Shariah does make the emphatic claim to universality – justice is universal and universally applicable: "The word of your Lord finds its fulfillment in truth and in justice." (6:115)

From these four principles emerge four basic types of laws in Shariah. Family laws that are designed for the development and protection of the family structure, including laws concerning marriage, divorce and inheritance; trade laws

that govern business transactions, trade and commerce, finance, contracts, etc; criminal laws that cover legal justice specifying punishment and compensation; laws that concern the defense of Islam that embody the codes of armed and unarmed struggle for the elimination of oppression, whether social, political, religious, economic or otherwise.⁴²

For the purpose of this study, it is to the area of laws concerning the defense of Islam that uncover parallels with the human rights discourse of contemporary western philosophy. Laws which seek to eradicate oppression fall into this context. From this perspective Maududi launches his analysis of what he refers to as 'human rights' in Islam as the outgrowth of an Islamic political system. It should be stressed here that Maududi uses the term 'human rights' to refer to the injunctions he uncovers in the Islamic sources of knowledge that are similar to the basic rights attributed in both the UN Declaration and the Charters of various liberal democratic states. While the term will be used over the course of analyzing his study, the applicability of its usage in the Islamic discourse is questionable and will be later discussed.

The Islamic Political Ideal— Basic Human Rights in Shariah

As Maududi notes in his book *Islamic Law and Constitution*, the political system of Islam is based on three principles: *tawhid* (Oneness of God), *risala* (Prophethood), and *khilafa* (Caliphate).

Tawhid means that one God alone is the Creator. "No aspect of life in all its multifarious forms... has been created or acquired by us in our own right."⁴³ From this it follows that there is no such thing as legal or political sovereignty of human beings. *Tawhid* initiates the development of a framework that operates solely within the context of divine revelation. Humans are the instruments of this. As such, the legal and political framework of the Islamic state is one based on revelation: the Qur'an.

Risala "is the medium through which we receive the law of God."⁴⁴ This medium, expressed in the life of the Prophet Muhammad, is the practical expression of the Qur'an, and both constitute what is referred to as Shariah, or Islamic Law.

Khilafa means "representation". Man, according to Islam, is the representative of God on earth: "...by virtue of the powers delegated to him by God, and within the limits prescribed, he is required to exercise Divine authority."⁴⁵ As

such, the state that is established in accordance with this political theory is intended to be a caliphate under the sovereignty of God.

With this brief description of the Islamic state's guiding principles, it becomes clear that for Maududi the concept of human rights in Islam is expressed by "those rights granted by God."⁴⁶ Hence, from his perspective, the western discourse and the UN Declaration, while expressing principles consistent in many ways with Islamic ones, cannot be compared with so-called rights sanctioned by God. That is, even if they *are* consistent, the Muslim cannot replace obligations as presented by God with rights presented by philosophers and intellectuals. The point here is that the emphasis on revelation is the key in the Islamic discourse. The source of the obligations is what is fundamentally different between the two traditions. Though it must be stressed that if we were to compare the Islamic articulation with early Christian articulations we would find a striking consistency. Both would hold that obligation to God is what guides human action. Yet because the modern liberal discourse has these religious roots there is room for much consistency with Islam. While in the Islamic framework, the observance of obligations as sanctioned by God is not something that is either negotiable, or avoidable – the use of the term inalienable to describe rights offers an area of similarity. Inalienable rights are non-negotiable and as such the duty to uphold them is non-negotiable. Thus, while in the Islamic context, the verdict of the Qur'an is unequivocal: "Those who do not judge by what God has sent down are disbelievers," (5:44) the verdict of the liberal discourse is similarly unequivocal: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized (Article 28 UNDHR)."

As argued by Maududi in his essay *Human Rights in Islam*, the first and foremost basic right is the right to life.⁴⁷ The Qur'an lays down: "Whosoever kills a human being (without any reason like) manslaughter, or corruption on earth, it is as though he had killed all humankind." (5:32) The propriety of taking life in retaliation for murder or for spreading corruption can be decided only by competent court of law in the Islamic state. In this context, no individual has the right to decide such questions by himself. As the Qur'an makes clear: "Do not kill a soul which Allah has made sacred except through the due process of law." (6:151)

Here scholars of the Qur'an note that homicide is thus distinguished from destruction of life carried out in the pursuit of justice. According to the tradition of the prophet Muhammad, "The Greatest sins are to associate something with God and to kill human beings."⁴⁸ It is stressed here that in all the verses

of the Qur'an and the Traditions of the Prophet, the word 'soul' (nafs in Arabic) has been used in general terms without any indication that it is citizens belonging to one's own nation or the people of a particular race or religion who should not be killed. The injunction applies to all human beings and as such is intended to be universal in application.

Immediately after the verse in the Qur'an which articulates a right to life, it states: "And whosoever saves a life, it is as though he had saved the lives of all mankind." (5:32) Maududi articulates this as the second basic right in Islam: the right to "the safety of life". This may appear similar to the first, and yet it covers a wider range and may be seen as consistent with the idea of 'security of the person' – saving a life has many social and economic implications such as standard of living and issues of public health. While this right is articulated as universal, it is not clear whether the *duty* to preserve life is also universal. Islamic scholars on this subject note that "we", meaning Muslims, must honor the above Qur'anic injunction, and that the universal right to security if the person flows from the duty to the Qur'anic verse. However, this duty is, it seems, not intended to be taken as a general description of how all humans should act, but rather how Muslims should act. In this respect the second basic human right as articulated by Maududi appears suspiciously more like a particular duty than a universal inalienable right. In this respect the second basic Islamic human right is dependent on a Muslim duty to honor the Qur'anic injunction.

