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ISLAM AND HUMAN RIGHTS: A POSSIBLE WAY OF RECONCILIATION

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INTRODUCTION

“It is not our purpose to become each other; it is to recognize each other, to learn to see the other and honor him for what he is: each the other's opposite and complement”.

Herman Hesse, *Narcissus and Goldmund* (1930)

Religion resurgence and the theory of human rights are two of the most discussed issues in contemporary political and philosophical debate. The assertion of special communal identities and the demand for increased protection for some basic rights occur in a complex world in which economy and technology reinforce global relationships at the same time that local and national cultural identities remain remarkably strong. In this framework, societies and politics change and, during this transformation, religious issues and claims for the implementation of human rights can conflict.

This is particularly evident in the Islamic context I want to deal with in my essay. Here we have strong resistances to the application of human rights standards, usually justified on the base of the presumed incompatibility of Islamic precepts with these standards.

Moreover, the relation between Islam and human rights has taken a new significance since 9/11: the terrorist attack on US was, in fact, largely perceived as the climax of a clash of civilizations: western democratic culture with his human rights conception from one side and Islam on the other.

The aim of this essay is to demonstrate that Islam is not at all against the implementation of human rights, on the contrary, the claims for respecting human rights standards can be found within the same Islam.

The starting point of my research is the strong belief that the clash of civilizations can be avoided endorsing dialogical solution of conflicts. When we face questions of conflict resolution and we want to avoid the alternative of violent clashes, we must in fact engage in a practice of reaching understanding.¹ Actually, when people do not agree on a specific issue, but desire to go on in their discussion, each of them should

¹ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, Cambridge MIT Press, 1996, p. 310.

leave apart those believes that others does not endorse, in order to build an argument, based of her other believes, to convince the rivals, or to pass to another aspect of the problem.²

This is exactly the approach I want to use in my essay, in order to demonstrate that a cross-cultural background agreement on human rights is possible and can be endorse even by Muslims. I will adopt the form of non-public reasoning that John Rawls called “conjecture” and described, in his *The Law of People*, as involving the defense of a political conception of justice or specific policies from within an alien ethical tradition, arguing

*from what we believe, or conjecture, are other people’s basic doctrines, religious or secular, and try[ing] to show them that, despite what they might think, they can still endorse a reasonable political conception that can provide a basis for public reasons.*³

I will start trying to show the weaknesses of the main positions against a possible reconciliation between Islam and human rights and then adopt a Rawlsian approach, showing that the overlapping consensus can be an

² Charles Larmore, *Le strutture della complessità morale*, Feltrinelli, Milano 1990, p. 70. See also Charles Larmore, “Political Liberalism”, *Political Theory*, XVIII, 1990, p. 347.

³ Rawls J., *The Law of Peoples*, Harvard University Press, 1999, pp. 155, 156.

effective instrument to justify human rights standards from a religious point of view such as the Muslim one.

Actually, the main commitment of this paper is to demonstrate that if *Islam does not matter* in justifying practices such as female genital mutilations, stoning to death for adultery and so on, *Islam matters* in starting a process of liberation of the entire humanity from them. In fact, not only, in many cases Islam has nothing to do with such practices, but, on the contrary, Islamic doctrine holds concepts and precepts that can be consistent with and supportive for the human rights promotion. Human rights, in fact, are universal in the sense that they can find a justification through several and different pathways, distinctive of each single cultural and historical traditions.

Islam, like any other religious tradition, can be used to support democracy, human rights and respect among different communities, or oppression, authoritarianism, and violence, depending on the choices and actions of his members. And in the actual global world, we, western, are as responsible of these choices as Muslims are. That is why, the third part of my essay is dedicated to the “western burden” to promote dialogical solutions and avoid the clash of civilizations.

PART ONE

Islam and Human Rights

Chapter one

The Complexity of the Islamic Context

1.1 The Fact of Pluralism in Islam

The relation between Islam and human rights in the contemporary world is complex and there is not a clear, traditionally established Islamic position on these latter. This is due to the fact that Islam is not a unique, monolithic entity. The worldwide community of Muslims, the *umma*, is in fact plural and fragmentary from both a geographical and cultural point of view and from the standpoint of the interpretation of the religious message.

The *umma* numbers about one billion and a half people, spread across many different nations, from Morocco to Indonesia, passing through

Egypt, Iran, Pakistan, Turkey and Kazakhstan. Even if, in a broader sense, there is only one Islam, defined by the unity of its credo and of its practice, due to the great diffusion of Islam all over the world, cultural, historical and traditional elements influence in a deep way the interpretations of the same religious message.⁴

This is possible because in the Muslim religion we do not have neither a church nor a unique doctrinal mastery, or a centralizing authority guarantor of the orthodoxy. Each believer makes reference, according to the profession of Muslim faith (*shahāda*), to a sole God (*tawhīd*) and to the prophetic mission (*nubuwwa*) of Muhammad, he is convinced to possess the true religion, and to belong to the unique *firqa* (unit among the believers) that, according to the tradition, will have salvation.⁵

Hence, *What is Islam?* asks Laith Kubba in his article “Faith and Modernity”,⁶ emphasizing the importance of a question usually underrated. According to Kubba there is a tendency of many intellectuals, Muslims and not, to fuse Islam with every kind of practice, institution or

⁴ There is a tendency to mistake Arabic with Islamic, using the two words as synonymous. Actually, the Arab world (al-‘alam al-‘arabi) includes only the Arabic-speaking countries. It consists of 24 countries and territories with a population of 325 million people, while Islamic context (Dar al-Islam) is much more wider. This latter in fact usually refers collectively to the 57 majority Muslim countries. Among them, it is remarkable that the top three countries in terms of Muslim population are all non-Arabic-speaking: Indonesia, Pakistan and India.

⁵ Sabrina Mervin, *L’islam. Fondamenti e dottrine*, Bruno Mondadori, Pavia 2001, pp. VII, VIII.

⁶ Laith Kubba, “Faith and Modernity” in *Journal of Democracy*, vol. 14, n. 2, 2003.

attribute more or less averse to it. It is pretty common, for example, the use of the term Islam in order to refer to the *shari'a* and vice versa. In this way, Islam has become the key word for all the ideas and the concepts whose original meaning has been lost, darkened, suppressed in the Muslim world as far as outside.

A good way to eradicate this practice would be, according to Kubba, to distinguish between the central message of Islam on one side, and the problematic baggage risen, in the centuries, around it.⁷ We must, in fact, take into account the fact that, if the sacred text for Muslims is the *Qur'an*, there are several interpretations of this same text and Muslims of a certain geographic area, in a specific time, make reference to one, rather than to another of these interpretations linked to different sects or schools of law, and to their peculiar juridical treatise legally recognized.⁸

Mohammad Khatami, past president of the Islamic Republic of Iran, maintains that

there are many and various conceptions of Islam, which does not belong to our time, but they have been elaborated in the

⁷ Ivi, pp. 45, 46.

⁸ Amy Gutmann, "La sfida del multiculturalismo", *Teoria Politica*, 3, 1993, p. 98.

course of history [...] However, I think that Muslims do not share a common and definitive opinion [...].⁹

Regarding this issue, Benazir Bhutto, twice prime minister of Pakistan, recently killed for her democratic ideals, wrote that

there is no one interpretation to it (Islam). [...] Just as we have different religious sects in Islam, upholding different religious views – whether it is the Shi'is, the Sunnis, the Malakis, the Hanafis, the Barelwis¹⁰ - so, too, we have different interpretations with regard to the more secular aspects of the duties incumbent upon the Muslim.¹¹

Thus, in the Islamic context we can find great differences between one group and another, due to cultural, historical and traditional elements that influence the interpretations of the same religion. The *umma* is therefore divided in different doctrinal currents and the *shari'a* remarkably varies for extent and contents in the different communities and schools of thought.¹²

⁹ Mohammad Khatami, *Religione, libertà e democrazia*, Laterza, Roma – Bari 1999, pp. 65 e 68 .

¹⁰ Sunnism and Shi'ism are the two largest sects of Islam, Hanafi and Malaki are two school of thought within Sunnism and the Barelwis are a revivalist sect founded in northern India in the nineteenth century.

¹¹ Benazir Bhutto, "Politics and the Muslim Woman", in Charles Kurzman, *Liberal Islam*, Oxford University Press, 1998, p. 107.

¹² See Benazir Bhutto, *Riconciliazione. L'Islam, la democrazia, l'occidente*, Bompiani 2008, pp. 90-91.

Sects, ideologies and different interpretations of the message of Islam often clash and, as a result, Muslim world is characterized by a permanent conflict which poisoned the internal relation of Islam for more than one thousand and three hundred years.¹³ Today, the sectarian violence inside Islam is definitely more evident because of the Iraqi civil war and many other conflicts, such as, for example, the one which is mangling Pakistan. And while the Muslim world seethes, the extremists manipulate Islamic dogma to justify the so called *jihad* against the West.¹⁴

The message of Islam has, in fact, been altered in order to fit fundamentalist claims and this manipulation find favour among Muslim communities in the growing hostility and contempt toward the West, and especially the United States. The historical experience of Colonialism, the Iraqi war and the situation in Palestine are considered the main reasons of this behavior, but the decaying values of the West are constantly invoked to explain Muslim contempt. Of course, none of these elements can justify terrorism.¹⁵

The framework I have just depicted, allow us to support the idea that what Rawls called “the fact of pluralism” exists in the same *dar al-Islam*. Therefore, it is not possible to consider reliable the existence of a single,

¹³ Ivi, p. 9.