Thirdly, Maududi notes the right to a basic standard of life. The Qur'an enjoins its adherents: "And in their wealth there is an acknowledged right for the needy and destitute." (51:12) The wording of this injunction suggests that it is categorical and unqualified. It is important to note that according to Islamic tradition, this verse was revealed when the Prophet was still in Mecca, where there was no Muslim society in existence. This fortifies the suggestion that this right to a "decent standard of living" is intended to be universal. As Maududi states: "The clear meaning of this verse is that anyone who asks for help and anyone who is suffering from deprivation has a right to share in the property and wealth of a Muslim, irrespective of whether he or she belongs to this or that nation, country, or race."⁴⁹

Fourth, Islam recognizes the individual's right not to be enslaved: "Islam has categorically forbidden the primitive practice of capturing a free man to make him a slave or to sell him into slavery."⁵⁰ On this point the tradition of the Prophet states: "There are three categories of people against whom I shall myself be a plaintiff on the Day of Judgment. Of these three, one is he who

enslaves a free man, then sells him and eats this money."⁵¹ This suggests that the right not to be enslaved is a component of the Islamic human rights paradigm. Here, it is not clear as to whether Maududi is defining freedom as the right not to be enslaved or whether this discussion is more of a focus on the practice of slavery than on the broader political and social articulations of freedom. Moreover, the obvious question emerges as to whether slavery is itself specifically banned or only the enslavement of free men. The approach of Islam to slavery is evolutionary in that when Islam arrived, slavery was widely practiced in the Arabian peninsula – as such Islam put in place a set of injunctions that when realized made the emancipation of slaves a religious duty. As such “the right to freedom” is defined more clearly as the *duty* to emancipate.

Fifth, Maududi identifies the right to justice. The Qur’an states: “Do not let your hatred of a people incite you to aggression.” (5:3) “And do not let ill-will towards any folk incite you so that you swerve from dealing justly.” (5:8) Justice here can be taken as both as the moral commandment to “be just” and the more legal injunction to a right to due process of law. In this respect Maududi notes that “the justice to which Islam invites her followers is not limited to the citizens of one’s own country, race, nation, or the Muslim community as a whole; it is meant for all human beings.”⁵²

The sixth basic human right offered by Shariah, according to Maududi, is the equality of all human beings.⁵³ Articulated by the Prophet in one of his sayings: “No Arab has any superiority over a non-Arab, nor does a non-Arab have any superiority over a black person, or the black person any superiority over the white person. You are all the children of Adam, and Adam was created from clay.”⁵⁴ According to Islam, “God has given this right of equality as a birthright.”⁵⁵ In other words, it is inalienable, and to be applied universally.

Finally, Maududi notes that the seventh basic human right in the Shariah is the right to cooperate in the struggle to achieve the aforementioned rights. The Qur’an states: “Co-operate with one another for virtue and heedfulness and do not cooperate with one another for the purpose of vice and aggression” (5:2). Here is the emancipatory element of Islamic human rights. It is established as a universal that if the above-mentioned rights are denied to any persons or group of persons it is the right and duty of Muslims to cooperate in the struggle to achieve these goals.

It should be mentioned here that what Maududi sees as basic rights flow first and foremost from the duties the “believers” have towards their Creator and their *Ummah*, and to humanity at large. As such, to call them rights is a bit misleading. They are the necessary conclusion of the duty to God and com-

munity. In this sense, while they are comparable to many of the injunctions in the UN Declaration they are at the root quite different. Moreso, the injunctions to uphold many of these rights are placed upon the shoulders, not of individuals, but of the collective of believers, the *Ummah* as it were. Thus, in Islam, if we are to refer to Maududi's list as basic human rights we must be careful to stress that while they are attributed to all people universally they cannot be realized or even entrenched unless the collective duty of the *Ummah* to follow the teachings of God is honored – i.e. the establishment of the Islamic state. Islam focuses more on this practical duty than on the abstract right. However, while this is a different approach than that taken by western philosophy, the fact that the duties articulated by Maududi are so similar to those noted earlier from the UNDHR would seem to point to the conclusion that despite the conceptual difference in the starting point of the traditions, duty to God vs. inalienable right, *this conceptual conflict makes little difference when articulated*. To elaborate further, it is important to explore the Islamic articulation of these rights in a different context.

Maududi attempts to do this in his discussion of the rights of citizens in an Islamic state, "as these rights are more extensive than the general human rights which have been described earlier, they require separate treatment."⁵⁶ First, he identifies the right to "security of life and property". In the final address of the Prophet, delivered on the occasion of the "farewell pilgrimage", he states: "Your lives and properties are forbidden to one another till you meet your Lord on the Day of Resurrection."⁵⁷ With respect to dhimmis or non-Muslims in the Islamic state, the Prophet is reported to have said: "One who kills a man under covenant (i.e. a dhimmi) will not even smell the fragrance of Paradise."⁵⁸

Along with the security of life, Islam has also conferred the right to security of ownership of property. The Qur'an goes as far as to declare that the taking of people's possessions or property is prohibited unless done by lawful means: "Do not devour one another's wealth by false and illegal means." (2:188)

The second right to be conferred upon the citizens of an Islamic state is the "protection of honor". Under Islamic law, if it is proven that someone has attacked the honor of another person, then, irrespective of whether the victim is Muslim or not, the culprit is punished. The Qur'an lays down: "You who believe, do not defame one another." (49:12)

Third is the right to the sanctity and security of private life. Islam recognizes the right of every citizen in an Islamic state to no undue encroachment on the privacy of his life. The Qur'an states: "Do not enter any houses except your own homes unless you are sure of their occupants' consent." (24:27) Flowing

from this injunction is the reality that it is unjustifiable on moral grounds that in an Islamic state, the government pry into the lives of individuals for the purpose of "state security".

Fourth, is the right to "security of personal freedom". Islam upholds the principle that no citizen may be imprisoned unless his guilt has been proven in open court: "To arrest a man only on the basis of suspicion and to throw him into prison without proper court proceedings and without providing him with a reasonable opportunity to produce his defence is not permissible in Islam."⁵⁹ The second caliph Omar is reported to have said: "In Islam no-one can be imprisoned except in pursuance of justice."⁶⁰ Pursuance of justice is identified as the due process of law.

Fifth, is the right to protest against the tyranny of a government. The Qur'an states: "God does not love evil talk in public unless it is by someone who has been injured thereby." (4:148) Maududi notes that "this means that God strongly disapproves of abusive language or strong words of condemnation, but that the person who has been the victim of injustice or tyranny has the right to protest strongly against the injury that has been done to him."⁶¹

Sixth, is the right to freedom of expression. It must be emphasized here that while Islam gives the right of freedom of thought and expression to all citizens of an Islamic state, it is conditional, not absolute. The Islamic articulation of this fundamental freedom is that it must be constrained by the guidelines of Shariah such that freedom of expression does not allow the expression of things deemed in contradiction with Islamic norms. As such, in Pakistan, the blasphemy laws prohibit expressing ideas that blaspheme the Islamic religion. This may be seen as the only right that is more restricted in Islam than in the western tradition. Yet upon closer analysis it may be said that this so-called right 'makes sense' in the context of an Islamic state. It was noted earlier that freedom of expression even in the liberal state is not absolute and is restricted so that can not be used to slander, incite hatred or infringe on the rights of others. The Islamic position is that in an Islamic state, while freedom of expression is honored, this does not encompass the right to viciously attack the image of the Prophet or the religion of Islam. The key here is that in an Islamic state, to do so is seen as an attack on the state itself and is an issue of state security and as such threatens the well-being of society at large.

Seventh is freedom of association. "Islam has also given people the right to freedom of association and formation of parties or organizations." Eighth, is freedom of conscience and conviction. As the Qur'an states: "There is no compulsion in religion." (2:256) Supporting this is the ninth right of a citizen in

an Islamic state, protection of religious sentiments. Maududi notes that, "along with freedom of conviction and freedom of conscience, Islam guarantees the individual that his religious sentiments will be given due respect and that nothing will be said or done which may encroach on this right."⁶³

Finally, is the right to the basic necessities of life: "And in their wealth there is acknowledged right for the needy and the destitute." (51:19) For this purpose Islam does not depend only on voluntary charity, but has made compulsory charity, Zakat, its third pillar. As the tradition of the Prophet Muhammad states: "It (wealth) will be taken from the rich and given to those in the community in need."⁶⁴

Thus, in both the basic framework and the particular framework of the citizen within the Islamic state, from the perspective of Maududi, human rights are similar if not interchangeable to some degree with the contemporary discourse. On deeper analysis, however, it must be stressed that they are interchangeable in articulation, but at the conceptual level they offer some interesting differences. Human rights discourse between the two traditions is, it would seem, similar in *letter*, but subtly different in *spirit*.

To elaborate, the most basic difference between the western and Islamic conceptions of human rights rests in the conception of the right itself. For the UN Declaration and the modern liberal discourse, the rights are, by virtue of our humanity, inalienable, unconditional, and objectively existent beyond the human practical experience. *They cannot be changed by circumstance or condition.* They simply *are*. It is the choice of people whether they wish to protect them or not. Regardless of human actions, *the rights themselves remain.* More so, these rights are the rights *of* individuals, *as* individuals. The collective, while recognized, cannot by its collective will decide to alter these rights.

The Islamic tradition, however, like the early Christian discussion on rights, while maintaining the idea of universality, superimposes the concept of *duty* on the discourse of human rights. It is the duty that becomes universal and unchangeable. In Islam, it is the collective duty of Muslims, first to God, then to the *Ummah*, to follow all Qur'anic injunctions to the best of one's ability. As such, human rights flow from the active execution of these injunctions. The right to life, then, is dependent on the duty of Muslims to follow the injunction "all life is sacred". The above quoted verses of the Qur'an that articulate human rights articulate them *within* a commandment to the believers to do or not to do something. The only exception is the verse, "There is no compulsion in religion," which is stated emphatically. Hence with the exception of the right to freedom of religion, which is not articulated in the context of a duty,

all the human rights which Islam attributes are not inalienable *per se* – as such they are not rights *per se*. Rather they are a logical conclusion of both an individual and collective duty.

The Islamic obligations, it would seem, do not have an objective existence beyond human action; *rather they depend on human action to be articulated*. Islam and the system it seeks to establish cannot be realized unless it is actively and consciously practiced, its injunctions executed, its duties upheld. However, despite their articulation as objectively existing outside the human experience, the rights of the liberal discourse are nonetheless dependent as well on the actions of states to uphold them and honor them and the actions of individuals to internalize them and understand them. *Thus it may be said that in Islam the duty initiates something comparable to the liberal right, whereas in the modern liberal democratic tradition the right initiates something comparable to the Islamic duty*. It would seem both traditions go about articulating similar discourses in different ways. More specifically, the liberal tradition has shifted from the duty-right equation flowing out of a religious system that presupposes a duty to God, to a right-duty equation that flows from a system that presupposes the coercive influence not of God but of the rule of law. In this respect it would appear that the conceptual differences are conceptual nuances. The question then becomes which type of society, which *political culture* is more consistent with and accepting of a duty-right explanation and which for a right-duty explanation?