¹⁴ *Ibidem*.

¹⁵ Ivi, p. 11.

authoritative, identifiably “Islamic” cultural position on human rights issues, because of the presence of different schools of thought and the variety of possible interpretations of the sacred text. While each school of thought can deny the validity of other interpretations – and many do – none can deny the existence of different interpretations. Therefore, those affirming the impossibility to reconcile Islam and human rights fail to capture the full richness of Islamic values.

1.2 Qur’anic Islam and Historical Islam

Furthermore, many intellectuals, also in the Islamic world, denounce the fracture between the original sources and the successive interpretations of the Islamic sacred texts. *Shari’a*, or the revealed norm of Islam, is given, for Muslims, like a system of fixed and immutable references, but the sacred right that is derived from it, the *fiqh*, has an history that can be put in relation with the political, social and economical conditions of the framework in which it has been elaborated.¹⁶

While shari’a is the revealed and immutable path, Fiqh represents the product of human thought and elaboration on it; more precisely Fiqh is the state of juridical reflection reached by

¹⁶ Sabrina Mervin, *L’islam op. cit.*, p. 41.

*Muslim scholars at a certain time and in certain context in light of their studies of the shari'a; and as such Fiqh, while remaining faithful to the function and purpose of Shari's, has to be dynamic, in constant elaboration [...].*¹⁷

The history of the Islamic law (*fiqh*), from the origins to nowadays, is the history of tensions between the revelation (*naql*) and the reason (*'aql*); between an idealized theory, based on complex principles and methods, and legal practice, flexible and in evolution.¹⁸

Usually, Islamic tradition dates back the legal science and its practice to the prophet Muhammad, who is the inspirer of the founders of the schools of *fiqh*. On the contrary, many historians of Islam strongly oppose such an interpretation. Joseph Schacht, for example, in his *Introduction au droit musulman*, maintained that the influence exercised by the Qur'an on the norms of *fiqh* is clearly inferior to the one the tradition attributes to it. There is, actually, an evident historical discontinuity between the revelation and the elaboration of the Islamic law. We cannot deny the fact that the Qur'an contains precise norms, prescriptions and injunctions, but the common opinion between the historians of Islam is that these cannot

¹⁷ Tariq Ramadan, "Ijtihad and Maslaha: the Foundation of Governance" in M. A. Muqtedar Khan (ed.), *Islamic Democratic Discourse: Theory, Debates, and Philosophical Perspectives*, Lexington, 2005, p. 3.

¹⁸ Sabrina Mervin, *L'islam op. cit.*, p. 41.

be considered a *corpus iuris* or a systematic code. Muhammad himself simply pleads a new moral order, revealing the intention not to produce a complete legal system.¹⁹ But, in this way, the first Islamic communities had to arrange two coexisting normative systems: from one side, the pre-Islamic consuetudinary rules and, on the other side, the prescriptions of the revelation. The competition between the social reality and the reflection on the Qur'an produced the norms of the *fiqh*.²⁰

*It is not religion which makes the difference. The difference comes from man-made law. It comes from the fact that soon after the Prophet died, it was not the Islam of the Prophet that remained. What took place was the emergence or the reassertiveness of the patriarchal society, and religion was taken over to justify the norms of the tribal society [...].*²¹

This process occurred even being explicitly condemned by the Holy Qur'an itself:

*Then woe to those who write the Book with their own hands,
and then say: "This is from Allah," to traffic with it for miserable*

¹⁹ Joseph Schacht, *Introduction au droit musulman*, Maisonneuve et Larose, Paris 1983, p. 22.

²⁰ Norman Calder, *Studies in Early Muslim Jurisprudence*, Clarendon Press, Oxford 1993, pp. 198-200.

²¹ Benazir Bhutto, "Politics and the Muslim Woman" *op. cit.*, p. 109.

*price! Woe to them for what their hands do write, and for the gain they make thereby.*²²

Moreover, during the period of creation of the *fiqh*, from VIII to XI century, different approaches were in competition in several centers of the empire, until the creation of four canonical schools, said *madh'hab*, whose influence became predominant in the classic period, after the creation of the *fiqh*.²³ This explains why the *shari'a*, even if it is unitary in the inspiration, keeps a plurality of expression particularly evident in the methods developed by the jurists in order to establish the norms of the *fiqh*.

Thus, speaking of Islam - as pointed out by An-Na'im in his project on *The Future of Shari'a* - is about how Muslims understand and practice their religion, rather than religion in the abstract.²⁴ There is in fact, a Qur'anic Islam different from a historical Islam: Qur'an is as a matter of fact atemporal, whereas Islam is an interpretation that many scholars

²² The Holy Qur'an, 2:79.

²³ Sabrina Mervin, *L'islam op. cit.*, pp. 44-45. I refer to the four mainline schools of Sunni: the Hanafi, the Maliki, the Shafi'i and the Hanbali. Even Shi'a Islam has its own school of law, the Jafari. It differs from the four schools of Sunni jurisprudence in its reliance on *ijtihad* as well as on matters of inheritance, religious taxes, commerce and so on. However, despite these differences, there have been numerous fatwas regarding the acceptance of Jafari *fiqh* as an acceptable Muslim *madh'hab* by Sunni religious bodies.

²⁴ Abdullahi Ahmed An-Na'im, *The Future of Shari'a: Secularism from an Islamic Perspective*, Research and Advocacy Project - Emory University, http://sharia.law.emory.edu/fr/human_rights.

tend to impose on Muslims as if it was definitive and total, claiming its perfect correspondence to the Holy text.²⁵

This imposition is possible even for the reasons that the great majority of Muslim does not know the Qur'an. First of all because illiteracy is rampant in the Islamic context and, moreover, because only twenty per cent of Muslim are Arabic speaking, all the others are condemned to memorize the Qur'an in a language they do not understand.

²⁵ Mohammed Talbi & Guendoline Jarczyk, *Islam e libero pensiero*, UTET, Torino 2005, p. 183.

Chapter two

Islam Versus Human Rights

Aware of the impossibility to consider a unique Islamic position on human rights, for the reasons I have just exposed, we still have to take into account that in most of the Muslim countries the application of human rights is often contested. This chapter aims at examining the point of views of those opposing human rights application in the *dar al-Islam*, showing the limits of their approach to go further and demonstrating that Islam can fit with the promotion of human rights thanks to a liberal interpretation of some religious basic precepts.

2.1 The Relativist Approach

Among those opposing human rights in the Islamic context, many adopt a typical relativist approach to justify their position. They, in fact, maintain that justice criterions are linked to particular cultural conceptions and, as a result, the cultural significance of each social good defines its just distribution.²⁶ Those authors basically uphold that all those values and

²⁶ Amy Gutmann, "La sfida del multiculturalismo" *op. cit.*, p. 4.

principles orienting our actions are culturally stated, therefore it is not possible to identify universal standards to judge different cultures.

According to this point of view, using averse values to judge another culture is not only unfruitful but even dangerous. In fact, the application, for example, of western cultural standards to judge averse cultures, exposes us to the risk of misunderstanding. In the world of Charles Taylor

*to approach, say, a raga with the presumptions of value implicit in the well-tempered clavier would be forever to miss the point.*²⁷

If justice is related to specific cultural conceptions, therefore polygamy or female genital mutilations, for example, can be considered unjust for the members of my culture, but acceptable for those of another one. My opinions on issues of social justice are justified on the base of the social conceptions that are peculiar of my specific culture, being linked to it. Therefore, there is no reason to believe that my moral principles, whose development is strictly connected to problems and practices of my specific culture, have to be applied as they are to other cultures, whose conceptions of social goods are so averse to mine.²⁸

²⁷ Charles Taylor , “The Politics of Recognition”, in Charles Taylor, *Multiculturalism*, Princeton University Press, New Jersey 1994, p. 67.

²⁸ Amy Gutmann, “La sfida del multiculturalismo” *op. cit.*, p. 5.

This relativist approach relies on the assumption that each culture contributes in a decisive way to the creation of the identity of its members. Thus, misrecognition of a culture, through the application of averse standards of judgment, would harm its members.²⁹ In fact, identity, i.e. a person's understanding of who she is, is partly shaped by recognition, therefore, as pointed out by Charles Taylor in his "The Politics of Recognition",

[...] misrecognition shows not just a lack of due respect. It can inflict a grievous wound, saddling its victims with a crippling self-hatred. Due recognition is not just a courtesy we owe people. It is a vital human need.³⁰

Of course nobody would deny the importance of identity and its recognition, but we must remark that the relativist approach has a main problem. It, in fact, relies on the parameter of dominant conceptions. Actually, it is based on the idea that the concept of justice inside a single culture is shared by all members of this same culture. On the contrary, some main contradicting conceptions on basic social goods often coexist inside a single cultural context. Relativists consider justice as what is largely perceived as such: in other words, among the coexisting conceptions

²⁹ See Charles Taylor, "The Politics of Recognition" *op. cit.*, p. 26.