Relativism, Universalism, and Cultural Pluralism

The Maududi analysis hints at a consistency that cannot be ignored. If the rule of law and the rule of God act as the same force driving individuals and society to honor some bare minimum definition of what it means to treat someone as a human being, can it be said that the two discourses really are that different? Is the consistency in letter, in application, more important than basic theoretical differences in conception and spirit? Can conceptual differences nonetheless generate similar results? Or are they too overwhelming to initiate a parallel dialogue between the two traditions? This discussion would seem to present a superficial dilemma for a universal application of human rights. It is this 'dilemma' that is used to fuel the argument presented by the relativists, that by virtue of differing definitions and conceptualizations between duty and right in the quest to establish a "conception of the good", human rights cannot be presented as universal.

To elaborate on the framework within which this debate takes place, the opposing arguments forwarded by relativism and universalism respectively will be discussed in this section. While both make compelling arguments, and both will be discussed at length, both are wrought with conceptual and practical difficulties that will be highlighted and elaborated. Despite this, however, and despite what will be noted as the problems with the forced thrust to find commonality between the two, it is towards the argument that that the two traditions have much in common, that the conclusion of this research leans. While relativism offers much insight, the claims made under its name are inaccurate and insufficient to give weight to the conclusion that two different cultural traditions such as Islam and the West cannot compliment each other. It must be stressed, however, that the commonality between the two traditions studied rests not in conceptual definitions or principles (which it will be shown leads only to greater confusion) – but rather in the practical articulation of what the two traditions profess to establish: a community in which people are treated, and treat each other, as human beings.

Relativism

The guiding principle of relativism is that perceptions of human rights will differ as conceptions of the good differ, and more importantly, as understandings of legal and normative systems differ across cultures and traditions. Thus any attempts at establishing universal principles is really a guise for ethnocentrism. In their frequently cited work on human rights, *A Western Construct with Limited Applicability*, Pollis and Schwab offer serious criticism of what they identify as a cultural and ideological ethnocentrism in the area of human rights and human dignity. They view the UN Declaration as a document with underlying democratic and libertarian values, “based on the notion of atomized individuals possessed of certain inalienable rights in nature.”⁶⁵ Due to both the pervasiveness of the notion of the group rather than the individual and dominant anti-secular trends in many cultures, they conclude that “the western conception of human rights is not only inapplicable and of limited validity, but it is meaningless” to many non western nations.⁶⁶

In a similar vein, Legesse argues that “different societies formulate their conception of human rights in diverse cultural idioms,” and that in the liberal democracies of the West “there is a perpetual, and in our view obsessive, concern with the dignity of the individual, his worth, personal autonomy, and property.”⁶⁷ He dismisses the idea of transcultural values, and hence, of universal human rights, “for the simple reason that a value exists as such only in a

given cultural context." According to Panikkar, the crucial question with regard to the intercultural intelligibility of human rights is "how, from the *topos* of one culture to understand the constructs of another."⁶⁸ This approach is echoed by Hountondji, who suggests that human rights scholars must increasingly ask questions such as, "what varies, not only from one culture to another...but also from one class or social group to another?"⁶⁹

From this standpoint, as Perry notes in *Are Human Rights Universal*, universality is unachievable. As such, the argument against any "universal" criteria is really an argument against cultural imperialism and is based on three assumptions:

1. No culture is better than any other. (Therefore, no culture is worse than any other.) Every culture is as good as every other.
2. No evaluative standpoint is better than any other. In particular, the evaluative standpoint of one culture is no better than that of any other. Every evaluative standpoint is as good as every other.
3. No culture is, from its own evaluative standpoint, inferior to any other culture. From its own evaluative standpoint, every culture is at least as good as every other.⁷⁰

The question is, where does this leave us? Are we thusly to reject any claims to the universality of human rights discourse as attempts by the so-called dominant culture to assert itself on others? The answer is quite simply, "no." The analysis of the Islamic system, while bringing to light some basic conflicts, also brings to light some basic similarities. Moreover it is not acceptable to dismiss universality by virtue of the fact that two traditions, separated by history and geography, conflict at some obscure conceptual level. Such conflict is a given in a world with such a pluralism of worldviews and cultural norms. The fact is that commonality is more compelling than any differences that emerge between the two discourses. However, universalist arguments are fraught with difficulties and, while aiming at proper conclusions, they only serve to generate more confusion. This next section will note the problems with the arguments presented by the proponents of universalism. This criticism is offered not to add weight to the relativist position, but rather to sharpen and strengthen arguments for calling for the cooperation between traditions in the quest to establish meaningful standards by which to judge and guide human interaction. The criticism of the universalist position is based primarily on the contention that in the quest to establish universal standards, conceptual differences must not be glossed over, as this only gives weight to relativist con-

tentions as to the subjectivity of concepts such as 'justice' and 'oppression'. While this next section will be quite critical of endeavors to synthesize definitions such as 'justice' and 'oppression' between the two traditions, this criticism rests on the assumption that universality can still be achieved without conceptual consistency. The point is that the relativist position argues many valid points that must be conceded, and yet despite these concessions universalism prevails.

Finding Commonality

Many proponents of universalism and pluralism have held that, despite the conceptual divergence in some respects, what the two traditions are addressing is the same basic thing: *morality and the human condition*. Human rights or collective responsibilities belong to all people, at all times, in all situations, and in all societies, and in all traditions.⁷¹ They normally come into existence as *moral* claims, that is, as ethical claims that a certain personal good be always and everywhere protected by society, but they can and often do evolve into *legal* rights which are recognized within international or domestic national laws.⁷² This definition provides a formal characterization of what is generally meant in the *universalist argument of as a human right* – a right that belongs to persons *qua persons*.⁷³

In a similarly universalist vein, many argue that in both traditions, *human rights are normative responses to experiences of oppression*, whether from the minds of liberal philosophers, or from the revealed text of the Islamic faith – the *dhulm* that is attacked as the antithesis of Islam is strikingly similar to the 'violation of human rights' that is seen as the antithesis of contemporary liberal democracy. While this analysis is compelling and offers some area of cooperation at the conceptual level, there are still issues of contention, primarily that both oppression and justice are such different concepts in the Islamic framework. To be *oppressed* in the liberal mind is to be subject to the unjust or cruel exercise of authority or power, particularly when those who exercise that power or authority are so dominant that the people who are oppressed cannot effectively protect their own basic interests through the exercise of liberties or powers at their command. In the Islamic mind, to be oppressed begins with the forceful exclusion of God from the social, political, and economic lives of a people. It is thus argued that oppressed people are *vulnerable* in particular ways because they are subject to domination by forces beyond their control and that seeing human rights as normative, i.e., ethical and/or legal responses,

to systems of oppression and domination provides the key to understanding how human rights function in international relations. What the proponents of this argument fail to see is that in Islam, the subjugation to forces beyond our control is the very essence of liberation for the Muslim – as long as that force is represented by Allah and His commandments.

Taken as a whole, proponents of the interchangeability of the discourse stress that the canon of human rights provides a set of specific protections against various known forms of human oppression and domination. Since they are rights, they aim to call forth duties on the part of other agents within society to protect and defend the important interests, liberties or powers of those who are being oppressed.⁷⁴ Social cooperation is required in such cases precisely because, when people are oppressed and vulnerable, they normally lack the ability or power to fully or effectively protect and defend their own interests.⁷⁵ Together, these norms function to protect human *dignity*, that is, the condition of *not being oppressed* in the contemporary liberal mind, and therefore being *free* from the effects of external forms of power and authority which effectively prevent or inhibit the full realization of one's basic interests as a person. Human rights exist precisely in order to protect vulnerable individuals and groups from systems of domination and oppression, and this is their true function.

In Islam, however, duties and obligations exist in order to impress on the *Ummah* the active need to establish justice as a component of belief. Being free is being free from everything except one external form of power – Allah. Realizing "one's basic interests as a person" occurs in the Islamic mind only once one has subsumed the self in the duality of obligations to God and community – obligations defined by the active pursuit of justice.

Overlooking these very real differences, universalists hold that the human rights system represents, in both traditions, a kind of implicit *theory of human oppression*. It is thus that we are told that they are the same discourse. It is justified experientially by its links to known, historically given, forms of oppression, and it is justified pragmatically by its serving as a tool for combating newer instances or variants of these known forms of oppression.⁷⁶ "While the particular *values* that human rights norms are designed to protect are discovered through historical reflection on particular instances of oppression, the rights themselves are always framed in a general way so as to cover both known past instances as well as possible future instance of the same type of oppression or variations on those kinds of techniques of repression."⁷⁷ This is what enables them to function as protective shields – they draw out and distill the particu-

lar lessons of history into a system of norms, which will, if properly implemented, prevent known types of human oppression.⁷⁸

In this respect, it was noted previously that the Islamic tradition, because it is oriented to God and the *Ummah* and then the individual, is different in spirit from the western liberal individualist standpoint. Yet, ignoring basic conceptual differences, it can be and is argued from the standpoint of universalism that this divergence, while highlighted by critics as the defining operational difference between the two traditions, can be downplayed in its significance. *It is thus held that the two share the same spirit of fighting human oppression and preserving human dignity.* The point being argued by these authors and proponents of this brand of universalism is that whether Islamic or western, the *issue* is the same.

As such, rather than attempting to demonstrate the supposed rift between the practice of the western and Islamic frameworks in a case-by-case analysis, we are told that it is more fruitful to analyze the very root of the issue. *That is, in either the western or Islamic case, how is it possible to present a scheme of moral claims and anti-oppression mechanisms to the average citizen, in a way that is liberating, and yet more importantly truly universal?* The root of this universality lies in the assumption that we think of ourselves first as human beings – something which is in and of itself enough to necessitate conceptual and practical consistency and cooperation between the discourses.

No doubt this argument is both poetic and compelling. Yet the divergence of cultural interpretations and ethical frameworks (let alone *definitions* of what it is and is not to be oppressed) indicates that self definition is primarily based on “who we are not”: “It is crucial for their sense of who they are that they are not an infidel, not a queer, not a woman, not an untouchable.”⁷⁹ In this respect making human rights principles practical in everyday life becomes increasingly difficult. It is here that the distinction in the Islamic and western frameworks is even more pronounced.