³⁰ *Ibidem.*

present in a single culture, they take into account only the dominant one. Nevertheless, cultures own significant and systematic disparities of power related to differences of race, class, gender, religion and ethnicity. Those disparities influence the development of the dominant conception and the selection of the group that will represent the interests of such a conception.³¹

In this framework, relativism risks to identify justice with the dominant conceptions of leading groups, denying, in such a way, the possibility to use justice to judge the same dominant conceptions. Let's suppose, for argument sake, that there is a universal social consensus on slavery: it seems to me pretty clear that this consensus is not sufficient to justify this practice. Justice, in fact, cannot rely exclusively on dominant social conceptions. Therefore, coming back to the main issue of this chapter, relativism cannot justify the non-adoption of human right in an Islamic context.

2.2 The “Hermeneutic of Suspicion”

Behind a relativist critique to human rights there is the widespread belief that they are a western product. According to relativists, in fact, human

³¹ Amy Gutmann, “La sfida del multiculturalismo” *op. cit.*, pp. 4-8.

rights are the result of a cultural background and a system of values completely alien to the Muslim one. This is what Jürgen Habermas defined “hermeneutic of suspicion”,³² i.e. the tendency to present democracy and human rights as a hegemonic taking up of power of a predominant western world.³³

There is no doubt that the idea of human rights, as rights that one has simply because she is a human being,³⁴ i.e. universal and inalienable, spread in the aftermath of the Second World War. It was, in fact, an attempt to achieve the benefits of strong entrenchment of certain fundamental rights beyond the contingencies of national politics. The founding vision was that these rights are so fundamental that they must be safeguarded through international consensus and cooperation in order to ensure their protection under national constitutional and legal systems.³⁵

But, in reality, the first attempt to introduce the language and the culture of human rights within the world system did not come from a western

³² Jürgen Habermas, *The Inclusion of the Other: Studies in Political Theory*, MIT Press, 2000, Trad. it. *L'inclusione dell'altro*, Feltrinelli, Milano 1998, p. 223.

³³ See also Jürgen Habermas, “Legittimazione in forza dei diritti umani”, *Fenomenologia e Società*, 2, 1997, p. 8.

³⁴ See Jack Donnelly, “The social Construction of International Human Rights” in Tim Dunne & Nicholas J. Wheeler, *Human Rights in Global Politics*, Cambridge University Press, 1999, p.80.

³⁵ Eva Brems, *Human Rights: Universality and Diversity*, Martinus Nijhoff, The Hague, 2001, p. 5–7.

country. It was, in fact, Japan to propose the introduction of a norm on racial equality to the League of Nations, during the Paris Peace Conference of 1919. More surprisingly, this attempt found strong resistances in Western countries such as US and United Kingdom. Resistances to human rights come from the Western idea of state sovereignty and only the aftermath of Second World War with the public condemnation of the Nazi politics made the human rights paradigm dominant in the West.³⁶

I do not want to deny that the present formulation of international human rights standards strongly reflects Western political philosophy and experience. Many of the articles of the Universal Declaration, in fact, copy the language of the Bill of Rights of the United States.³⁷ But this does not make international human rights standards alien or irrelevant to other societies and cultures, which can indeed appreciate the need to protect these rights in their own contexts. At the end of the day, why should human rights belong only to the West?

³⁶ See Antonio Cassese, *I diritti umani nel mondo contemporaneo*, Laterza, Roma-Bari 1988, p. 11.

³⁷ Eva Brems, *op. cit.* p. 17

2.3 Does Islam Really Reject Human Rights?

Non-relativist oppositions to the application of human rights standards in the Islamic context, usually assume that the curbs on human rights constitute an authentic product of the Islamic culture. Thus, the same Islam would imply the refusal of western standards and Muslims would not aspire to enjoy those rights considered fundamental in the West.³⁸

As Michael Ignatieff writes in *Human Rights as Idolatry*, the scholars supporting such a position maintain that

*the freedoms articulated in the Universal Declaration make no sense within the theocratic bias of Islamic political thought. The right to marry and found a family, to freely choose one's partner, is a direct challenge to the authorities in Islamic society that enforce the family choice of spouse, polygamy, and the keeping of women in purdah.*³⁹

³⁸ Ann Elizabeth Mayer, *Islam and Human Rights*, Westview Press 1998, pp. 8-9.

³⁹ Michael Ignatieff, *Human Rights as Idolatry*, Princeton University Press 2001, p. 60.

Nevertheless, in Islam as in all major religions, we can find a wide range of concepts and beliefs that can be used to support both human rights and their denial. As Abdullahi An-Na'im correctly pointed out

the discussion of the relationship between Islam and human rights does not mean that Islam, or any other religion is the sole "cause" or explanation of the attitudes and behavior of believers. Muslims may accept or reject the idea of human rights or any of its norms regardless of what they believe to be the orthodox view of their religion on the subject. In fact, various levels of acceptance or compliance with human rights norms are more likely to be associated with political, economic, social and/or cultural conditions of present Islamic societies, than with Islam as such. Consequently, whatever the role of Islam may be, it cannot be understood in isolation from other factors that influence how Muslims interpret and attempt to comply with their own tradition.⁴⁰

What has happened throughout the Muslim world is that official Islam (*al-Islam al-rasmî*) usually provided rulers with the legitimacy they needed to be in power, exploiting those religious elements that could be interpreted

⁴⁰ Abdullahi Ahmed An-Na'im, *The Future* op. cit. http://sharia.law.emory.edu/fr/human_rights.

in favour of their position too often patriarchal and against changes. *Ulema* have generally helped non-democratic regimes through their Friday sermons (*khutbah*), underscoring obedience to authority, supporting governments and emphasizing their inseparability from Islam.⁴¹

The powers which base themselves on conservatism - points out Hassan Hanafi, Professor of Philosophy at Cairo University - are the real obstacle for social change in the Islamic context. Conservatism, in fact, acts against any effort to promote human rights application or to promulgate a new family law.

It is not religion but a political, conservatist power in every society that uses religion as its legitimizing device. Religion has room for social change within itself as law is temporary and can change according to social change. Since liberalism, secularism and progressive forces in our society, in this historical moment, are not so strong they are swimming against the tide. The overwhelming force seems to be conservatism, in the state apparatus, in institutions and in the mass media.⁴²

⁴¹ James Bill and Robert Springborg, *Politics in the Middle East*, Reading, MA Addison-Wesley 2000, p. 43.

⁴² Hassan Hanafi, "The problem is not Islam. It's politics", *Reset DOC*, 19 Sept 2006, http://resetdoc.org/EN/hassan-hanafi-interview.php?search_str=islam.

Therefore

*it is not Islam that prevents Muslims from accepting human rights, but rather a religious and political dogmatic trend of thought, ever prevalent, which claims that Islam and modernity contradict one another.*⁴³

Shari'a principles are basically consistent with most human rights norms, with the exception of some specific and very serious aspects of the rights of women and non-Muslims, as well as freedom of religion and belief. However many Islamic scholars are convinced that Islam can and should be interpreted as a promoting factor for social change, liberalism and secularism.

According to Tariq Ramadan, well known Swiss Muslim academic and theologian

[...] the Qur'an is the word of God; yet it is a word revealed over a period of 23 years in a specific socio-historical context. Several Qur'anic verses can be interpreted only in the light of that context. A literal, ahistorical reading has the effect of making the text rigid, and in turn of preventing us from grasping

⁴³ Nasr Abu Zaid, "The Nexus of Theory & Practice" in Mehran Kamrava (ed.), *The New Voices of Islam*, I.B. Tauris, London - New York 2006, p. 174-175.

*the objectives of Revelation. Only by carrying on the task of reinterpretation in the light of new geographical and historical contexts can Muslims be faithful to the ethics and the finalities of the revealed message.*⁴⁴

In the following chapter I will deal with Islamic efforts toward the task of reinterpreting Islam.

⁴⁴ Tariq Ramadan, "No faithfulness without evolution" published on 18 March 2008 on <http://www.tariqramadan.com/spip.php?article1400>

Chapter three

A Liberal Interpretation of Islam

3.1 Historical Background

Since the 8th century, intense legal discussions have opposed those who favour strict attachment to the historically constituted schools and those who call for a constant return to the primary scriptural sources.⁴⁵

The Mu'tazilites, just one century after the spread of Islam, maintained that the Qur'an is God given, but because of the fact that "there is none co-equal or comparable unto Him",⁴⁶ its message cannot be eternal. This desacralization of the Holy book allows an allegorical interpretation of the text that can be, in this way, adapted to the actual situation through time. The main aim of the Mu'tazilites was, indeed, to limit the power of *ulema*, who abused their role of interpreters of God's words, till that time.⁴⁷

⁴⁵ See Albert Hourani, *Arabic Thought in the Liberal Age 1798-1939*, Cambridge University Press, Cambridge 1962, p. 67 and following, and Tariq Ramadan, *Radical Reform: Ethics and Liberation Two Excerpts from Tariq Ramadan's Forthcoming Book*, www.theamericanmuslim.org/tam.php/features/articles/radical_reform_ethics_and_liberation_two_excerpts_from_tariq_ramadans_forth/.