At the base, despite their similarity, Islamic human rights are built on the view that human society is “God centered” and as such humanity as defined by rights is dependent on revelation for this self-definition. The western tradition is “human centered” in that, based on the tradition of Kant, humanity is defined primarily by rationality – it is this ability to reason that is the defining factor of both equality and freedom. Hence, *who we are not* is for the Muslim a question of revelation, while for the liberal it is a question of rationality. Conceptually this theoretical framework generates quite a distinction – a distinction that must not be glossed over by poetic affirmations of some kind of

global quest to end “oppression” and remove the “shackles of injustice from the hearts and souls of the oppressed.” The strength of the universalist position does not reside in this type of argument. Rather, upon close analysis, universalism emerges not as a function of conceptual consistency but *despite* conceptual *inconsistency*. The relativist contention accepted, what the research indicates is that even though there is such subjectivity in the conceptual debate, *in practice this distinction would seem to be less significant than relativists would have us believe.*

Reality—Practical Consistency vs. Conceptual Differences

Obligations to God and the *Ummah* in the Islamic framework are sacred. As such they cannot be circumvented by legal institutions or procedures – in fact there is no distinction between the legal and theological. They are beyond law. In the western framework, rights are legislated and as such are subject to be evolutionary in nature – the “evolution” of the human rights discourse from natural rights theory is proof of this. In Islamic tradition, human rights have not been articulated because they are a part of religious obligations, not mere legal procedures for the protection of citizens. In this respect, practical human rights are legislation in the western paradigm, while they still take the form of religious obligation in the traditional Islamic paradigm. The attempts by Islamic modernists to introduce rights discourse into the Islamic framework is thus an awkward task. There really is no need, save for the purpose of theoretical comparisons, to cast the Shariah in terms of human rights. To do so would be to change the framework of Islamic religious obligations into legal procedures.

However, upon closer analysis, and this is the main contention with arguments for commonality, it can be emphatically stated that it is *unnecessary* to do so. Commonality is evident and vibrant without attempts to ‘westernize’ the Islamic tradition with conceptions that are foreign and problematic once placed outside the context of their historical development. The evidence suggests that the two traditions offer similar paradigms through which to imagine and construct some bare minimum definition of what it means to treat someone as a human being – a bare minimum definition that despite conceptual differences is strikingly similar in letter and practice.

To reiterate, conceptually, the difference between legality and religiosity is striking – and yet at the same time this difference can be seen as nominal, once

analyzed practically with a vivid example. However, before analyzing a particular case, what has become evident in this research is that, as noted previously, the emphasis on God and obligation to community is what seems to differentiate the two traditions at the very core. One tradition, Islam, casts the discourse as a duty to God, while the other liberal tradition casts the discourse as inalienable rights objectively existing, by virtue of our humanity, that do not require any 'obligation' to come into effect. However, *this is a conceptual nuance*. In practice, it cannot be ignored that even in the liberal framework where rights are articulated as inalienable, they still must be enforced by the mechanism of the rule of law. Even internationally, debate rages as to the applicability of rights without the mechanisms of coercion needed to enforce them. As such, obligation in the liberal framework, and obligation that is forwarded as belonging to God in Islam and even in the early history of the western discourse, is seen as belonging to the rule of law in contemporary liberal society. Hence whether it is Allah or the rule of law, the end results of generating the obligation to obey are the same. Fear of divine punishment is replaced with fear of legal sanctions. It can thus be forwarded that despite the ways in which both traditions seek to achieve certain ends, and despite what may seem to be superficial clashes, the end result is often strikingly similar and strikingly compatible. A case that demonstrates this conceptual difference/practical consistency is that of the issue of wearing the Muslim woman's headscarf –hijab - in the Turkish parliament.

Recently in Turkey a female member of parliament, Merve Kavakci, was told to leave parliament if she refused to take off her headscarf. From the Islamic standpoint, the Turkish court has no jurisdiction on the religious obligations of Muslim women. What makes this case interesting is that Turkey has used its supposed liberal democratic legal system to violate what liberals would refer to as Kavakci's "human right" to practice her religion. The point is that the right was circumvented by a legal procedure. From the Islamic mindset, the courts have no jurisdiction to begin with – rights are not legally binding as much as they are binding in the relationship to God and then to the *Ummah*. For Kavakci in the Islamic framework, hers is not a right but an obligatory duty to God – an *obligation* to follow the religion - and thus the defense to let her fulfill this obligation is not a legal exercise, rather it is a circumventing of the entire legal process. The defense is that the law cannot have any jurisdiction. This demonstrated a conceptual difference between the two traditions – one notes that it is the rule of law that legislates or violates rights, whereas the other notes that it is Allah and His commandments that place obligations on

individuals to act a certain way, and there is no legalistic mechanism that can enforce or override personal religious obligations.⁸⁰

Practically, however, this stark conceptual difference is really not so compelling. The liberal would agree that the courts have no jurisdiction on restricting the right of anyone to practice what they feel is their religious obligation as long as this did not infringe on the rights of others. In this context, the liberal would hold that the law was violating a basic human right of freedom of conscience and that it was incumbent on the courts to change the law. As such it is interesting to note that even though in the Islamic framework the courts have no jurisdiction, it is this jurisdiction that would generate a defense in the liberal framework. The liberal can question the 'justness' of a law and use the very mechanism that at first violated a right to enforce it.

In this respect, there is a basic problem in *comprehension*, and it is this confusion that would fuel the argument that would have the two traditions on a collision course. To use the term 'rights' with all the liberal legalistic connotations this word has, to refer to Islamic religious obligations, *despite their similarity, is an inaccuracy* – an inaccuracy that generates erroneous conclusions about the incompatibility between the two. Hence even Maududi's work, for all his attempts to bring Islam into the modern political framework for discourse, fuels this confusion. What Islam offers are religious duties and obligations; they are not legalistic, nor can they be circumvented by law. To this end, if we understand that what Islam offers are not 'rights' *per se*, and understand these obligations within their own framework and tradition, what emerges is a distinct system that can be compared as a whole with the one that has emerged from the liberal tradition. Meshing the concepts that exist within the liberal framework with Islamic injunctions fuels a confusion that can only lead to a discrediting of attempts to initiate dialogue. The key to dialogue rests in understanding what the two traditions offer: distinct and complete systems of political and social organization that are similar and consistent in many ways.

Final Analysis

It would appear, then, that there are many angles from which the debate as to the universality of the human rights discourse within the context of Islamic thought can be analyzed. We are presented with stark conceptual differences – yet at the same time both the vibrant human rights movement and the believers in cultural pluralism would hold that regardless of the starting point, the end is the same: establishing a world without oppression and injustice. While

the latter is quite a compelling argument, it is not sufficient to overcome the reality that the very basic divergences in world view between the two traditions necessitate the conclusion that human rights are foreign as a conceptual or philosophical paradigm through which to uphold basic ethical or moral claims – because the ethical and moral claims are so different in Islam. In the liberal mind, this paradigm generates the conclusion that life without individual liberty, freedom and equality is a life that is not human and as such a violation of human rights. In the Islamic mind, the framework begins with Islamic justice which tells us that life must be grounded in God consciousness and commitment to a standard of justice that requires involvement in and obligation to a universal community or *Ummah*. The individual finds freedom in the active pursuit of obligations and duties. In the liberal framework the individual is not required to do anything to become the recipient of his or her inalienable rights.

As such we are presented with the possibility of a problematic and controversial conclusion. Problematic to anyone who believes that universal standards of human rights are a necessity in establishing global stability. Controversial in that it almost hints at the acceptance of a cultural relativist justification of any acts within any culture no matter how reprehensible they may seem. It would appear that we are to be left with no other option but to condemn conclusions and ideas generated by statements such as the quote by Nelson Mandela opening this research paper: mainly, that it is possible due to our “common humanity” to “transcend the oceans and all national boundaries” in some global struggle to end a commonly agreed upon definition of oppression. With much discomfort, it would hence appear that we are where we left off - at a seeming standoff between relativism and universalism in the human rights debate. We have noted the problems arising from authors’ attempts to gloss over conceptual differences by arguing that both traditions seek to eliminate oppression by noting *the very definition of what it means to be oppressed differs in both traditions*.

However, the findings in this research paper indicate that *despite* obvious conceptual differences in worldview and between such principles as justice, oppression, freedom, liberty, collective duties and individual rights and responsibilities, and *despite* the arguments of cultural relativism, the evidence of the research suggests strongly that *there is an undeniable consistency between the fundamental freedoms and rights that have emerged and evolved from liberal thought and are expressed in the UN Declaration, and the obligations and duties Muslims owe to God and community*. It is worth reiterating here that it would appear that the spirit is different, and yet the letter is strikingly similar.

Of course, the question persists: where does this leave us? *Essentially*, the fact that despite conceptual differences and differences in world view, the two traditions have produced strikingly similar discourses, should quell the fears of those that hold that the mere appearance of inconsistency between what is termed 'universal human rights' and cultural/religious traditions is enough to inhibit the very noble quest to find a standard by which to judge whether the actions of governments, corporations, and collectivities are or are not violating some basic definition of what it means to treat someone as a human being. Both traditions claim universality in this respect. Both traditions offer ways, both conceptually and practically, through which certain principles and ideals can be realized and achieved. What *we* must realize is that because both traditions seek this, neither can be subsumed by the other - they are distinct: similar but different. They each offer ways in which to realize some definitions of justice and peace - and as such it is my opinion that the dialogue that occurs between the two cannot seek to amalgamate. It is a question of which one to adopt. Beyond this, it has been made clear that even if the two world views operate within the same international system, there need not be any fear of a 'clash' or conversely some kind of compromise in the movement to push the universalized standard of human rights presented in the UN declaration. All that is needed is the recognition that what Islam presents is a separate and distinct universal standard by which to guide our definition of what it means to be human, of what it means to be oppressed, of what justice is and is not.

In the end, *this definition leads to a path not much different than the path intended by the principles enshrined in the UN Declaration*, or in the charters and bills of rights of liberal democracies across the developed world. It is a path with the intended conclusion of some tangible state whereby the lives of the individuals within it are consistent with accepted conceptions of what it means to live fulfilling and dignified lives.

Notes

1. It should be noted here that despite the nature of this research, and the multitude of opinions and debates as to the relativity or universality of the human rights discourse that shall be analyzed, the basic argument of this paper rests firmly on the premise that the recognition of some bare minimum definition of what it means to treat an individual as a human being *is* universal; it is rather how this definition is articulated conceptually that can be said to differ between traditions.

2. With a wealth of scholars and activists to give this worldview voice, the task of choosing certain Islamic intellectuals to study over others is an inevitable task. To this effect the works of two twentieth century Islamic intellectuals, Maududi and Qutb, have been chosen, for reasons that will be discussed later. At this point it is enough to note that they are among the most influential Islamic scholars of the twentieth century.

3. It will be noted later how the use of the term *human rights* in the Islamic context is problematic. However for the purpose of clarity it is used here.

4. The intention here is not to demonstrate some kind of apparent stand-off between the two supposedly monolithic traditions of the West and Islam, but rather to highlight some apparent consistencies between the two traditions – *particularly a consistency in end*. The two traditions may have different conceptual frameworks, yet it is noted here that the conclusions drawn from these differing conceptual frameworks are strikingly similar. Enough to argue that such consistency overrides the classic debate as to the incompatibility between divergent political cultures. *It is not the intention here to make some grandiose claim to universality* but to simply highlight some points of commonality for the purpose of discussion and analysis. As such the paper is to some extent unfulfilling. It is not within the scope of this author to single handedly bring resolution to the debate between universalism and relativism in the human rights discourse. The arguments made here are expressions of distaste with the direction the present debate is heading, and the voicing of certain concerns and points of analysis that I feel should be addressed. While universalism is given more credit than relativism, it is a *qualified* universalism that accepts the subjectivity of concepts such as oppression and justice between Islam and liberal philosophy and yet insists that despite this, the destination both traditions arrive at is so similar that by virtue of this commonality alone universalist conclusions seem almost inevitable.