⁴⁶ The Holy Qur'an, 112:4.

⁴⁷ See Valentina Colombo, *Basta op. cit.*, pp. XLII and XLIII.

Mu'tazilites were persecuted as heretics until 850 AD, thank to Caliph Mutawakkil. But after three centuries, another group of philosophers, headed by the Andalusian Ibn Rushd, better known as Averroè, maintained that each time the Qur'an is not clear on a specific issue, we are entitled to use allegorical interpretation.⁴⁸ The aim of Averroè was to reconcile religion and Aristotelian philosophy, showing that faith and reason are not in conflict.⁴⁹

We assisted to another flourishing of innovative moderate ideas, against conservative thoughts of *ulema*, after Napoleon's occupation of Egypt in 1798. The "cultural invasion" of engineers, doctors, scholars and even actors coming from France after Napoleon's conquest, led Egyptians to develop a new critic thought based on those ideas coming from Enlightenment.⁵⁰

As a result, in the late 19th century, Egypt and than Lebanon and other Arabic-speaking countries experienced the so called *nahda* (awakening), cultural and intellectual renaissance often regarded as the Egyptian counterpart of the European Enlightenment era, and a period of intellectual modernization and reform.

⁴⁸ Ivi, pp. XLIII and XLIV.

⁴⁹ See Averroè, *On the harmony of Religion and Philosophy*, <http://www.muslimphilosophy.com/ir/fasl.htm>.

⁵⁰ Valentina Colombo, *Basta op. cit.*, p. XLIV and XLV.

In the same period, the *Salâfiyya* movement, especially in the persons of Jamâl ad-Dîn al-Afghânî and Muhammad `Abduh, had a new rush in its attempt to reform Islam in order to incorporate Western conception of modernity. The members of the movement supported the idea that the values of early Islam were compatible with those of modern Europe. As a result, they attributed to Islam secular virtues such as rationalism, the encouragement of sciences, political power, and democracy.

Thanks to the *Nahda* and *Salâfiyya* movements the concepts of research, renewal and reform of thought spread and became constant in contemporary Muslim discourse.⁵¹

3.2 Liberal Islam

Over the past decades, reforming currents of Islam has seen a new light thanks to many prominent Muslim thinkers. They dedicate their intellectual efforts to reform the interpretations of Islam, reformulating some of the main premises of Islamic theology and jurisprudence in a

⁵¹ See Tariq Ramadan, *Aux Sources du renouveau musulman*, Bayard, Paris 1998.

way that they are consistent with and supportive for the basic principles of democracy and human rights.⁵²

Let's follow the suggestion of the Indian legal scholar Asaf Ali Asghar Fyzee in calling this trend *Liberal Islam*,⁵³ although not all authors falling in this category necessarily self-identify as liberals.

*Liberal Islam defines itself in contrast to the customary tradition and calls upon the precedent of early period of Islam in order to delegitimize present-day practices. [...] There are various version of Islamic liberalism, but one common element is the critique of both the customary and revivalist traditions for what liberals sometimes term "backwardness", which in their view has prevented the Islamic world from enjoying the fruit of modernity: economic progress, democracy, legal rights, and so on. Instead, the liberal tradition argues that Islam, properly understood, is compatible with – or even precursor to – Western liberalism.*⁵⁴

⁵² Mehran Kamrava, "Reformist Islam in Comparative Perspective" in Mehran Kamrava (ed.), *The New Voices of Islam op. cit.*, p. 1.

⁵³ Asaf A. A. Fyzee, "The Reinterpretation of Islam" in John J. Donohue and John Esposito (eds.), *Islam in Transition: Muslim Perspectives*, Oxford University Press, 1982, p. 193.

⁵⁴ Charles Kurzman, "Liberal Islam and Its Islamic Context" in *Liberal Islam*, Oxford University Press, 1998, p. 6.

Among the authors falling in the category of liberal Islam we can list Abdullahi An-Na'im, Sudanese legal scholar and human rights activist, striving to reconcile his Islamic faith and identity with his commitment to universal acceptance of and respect for human rights; Mohamed Akroun, Professor of Islamic Thought, who has attempted to reshape Islamic interpretation through the use of contemporary social scientific and linguistic methods; Mohamed Talbi, Tunisian historians considered an authority on Qur'anic exegesis and Islamic Thought; Abdul-Karim Soroush, a leading oppositional figure in Iran, Nurcholish Madjid, a prominent Indonesian intellectual and many others. All those thinkers support the idea that human rights and Islam are not at all incompatible and that many rights present in the Universal Declaration (1948) can find justification in the same precepts of Islam.

Charles Kurzman in the introduction to *Liberal Islam* identifies three principal approaches in the reforming wave Islam is experiencing: *liberal*, *silent* and *interpreted* mode. The liberal mode, according to Kurzman, takes liberal positions as being explicitly sanctioned by the *shari'a*. As a result, liberal positions are divine command and not merely human choices. This approach avoids the accusation of inauthenticity by

grounding liberal position in the Islamic sources but, on the other side, is susceptible to theoretical counterattacks based on orthodox theology.⁵⁵

The second mode, the silent one, maintains that Muslims are free to adopt liberal positions on subjects on which the *shari'a* is silent.⁵⁶

*If Islam does not “mention” something, this indicates one of two things: either that it is not stated anywhere in the traditional sources or that Muslims have never practiced it throughout their history. In the first case, the non-mentioning of something implies that it is permitted. [...] In the second case [it] is only natural that Muslims should respond to changes and developments at all times and in all circumstances.*⁵⁷

This premise removes entire fields of human action from being subjects of Qur'anic scholarship. The main strength of this approach lies in its proficiency to allow intellectuals such as 'Abd al-Raziq or Sa'id Al-'Ashmawi to maintain, for example, that there is nothing in the *shari'a* that compels us to bind religion to a state setting, therefore democracy and

⁵⁵ Ivi, pp. 13-14.

⁵⁶ Ivi, p. 14. See also Muhammed S. El-Awa, *On the Political System of the Islamic State*, American Trust Publications, Indianapolis 1980, p. 83.

⁵⁷ Muhammed Salim El-Awa, “Political Pluralism from an Islamic Perspective” in Azzam Temimi (ed.), *Power-Sharing Islam?*, Liberty for Muslim World Publications, London 1993, pp. 72-73.

secularism in the Muslim world became possible. On the other side, the weakness lies in considering God's revelation as incomplete. Thus, this approach is susceptible to the counterargument that God's message encompasses all aspects of human life and that religion and politics are not separated in Islam. Moreover, the silent mode of liberal Islam leaves little room to challenge illiberal elements explicitly mentioned in the *shari'a*.⁵⁸

The third mode of liberal Islam, or the "interpreted mode", argues that *shari'a*, while divinely inspired, is subject to multiple human interpretations that are, by definition, conflicting and fallible. This approach can find its source in the following Prophet saying:

The Qur'an is malleable, capable of many types of interpretation. Interpret it, therefore, according to the best possible type.

Although revealed religion is divine, the science of religion is a human production. Religious interpretation is, in fact, a human phenomenon and is subject to multiple perspectives.⁵⁹

⁵⁸ Charles Kurzman, "Liberal Islam.." *op. cit.*, pp. 14-16.

⁵⁹ See Abdul Karim Soroush, "The Evolution and Devolution of Religious Knowledge" in Charles Kurzman, *Liberal Islam, op. cit.*, pp. 244-254.

Of course this approach of interpreted *shari'a* can be accused of apostasy, but its main strength is to bind orthodox scholar to the debate in which every theoretical advance is taken as evidence of interpretative variation.

The “interpreted *shari'a*” mode seems the most fruitful from the point of view of our aim. Thus, let’s analyze some main basic notions of Islam that present a significant margin of flexibility for proposing new readings of the sources, in order to support the possible justification of human rights standards from an Islamic point of view.

3.3 The Concept of *Ijtihad*

A key concept for an Islamic promotion of human rights is *ijtihad*, or independent reasoning. This notion describes the process of making a legal decision by independent interpretation of the legal sources, the Qur'an and the *sunnah*.

It is opposed to the imitative following of medieval authorities, and call on the Muslims to

*draw independent conclusions and judgments on legal and other issues.*⁶⁰

Some *ulema* have defined *ijtihad* as the application by a jurist of all his faculties both in inferring, with a degree of probability, the rules of *shari'a* from their sources and in implementing such rules and applying them to particular issues.⁶¹

Reformists stress the dynamic and context-driven potential of an interpretation of Islam based on *ijtihad*, calling for a texts analysis based on changing and evolving circumstances.⁶² This kind of analysis is possible because the great majority of the Qur'anic verses and of the *ahadith*⁶³ are open to interpretation and commentary. *Ijtihad* can, therefore, be a tool for understanding Islamic principles in a way that fits the changing needs of individuals and societies.

⁶⁰ Mir Zohair Husain, *Global Islamic Politics*, Longman, New York 2003, p. 90

⁶¹ Muhammad Khalid Masud, *Shatibi's Philosophy of Islamic Law*, Kitab Bhavan, 1998, p. 367.