5. Andrew Levine, "Human Rights and Freedom," in *The Philosophy of Human Rights*, ed. Alan S. Rosenbaum (Westport: Greenwood Press, 1980).

6. *Ibid.*, 138.

7. *Ibid.*

8. Barry Holden, *Understanding Liberal Democracy* (Hertfordshire: Harvester Wheatsheaf, 1993), 17.

9. *Ibid.*, 18.

10. James Hyland, *Democratic Theory: The Philosophical Foundations* (Manchester: Manchester University Press, 1995), 104.

11. The literature used here in this section consistently uses the masculine in accounting the emergence of the right in western philosophy (i.e. *man* or *men* is used instead of *humanity*, *human(s)* or *people*). I have opted not to change this in favor of a more inclusive terminology as this would gloss over the very real biases of the western discourse in its formulation of the 'right' – i.e. when the term *men* is used, the authors and philosophers who used this terminology really meant *just males* and white property owning males for that matter – though it must be noted that these early ideas have been interpreted now in more inclusive ways. While I would prefer to have dedicated a section of this paper to a deconstruction of the male-centered bias of the western discourse, this is not the particular focus of this research. For a discussion of the gender bias in the conceptualization of human rights see: Peterson, V. Spike. "Whose Rights? A Critique of the 'Givens' in Human Rights Discourse." *Alternatives* XV (1990): 303-344.

12. R.J. Vincent, *Human Rights and International Relations* (New York: Cambridge University Press, 1986), 20.

13. Peggy Billings, *Paradox and Promise in Human Rights* (New York: Friendship Press, 1979), 43.

14. Jene M. Porter (ed.), *Classics in Political Philosophy* (Scarborough: Prentice Hall, 1997), 125.

15. Vincent, *Human Rights and International Relations*.

16. *Ibid.*

17. *Ibid.*, 23.

18. *Ibid.*, 25.

19. *Ibid.*

20. *Ibid.*, 26.

21. *Ibid.*

22. Billings, *Paradox and Promise in Human Rights*, 11.

23. Vincent, *Human Rights and International Relations*.

24. Ibid., 30
25. Ian Hampsher-Monk. *A History of Modern Political Thought* (Oxford: Blackwell Publishers 1994), 87.
26. Ibid.
27. Vincent, *Human Rights and International Relations*, 25.
28. Ibid.
29. Christine Loudes, *The Emergence of the Political Myth of Human Rights* (1991), 2 at website <http://www.ccc.nottingham.ac.uk>.
30. Ibid.
31. Levine, "Human Rights and Freedom," 139.
32. Ibid.
33. Rehof 73.
34. Lassen (1980), 89.
35. Esposito (1993), 139.
36. Shahina Siddiqui, "Choosing Reconciliation Over Retribution," *Issues of Justice Challenges of Reconciliation Paths to Peace* June 2000, no. 138: 34.
37. Ibid., 31.
38. Sayyid Qutb, *Social Justice in Islam*, trans. John B. Hardie (New York: Islamic Publications International, 2000).
39. Ibid.
40. Siddiqui, "Choosing Reconciliation Over Retribution," 33.
41. Ibid.
42. Ibid., 34.
43. Abul A'la Maududi, *Human Rights in Islam* (London: Islamic Foundation, 1980), 9.
44. Ibid.
45. Ibid.
46. Ibid., 15.
47. Ibid., 17.
48. Ibid.
49. Ibid., 19.
50. Ibid.
51. Ibid.
52. Ibid., 21.
53. Ibid.
54. Ibid., 22.
55. Ibid.
56. Ibid., 23.
57. Ibid., 24.
58. Ibid.
59. Ibid., 25.
60. Ibid.
61. Ibid., 28.
62. Ibid., 29.
63. Ibid., 30.
64. Ibid., 31.
65. Pollis quoted in Michael J. Perry, "Are Human Rights Universal? The Relativist Challenge," *Human Rights Quarterly* 19, no. 3 (1997): 461-509.
66. Ibid.
67. Legesse quoted in Ibid.
68. Panikkar quoted in Ann-Belinda Preis, "Human Rights as Cultural Practice: An Anthropological Critique," *Human Rights Quarterly* 18, no. 2 (1996): 286-315.
69. Hountondji quoted in Perry, "Are Human Rights Universal? The Relativist Challenge."
70. Perry, "Are Human Rights Universal? The Relativist Challenge."

71. Heiner Bielefeldt, "Muslim Voices in the Human Rights Debate" in *Human Rights Quarterly* 7, no. 3 (1995): 587-617.

72. Ibid.

73. Ibid.

74. Ibid.

75. Ibid.

76. Ibid.

77. Ibid.

78. Ibid.

79. Richard Rorty, "Human Rights, Rationality, And Sentimentality in *On Human Rights in The Oxford Amnesty Lectures*," ed. Susan Hurley and Steven Shue (New York: Harper Collins, 1993).

80. An argument could be made here that in Muslim countries such as Afghanistan, laws have been passed to force women to cover. It must be understood that to do so would violate basic principles of Islamic Law. Shariah laws are not designed to legislate commitment or religiosity. Therefore the commandments in the Qur'an that deal with worship and personal behavior are left to individual conscience. As the Qur'an encourages Muslim women to cover themselves in public, at the same time it does not legislate that if they do not they should be punished.