⁶² Mehran Kamrava, "Reformist Islam.." *op. cit.*, p. 10.

⁶³ *Ahadith* is the plural form of the word *ahadith*, the oral traditions relating to the words and deeds of the Islamic prophet Muhammad.

In the Islamic tradition we can find two conceptions of *ijtihad*. The first one is a narrower, legalistic notion that refers to *ijtihad* as

*a process of juristic reasoning employed to determine the permissibility of an action when primary sources, namely the Qur'an and sunnah, are silent and earlier scholars of shari'a had not ruled on the matter. For those who hold this view of ijtihad, who can perform ijtihad is often more important than the need for ijtihad.*⁶⁴

This view, confining the right to understand and explain Islam only to Muslim jurists, does not encourage independent thought. Moreover, it opposes reason that should be employed, according to this interpretation, only when the texts are silent and no medieval scholar has addressed the issue under scrutiny. As a result, reason is the last resort for understanding God's will.⁶⁵

The second conception of *ijtihad* can be more fruitful from our point of view. Many moderate Muslim scholars, in fact, see *ijtihad* as the spirit of inquiry and desire for all forms of knowledge, which needs to be revived

⁶⁴ M. A. Muqtedar Khan, "Two Theories of Ijtihad", <http://www.ijtihad.org/ijtihad.htm>.

⁶⁵ *Ibidem*.

in order to promote freedom of thought and rational thinking. In the words of Khurshid Ahmad, the Pakistani Muslim economist:

*God has revealed only broad principles and has endowed man with the freedom to apply them in every age in a way suited to the spirit and conditions of that age. It is through the Ijtihad that people of every age try to implement and apply divine guidance to the problems of their time.*⁶⁶

In this framework, the text should be considered as a stimulus for a living, contextualized and actual interpretation of the Qur'an. In fact, the Qur'an speak to living people: a stimulating interpretation of the text must take into account the starting point, i.e. the Revelation, but also look at the future toward the same Qur'an is addressing:

*this Qur'an guides to the best path, and brings good news to the believers who lead a righteous life, that they have deserved a great recompense".*⁶⁷

The Qur'an, in fact, is guide (*hudan*), not stagnation or idleness.⁶⁸

⁶⁶ Khurshid Ahmad, "Islam: Basic Principles and Characteristics" in Khurshid Ahmad (ed.), *Islam: Its Meaning and Message*, Islamic Council of Europe, London 1976, p. 43.

⁶⁷ The Holy Qur'an, 17:09.

In the Islamic context in which truth is considered divine and divine only, as in all religions based on Revelation, there is little room for rational inquiry. As long as Islam is equated with *shari'a*, Islamic scholarship with *fiqh* and real knowledge with juristic knowledge, *ijtihad* will remain a limited jurisprudential tool and closed minds will never open.⁶⁹ On the contrary, *ijtihad* has to be seen as the source of an Islamic legitimation of rational reasoning, assuming a crucial role in promoting human rights and providing the basis for democratic reforms.

Islam has nothing to fear from reason, as pointed out by Averroè in *The Decisive Treatise*; on the contrary, rational thought must be considered the "engine of civilization".⁷⁰ *Ijtihad* has to be employed as an instrument to critique prevalent understanding of Islam and articulate a more modern and, perhaps, liberal one. As a result, a broad vision of *ijtihad* ensures a reform of Islam without losing the connection to Divine Revelation and traditional culture. Muslims must continue to embrace this spirit of inquiry and desire for all forms of knowledge in order to revitalize the same Islamic civilization.⁷¹

⁶⁸ Mohammed Talbi, "La *shari'a* ha ancora un futuro tra laicità e ateismo?", *Filosofia e Questioni Pubbliche*, vol. II, n. 2/2002, p. 85,86.

⁶⁹ M. A. Muqtedar Khan, "Two Theories of *Ijtihad*" *op. cit.*

⁷⁰ See Averroè, *Decisive Treatise and Epistle Dedicatory*, Brigham Young University, 2002.

⁷¹ M. A. Muqtedar Khan, "Two Theories of *Ijtihad*" *op. cit.*

3.4 The Concept of *Istihsan*

Another key concept for an Islamic promotion of human rights can be the one of *istihsan*. In its juristic sense, *istihsan* is a method of exercising personal opinion, that can be used in order to avoid any rigidity and unfairness that might result from a literal application of the law.

The decision of Caliph Umar Bin Khattab to suspend, in 634 AD, "hadd" penalty of amputation of hand for thieves during famine is considered a typical case of *istihsan*. Here, in fact, positive law of Islam was suspended as an exceptional measure in an exceptional situation. Another clear example of *istihsan* is the acceptance of photography, sound recording and laboratory analysis, in addition to oral testimony, traditionally considered the only form of evidence in Islamic law.

Imam Shafi, Shii and Zahiri *ulema* have rejected *istihsan* as a method of deduction. However, *istihsan* has been validated by Hanafi, Maliki and Hanbali jurists and, in effect the majority of modern jurists maintain the essential validity of *istihsan* as undeniable.⁷² Even if there is no definitive authority for *istihsan* in the Qur'an and the *sunnah*, the very famous

⁷² See Shah Abdul Hannan, *Usul al-Fiqh*, Virtual library of Witness-Pioneer http://www.witness-pioneer.org/vil/Books/SH_Usul/istihsan_and_maslahah.htm.

hadith “no harm shall be inflicted or tolerated in Islam” has been quoted in its support.

The concept of *istihsan* is in some way close to the one of “equity” in Western law even if this second one is based on natural law whereas *istihsan* is essentially based on divine law. According to John Makdisi, Professor of Law at St. Thomas University in Florida,

*equity finds the basis for its legal authority in a set of preconceived norms existing apart from the legal system - while - istihsan finds its basis in a determination of the causes underlying existing legal rules and in reconciling apparent conflicts between rules based on this determination.*⁷³

Istihsan is not independent of *shari'a*, it is integral part of it, but can be used to achieve important results in adjusting law according to the changing needs of society.

⁷³ John Makdisi, “Legal Logic and Equity in Islamic Law”, *The American Journal of Comparative Law*, 33 (1), Winter 1985, pp. 63-92.

3.5 The Concepts of *Maslaha* and *Istislah*

The notion of *Maslaha*, literary public interest, is invoked to prohibit or permit something on the basis of whether or not it serves the public's benefit or welfare.⁷⁴ The concept was used by the Andalusian lawyer al-Shatibi (AD 1388), to support the idea that, regarding questions related to God, human beings should look to the Qur'an or the *sunnah* for answers, but regarding the relationship between humans, they should look for the best public solution. Since societies change, al-Shatibi thought that the relationship between humans also needed to change.⁷⁵

Al-Ghazali, one of the most prominent and influential philosophers and jurists of Sunni Islam, described *Maslaha* as consisting of considerations which secure a benefit or prevent harm.

What we mean by Maslaha is the preservation of the objective of the Law, which consists in five things: the protection of religion, life, intellect, offspring, and property. Whatever ensures

⁷⁴ See Knut S. Vikoer, "Between God and State", in *The Oxford dictionary of Islam*, Spartacus, 2003.

⁷⁵ Shah Abdul Hannan, *Usul al-Fiqh*, *op. cit.*

*the protection of these five principles is Maslaha; whatever goes against their protection is Mafsada, and to avoid it is Maslaha.*⁷⁶

According to al-Ghazali *shari'a*, other than developing clear guidance of how to gain redemption in the afterlife, also aims at creating an environment that allows each individual well being and the pursuit of a virtuous and pious lifestyle. In fact, according to him, God revealed divine law with the purpose of advancing human benefits in this world and the next. Therefore, jurisprudence should aim at safeguarding the already mentioned five necessities, because public benefit, even if not directly mentioned in the revealed text, should be considered a valid source of legislation.⁷⁷

The need to seek the good of humankind is present in the Qur'an in *surah al-'Araaf* and *surah Yoonus*:

[The Prophet] commands them what is just and forbids them what is evil; he allows them as lawful what is good and prohibits them from what is bad; He releases them from their heavy

⁷⁶ Abu Hamid al-Ghazali, *Al-mustafa min ilm al-usul*, Muthanna, Baghdad 1970, vol I, pp. 286-287.

⁷⁷ Felicitas Opwis, "Islamic Law and Legal Change: The Concept of *Maslaha* in Classical and Contemporary Legal Theory", in Abbas Amanat and Frank Griffel (eds.), *Shari'a: Islamic Law in the Contemporary Context*, Stanford University Press, 2007, pp. 62–82, 203–07.

*burdens and from the yokes that are upon them. So it is those who believe in him, honour him, help him, and follow the light which is sent down with him, it is they who will prosper.*⁷⁸

*O mankind! There hath come to you a direction from your Lord and a healing for the (diseases) in your hearts, and for those who believe, a guidance and a Mercy.*⁷⁹

Moreover, many *ahadith* can be quoted to support the seeking of public benefit. Among them we can list the following ones:

- No harm shall be inflicted or tolerated in Islam.
- The Prophet only chose the easier of two alternatives so long as it did not amount to a sin.
- Allah loves to see that His concessions are observed, just as He loves to see that His strict laws are observed.

To seek for the good is the very essence of the Islamic teaching. *Maslaha* is close to the Western concept of utility. It, in fact, literally means benefit or interest. It is qualified as *Maslahah Mursalah* when neither the Qur'an nor the *sunnah* confirm or reject a *Maslaha* that became apparent in the

⁷⁸ The Holy Qur'an, 7:157.

⁷⁹ The Holy Qur'an, 10:57.

age after Revelation.⁸⁰ In this case, *Maslaha* refers to unrestricted public interest and is synonymous with *Istislah*.

Istislah, which means “to seek the good”,⁸¹ is a method employed by Muslim jurists to solve perplexing problems that find no clear answer in sacred religious texts.⁸² In his legal research, Imam Malik referred to the notion of *Istislah* as one of the fundamentals of the *shari’a*. To support this assumption he cited the example of the Companions, who formulated various legal decisions in accordance with the common good while respecting the corpus of the sources.⁸³

The majority of *ulema* maintain that *istislah*, or the consideration of public interest, is a proper ground for legislation. Al-Shatibi, a Spanish Sunni Islamic legal scholar of XIV century, pointed out that this is the purpose of Qur’anic Ayat n. 107 of *surah* Al Anbiya that

we have not sent you but as a mercy for all creatures.

⁸⁰ Tariq Ramadan, “The Way of Islam”, in Mehran Kamrava, *New Voices of Islam op. cit.*, p. 75

⁸¹ *Istislah* is the tenth form of the root *sa-lua*, the same of *Maslaha*.

⁸² Shah Abdul Hannan, *Usul al-Fiqh, op. cit.*

⁸³ Tariq Ramadan, “Ijtihad and Maslaha: the Foundation of Governance” *op. cit.*, p. 5.

Therefore, no unnecessary rigor is recommended in the enforcement of *Ahkam* (Islamic commandments) and Muslims should benefit from the flexibility of *shari'a* granted by the concept of *maslaha* and *istislah*.⁸⁴

3.6 Pluralism and Freedom of Choice in Islam

As Mohamed Talbi pointed out in his interview to Gwendoline Jarczyk, if God had had a unique project, without alternatives, she would have created only believers. But she did not, therefore our differences must be part of her project.⁸⁵ The same Qur'an, maintains Talbi, contains such a statement:

*And if your Lord had pleased He would certainly have made people a single nation, and they shall continue to differ.*⁸⁶

And even the *surah* named "*Jonah*" confirms the same point:

*And if your Lord had pleased, surely all those who are in the earth would have believed, all of them; will you then force men till they become believers?*⁸⁷

⁸⁴ Shah Abdul Hannan, *Usul al-Fiqh*, *op. cit.*

⁸⁵ Mohamed Talbi & Gwendoline Jarczyk, *Islam e libero pensiero op. cit.* p. 137.

⁸⁶ The Holy Qur'an, 11:118.

Thus, Islam accepts as a fundamental principle that human beings were created in different societies and religions: the same God created multiplicity, therefore, she demands tolerance for all the creatures and the cultures she created.⁸⁸

We can find support to a positive interpretation of pluralism in Islam even in the sayings of the Prophet:

The differences of opinion among the learned within my community are [a sign of] God's grace.

And what is most interesting is that, not only Islam insists on tolerance, maintaining that pluralism is God's mercy, but even provides grounds for freedom of choice:

*You shall have your religion and I shall have my religion.*⁸⁹

There is no compulsion in religion; truly the right way has become clearly distinct from error; therefore, whoever disbelieves in the Shaitan and believes in Allah he indeed has

⁸⁷ The Holy Qur'an, 10:99.

⁸⁸ Benazir Bhutto, *Riconciliazione op. cit.*, p. 49.

⁸⁹ The Holy Qur'an, 109:6.

*laid hold on the firmest handle, which shall not break off, and Allah is Hearing, Knowing.*⁹⁰

Not only there cannot be coercion in religion according to the Holy Book but, what is more interesting, is that Islam allows salvation even for non-Muslim believers:

*surely those who believe, and those who are Jews, and the Christians, and the Sabians,⁹¹ whoever believes in Allah and the Last day and does good, they shall have their reward from their Lord, and there is no fear for them, nor shall they grieve.*⁹²

As pointed out by Khaled Abou El Fadl in his *Islam and the Challenge of Democracy*, the Qur'an makes no difference between the sanctity of a Muslim and the one of a non-Muslim. No human being can limit in any way God's mercy, therefore, people cannot operate discriminations between religions.⁹³

⁹⁰ The Holy Qur'an, 2:256.

⁹¹ Most likely, the Sabians of the Qur'an were the Mandaeans of southern Iraq, they, in fact, had been living in this area since the second century of the Christian era. Their beliefs and cults have many similarities to Judaism, Christianity, and Zoroastrianism.

⁹² The Holy Qur'an, 2:62.

⁹³ Khaled Abou El Fadl, *Islam and the Challenge of Democracy*, Princeton University Press, 2004, p. 29.

I would like to conclude this chapter citing the famous Arab saying “La ya’ Allāh illa Allāh”, i.e. only God knows God. That is to say that each human attempt to explain the mystery of God’s project on mankind is vane.

PART TWO

A Way of Reconciliation

Chapter four

Towards a General Background Agreement on Human Rights

Given the fact of pluralism in Islam and the possibility to adopt a liberal interpretation of its basic principles in order to fit the request for human rights implementation, let's analyze, from a philosophical point of view, a possible model of reconciliation between Islam and human rights.

The different forms of resistance to a universal acceptance of human rights - in Islam as in many other contexts - mostly depend on the dual nature of the same human rights. They, in fact, have both a philosophical (moral and ontological) and an empirical (historical and legal) nature. This fact has two main consequences: on one side, being the fruit of moral reasoning, human rights have a natural claim to a metaphysical foundation. On the other side, being connected with specific global

institutions, such as UN for example, human rights are characterized by a general background agreement.

Resistances to a universal acceptance of human rights usually deny the possibility to find out this kind of general background agreement, given the fact of pluralism. The quality of being a universal norm cannot be assumed or imposed. I completely agree with Abdullahi An-Na'im in rejecting

*the notion that the only valid model for the universality of human rights is set by Western or any other group of societies for the rest of the world to follow, if they wish to be considered a part of civilized humanity.*⁹⁴

Since all human societies adhere to their own normative systems, shaped by their own context and experiences, any universal concept cannot be simply proclaimed or taken for granted. Therefore, we face the problem of how to generate, promote, and sustain consensus on universal human rights norms in non-western cultures.⁹⁵

⁹⁴ Abdullahi Ahmed An-Na'im, *The Future op. cit.*

⁹⁵ *Ibidem.*

The key question is thus: why should we, westerns, Muslims, Africans or Chinese, act in accordance with human rights standards? This is a typical question of legitimacy.

By legitimacy I mean something different from other traditional philosophical-legal notions, such as, for example, effectiveness, legality and validity. Actually, the mere fact that a legal rule or disposition works, that is to say effectiveness, does not say anything special about its legitimacy, which presupposes something more than some occasional compliance, such as a kind of partial moral assent or consent. Concerning legality, it implies the acceptability of the formal pedigree of a legal rule or disposition. Legality with effectiveness together, in other words legality with some substantial degree of compliance, implies validity. Legitimacy - differently from validity - presupposes that this potential acceptance is an acceptance for the rights reasons.⁹⁶

A kind of conferred, quasi-general or at least widespread recognized legitimacy provides legitimation to a system of legal rules or dispositions. Legitimation is therefore based on the empirical consent that peoples give to these norms.⁹⁷

⁹⁶ Sebastiano Maffettone, "Global Legitimation", paper presented to the Conference "Reasonableness in Law" – European University Institute of Florence, p. 5.

⁹⁷ *Ibidem*.

Hence, legitimation is complementary with justification: no regime, in fact, is legitimate unless it is reasonable from every individual's point of view.⁹⁸

The problem with justification is that cannot be so public or widespread, because of the existence of a plurality of points of view on the same system of norms. This is exactly the case of human rights: they can have many justifications, all equally right even if with different cultural origins.

Having already demonstrated that there is not a clear and univocal rejection of human rights standards in Islam, but, on the contrary, that is possible to find a human rights' justification through a liberal interpretation of its key concepts, I will try to demonstrate that it is possible to reach an acceptance for the rights reasons of human rights through a sort of Rawlsian "overlapping consensus" considering human rights as a freestanding political conception.

⁹⁸ Stanford Encyclopedia of Philosophy, 2007, <http://plato.stanford.edu/entries/justification-public/#2.1>

Chapter five

The Overlapping Consensus

5.1 Definition of the Overlapping Consensus

“Overlapping consensus” is an expression coined by John Rawls and illustrated in his book *Political Liberalism*. It refers to how supporters of different comprehensive doctrines⁹⁹ can agree on a specific form of political organization.

The aim of *Political Liberalism*, written in 1993, was in fact to show that the two principles of justice, enunciated more than twenty years before in his *A Theory of Justice*, form a theory of the right that can be supported by all reasonable individuals, even under conditions of reasonable pluralism,¹⁰⁰ through the mechanism of the overlapping consensus.

Essentially, *Political Liberalism*'s aim was to answer the following question: given the fact of reasonable pluralism and a family of

⁹⁹ Rawls conceived reasonable comprehensive doctrines as being both an exercise of theoretical reason and of practical reasons and being stable over time, even if evolving in the light of what they consider good reasons. See *Political Liberalism op. cit.*, p. 59.

¹⁰⁰ According to Rawls, modern democratic societies are characterized not only by a pluralism of comprehensive, moral, philosophical or religious doctrines, but by a pluralism of incompatible yet reasonable comprehensive doctrines. See *Political Liberalism*, Columbia University Press, New York 2005, p. xvii.

reasonable thought differing liberal political conceptions, what is the most reasonable basis for social unity? In other words:

*how is it possible for those affirming a religious doctrine that is based on religious authority [...] - such as in the case of Muslims – also to hold a reasonable political conception that supports a just democratic regime?*¹⁰¹

Actually, not all reasonable comprehensive doctrines are liberal comprehensive doctrines. Thus, is it possible to have a sort of compatibility for the right reasons with a liberal political conception such?¹⁰²

To answer this last question we need to point out that, in order to have compatibility for the right reasons between a comprehensive doctrine and a liberal political conception, it is not sufficient that this doctrine accepts a democratic regime merely as a *modus vivendi*: it must accept it as a member of a reasonable overlapping consensus.¹⁰³

¹⁰¹ John Rawls, "Introduction to the Paperback Edition" in *Political Liberalism op. cit.*, p. xxxvii.

¹⁰² *Ibidem.*

¹⁰³ *Ivi*, pp. xxxvii and xxxviii.

Any *modus vivendi*, in fact, is no more than a balance of powers, therefore it might shift and social stability can be lost. On the contrary, in the case of an overlapping consensus, citizens affirm a political conception entirely deeply rooted in their own perspective: this allow a stability for the right reasons, i.e. each citizen affirms a moral doctrine - a liberal conception of justice - for moral reasons, as given by her comprehensive doctrine. Stability in an overlapping consensus is, therefore, superior to a mere *modus vivendi* among citizens who hold contending worldviews.¹⁰⁴

Overlapping consensus is the area of agreement, shared by all reasonable doctrines, which mirrors the agreement reached in the original position. Rawls, in fact, worked out a political conception of political justice for a constitutional democratic regime that a plurality of reasonable doctrines - both religious and nonreligious, liberal and nonliberal - may freely endorse. Rawls's aim was not to replace comprehensive doctrines with this political conception of political justice, in fact, this conception deriving from the overlapping consensus must be equally distant from all of these doctrines and, in Rawls's intention, acceptable for each of them.¹⁰⁵

¹⁰⁴ Stanford Encyclopaedia of Philosophy, 2008, <http://plato.stanford.edu/entries/rawls/>.

¹⁰⁵ John Rawls, "Introduction to the Paperback Edition" *op. cit.* p. xxxviii.

The overlapping consensus, in fact, consists

*of all the reasonable opposing religious, philosophical, and moral doctrines likely to persist over generations and to gain a sizable body of adherents in a more or less just constitutional regime.*¹⁰⁶

Within this institutional reality, it is likely to assume that different comprehensive doctrines face reciprocally in a regime of reasonable pluralism. This possibility is linked, in Rawlsian approach, to the fact of the nation state. In this case, it is plausible to think that the majority of intellectual conflicts are, so to say, reasonable and that everybody can accept, keeping her profound comprehensive view, the institutional framework within which these conflicts take place.

In my essay, I deal with a wider horizon that embraces more than a single institutional framework or a single society. The aim of my work is, in fact, to provide a justification for the application of human rights standards that can be acceptable both from a western point of view, and from an Islamic point of view. In this case, Rawlsian strategy - as stated in *Political Liberalism* - seems to be less applicable. Here, in fact, there is no such thing as a common institutional framework to uphold.

¹⁰⁶ John Rawls, *Political Liberalism op. cit.* p. 15.

In *The Law of People*, Rawls proposed a form of non-public reasoning which would involve defending a political conception of justice or specific policies from within an alien ethical tradition. Rawls referred to this form of reasoning as “conjecture”, and defined it as arguing

*from what we believe, or conjecture, are other people’s basic doctrines, religious or secular, and try[ing] to show them that, despite what they might think, they can still endorse a reasonable political conception that can provide a basis for public reasons.*¹⁰⁷

Unfortunately, Rawls did not go further in the explanation of such a method, nevertheless, I consider the invitation to engage in a similar form of comparative political theory worth accepting. Most of all in the light of all the promising elements listed in the first part of this work, which render Islam particularly suited for such reasoning.

At this point I need to investigate the capacity of Islam to provide support for an overlapping consensus on human rights. To make my argument work, I need to take for granted two assumptions. First of all I assume that human rights are not only a set of moral imperatives but also a set of legal requisites. Secondly, I take into account the fact of globalization.

¹⁰⁷ Rawls J., *The Law of Peoples*, Harvard University Press, 1999, pp. 155-156.

5.2 First Assumption: Human Rights as Legal Requisites

Regarding the first premise, I follow Maffettone's approach of "pluralistic integration from below", assuming that human rights are not only a set of moral imperatives but also a set of legal requisites that constitutes a significant background not easily removable.¹⁰⁸

According to Maffettone, it is hard to think that one can substitute existing human rights with a different set of moral imperatives, all in principle able to defend and protect human dignity, but without such an historical successful background. This assumption implies that different moralities, religions and metaphysics can well found the same set of human rights, but also that it is difficult that we can substitute this existing set of human rights with comprehensive doctrines of any kind.¹⁰⁹

Maffettone correctly remarks that the integration of an already existing platform of human rights with several profound justifications of them must however be pluralist and critical. This means that existing human rights cannot be taken for granted and their legitimating force must be

¹⁰⁸ I owe the clarification of this passage on human rights as a legal set of requisites to Sebastiano Maffettone and his paper "Human Rights, the Need of an Intercultural Dialogue" discussed at the round table organized by Reset Dialogues on Civilizations "The awakening of religion and the open society", which took place on UNESCO's World Philosophy Day (Rabat – Morocco, 16th November 2006), <http://www.resetdoc.org/EN/maffettone-rabat.php>.

¹⁰⁹ Sebastiano Maffettone "Human Rights, the Need of an Intercultural Dialogue" *op. cit.*

discussed and evaluated by an open intercultural dialogue. If we accept this thesis, then the overlapping consensus model can help us in promoting intercultural dialogue and provide legitimacy to human rights.¹¹⁰

Pluralist integration from below - as Rawlsian model in *Political Liberalism* - presupposes a dual levels of belonging and loyalty for each person. At an ethical and metaphysical level, each maintains her own traditional cultural and religious perspective. On the other hand, at a political level, each opts for a vision that is convergent with that of the other members of the international community through the progressive affirmation of a sort of multicultural overlapping consensus.¹¹¹

An agreement on human rights is possible through an overlapping consensus of differing cultural approaches if we conceive human rights as “freestanding”, i.e. not presented as derived from, or part of, any specific comprehensive doctrine, such as the western one. Only in this case human rights can be perceived as shared elements, of legal and political nature, that are consistent with various moral, religious and metaphysical foundations.

¹¹⁰ *Ibidem.*

¹¹¹ *Ibidem.*

In my opinion, the only way to render not controversial the universality of human rights is in fact to present them as justifiable through several and different pathways, distinctive of each single cultural and historical tradition. Universality, actually, must never be confused with homologation: the fact of applying equally to everybody in any case denies the differences linked to culture, religion or any other element that can contribute to the production of the identity of a single human being. Equality in fact opposes inequality, not difference.¹¹²

5.3 Second Assumption: the Fact of Globalization

At this point I have to identify the motivation for non-westerns to accept the political conception of human rights I described before. In my opinion we can find a decisive instrument to this goal in the fact of globalization.

Immanuel Kant wrote over two hundred years ago that we are “unavoidably side by side”. Since Kant, interdependence between peoples, countries, individuals and so on has grown in an exponential way.

¹¹² Dworkin, Nagel, Sen and Walzer are only some of the authors whose conceptions of equality - even if very different one from the other - are able to encompass and justify differences between human beings.

Today,

*the very nature of everyday problems and processes joins people in multiple ways.*¹¹³

Globalization is, in fact, a process - or a set of processes - which implies a transformation in the spatial organization of social relations and transactions, expressed in transcontinental or interregional flows and networks of activity, interaction and power.¹¹⁴

According to David Held and Anthony McGrew, who deeply investigate on this subject, globalization is characterized by four types of change:

- a. the *stretching* of social, political and economic activities across national borders, regions and continents;
- b. the *intensification* of interconnectedness and flows of trade, investment, finance, migration, culture and so on;
- c. the *speeding up* of global interactions and processes, as the development of world-wide systems of transport and

¹¹³ David Held, "Globalization, International Law and Human Rights" paper presented at Human Rights Center, University of Connecticut on 20 September 2005, http://digitalcommons.uconn.edu/hri_papers/2.

¹¹⁴ See David Held, Anthony McGrew, David Goldblatt and Jonathan Perraton, *Global Transformations: Politics, Economics and Culture*, Polity Press, Cambridge 1999 and David Held and Anthony McGrew, *Globalization/Anti-Globalization*, Polity Press, Cambridge 2002.

communication increases the *velocity* of the diffusion of ideas, goods, information, capital and people;

- d. the growing *extensity, intensity* and *velocity* of global interactions can be associated with their deepening *impact* such that the effects of distant events can be highly significant elsewhere and specific local developments can come to have considerable global consequences.¹¹⁵

In this framework, the boundaries between domestic matters and global affairs become increasingly fluid. Globalization, in short, can be thought of as the widening, intensifying, speeding up, and growing impact of world-wide interconnectedness.¹¹⁶

Globalization makes us citizens of a wider cosmopolitan society in which each of us must care about the actions of the others because this specific action can influence my life in a more decisive way than ever before. This phenomenon is particularly clear, for example, in the case of environmental issues. When such issues are at stake, in fact, boundaries between states decrease their legal and moral importance and individuals feel the increasing cross-borders interconnection.

¹¹⁵ See Joel Krieger, *Oxford Companion to Politics*, Oxford University Press, 2001, www.polity.co.uk/global/globalization-oxford.asp.

¹¹⁶ *Ibidem*.

Chapter six

Towards a Reconciliation of Islam and Human Rights

6.1 The Overlapping Consensus in a Global Context

According to me, it is possible to extend Rawlsian approach to a global context, maintaining that the necessity of an overlapping consensus arises because different comprehensive moral views must seek some common ground for reaching consensus about principles of justice. The actual circumstances of living in a global society provide individuals with the motivation for accepting a political conception that is not in conflict with each other's comprehensive views.¹¹⁷ 9/11 is, in fact, a strong reminder of what can happen when we hivy ourselves off from the problems of “others”: good global citizenship has titanic benefits for domestic security.¹¹⁸

There are some issues that cannot be discussed in the context of a single nation or people. Human rights are such a case of global issue that has to

¹¹⁷ In *Political Liberalism* this motivation is given by the circumstances of living in a democratic society (PL 134).

¹¹⁸ Irshad Manji, *The Trouble with Islam Today*, St. Martin's Griffin, New York 2003, p. 160.

be considered worldwide. Unfortunately, human rights' theory, as conceived in the West, is not equally shared by all cultures. This is particularly evident in the Islamic context in which many scholars refuse human rights as alien from their culture and inconceivable from their point of view.

As we have seen in previous chapters, Islam encompasses various elements and precepts in favour of human rights and the overlapping consensus can be an extraordinary instrument to justify such rights from a perspective acceptable even from a Muslim point of view.

The bet with overlapping consensus is that comprehensive views which develop over time within a political culture, a global one in this case, will be able to affirm a reasonable conception of justice and fairness that hopefully include human rights standards, within their own context. This would mean that the reasonable citizen who is able to work out a freestanding political conception would also be able to enrich that conception by affirming it within her own comprehensive view.¹¹⁹

This would allow what Michael Davis calls "*indigenization*", and my dear Professor Sebastiano Maffettone "*pluralistic integration from below*".

¹¹⁹ I owe to David Rasmussen and his paper "Defending Reasonability", discussed in Rome last 20 may 2008, the clarification of this passage on the overlapping consensus.

Davis' indigenization underlines the need of finding roots for constitutionalism in the local soil. According to Davis, in fact, It is through indigenization that constitutionalism responds to the concerns with values and community.¹²⁰ Maffettone's proposal, on the other side, holds that

*human rights [...] may not be asserted by the center and then subsequently imposed in the peripheries of the world system. Far from it, their success depends on the possibility of their becoming the heritage of individual national cultures.*¹²¹

Rawls's overlapping consensus, in my view, fulfills both Davis and Maffettone's requirements and represents a feasible basis of democratic stability that is the most desirable.

In this framework, the overlapping consensus depends on there being a morally significant core of commitments common to the reasonable fragment of each of the main comprehensive doctrines in the global community, even Islam.¹²² And, as shown in last chapter, it is possible to

¹²⁰ See Michael C. Davis, "The Emerging Global Scenario and the East Asian" in George Mathews Chunakara (ed.), *Perspective on Human Rights Globalization and Its Impact on Human Rights*, Institute of Human Rights Vigil India Movement, 2000 <http://www.religion-online.org/showbook.asp?title=1559>.

¹²¹ Sebastiano Maffettone, "Human Rights, the Need of an Intercultural Dialogue" *op. cit.*

¹²² *Ibidem.*

find in the same Islam some key concepts that can be used, in this sense, to reach a stability for the right reasons.

6.2 Islam as a “Reasonable” Comprehensive Doctrine

Of course, the way to a possible reconciliation between Islam and human rights presents some problems. The main one is the fact that the same spirit of Islam, intended as a monotheist religion, holder of the “Truth” - as any other monotheism - is incompatible with the pluralistic doctrine that founds the same concept of human rights. Therefore, when we look for a possible way of reconciliation between Islam and human rights, we must not take into account Islam as a religion, but Islam in its legal application to the everyday life of Muslims.

This last assumption is crucial to the application of Rawlsian model of the overlapping consensus, which, in fact, applies to the political domain. In Rawls’s mind, actually, such a consensus grants social unity through the endorsement - each reasonable comprehensive doctrine from its own point of view - of a unique and shared political conception that includes matters of basic justice such as human rights.¹²³ Political Liberalism’s claim is, in fact, freestanding from any single comprehensive doctrine and

¹²³ John Rawls, *Political Liberalism op. cit.* p. 134.

limited to a commitment to the reasonable rather than fully true or rational.

The central question is thus the following one: does Islam allow such a separation of the political dimension? This is not a mere matter of secularism: here the question at stake is the possibility to conceive Islam as a “reasonable” comprehensive doctrine in a Rawlsian sense.

In *Political Liberalism*, reasonable comprehensive doctrines are characterized by three main features. First of all they are an exercise of theoretical reason, covering all main aspects of human life in a more or less consistent and coherent manner. They are, at the same time, an exercise of practical reason, ordering values on a scale of priorities and balancing them when they conflict. Finally, reasonable comprehensive doctrines are not necessarily fixed and unchanging.¹²⁴ On the contrary,

*although stable over time, and not subject to sudden and unexplained changes, [a reasonable comprehensive doctrine] tends to evolve slowly in the light of what, from its point of view, it sees as good and sufficient reasons.*¹²⁵

¹²⁴ Ivi, p. 59.

¹²⁵ *Ibidem*.

Does Islam fit this description? The comprehensive character of Muslim religion is clearly undeniable: it in fact touches all aspects of life, giving special priorities to certain values. The first two characteristics of a reasonable comprehensive doctrine are therefore respected. Regarding the third one, i.e. the capacity to evolve for good reasons, many Islamic scholars - as I already pointed out - draw attention to the fact that, while in the area of religious practice the revealed rites are fixed and not subject to human reason, in the area of social affairs, everything is permitted except for what is explicitly forbidden by a text. Therefore, texts are the ultimate reference, with an extremely small margin of interpretation, only on matters of religious practice. On the other hand, Muslims have complete discretion to experiment, progress and reform in the wider area of human and social affairs.¹²⁶ According to Tariq Ramadan

[...] the fact that the fundamental principles and prohibitions of Islam are stated can never allow Muslims to dispense with a study of the context and the societies in which they live.¹²⁷

¹²⁶ Tariq Ramadan, "The Way of Islam" *op. cit.* p. 70.

¹²⁷ *Ibidem.*

The corpus of the *shari'a* - goes on Ramadan - is in fact

a human construction and some aspects of it may evolve just as human thought evolves and just as some aspects of the Qur'an and the sunnah were revealed over time. This is precisely the meaning of the Prophetic tradition "God sends this community, every hundred years, someone to renew its religion".¹²⁸

This renewal mentioned by the *hadith* is not an alteration of the sources, points out Ramadan, but a transformation of the readers who are naturally influenced by the new social, political and scientific context they experience.

Therefore, it is possible to distinguish between the principles of Islam and the practice of them: though the principles are universal and timeless, the practice is contingent and relative at a given moment in human history. The principles remain the same, but the way of being faithful to them changes in time and even in space. In fact, as already mentioned, the Islamic context is extremely wide and differentiate in the application of the Qur'anic message.¹²⁹

¹²⁸ Ivi, p. 72.

¹²⁹ Ivi, pp. 70-71.

In conclusion, coming back to our original question, we can consider Islam a reasonable comprehensive doctrine and follow Tariq Ramadan in assuming that

*there is a difference in Islam between creed and rationality, the private and the public, the religious and the political.*¹³⁰

Islam, as a reasonable comprehensive doctrine, is therefore able, at least *in potentia*, to participate in the legitimation of human rights through the application of the overlapping consensus' model. In the words of Andrew March

*a pious Muslim has no problem recognizing the source of Rawls's concern that there be an overlapping consensus supporting a society's public conception of justice. Indeed, what we might call "normative Islam" prescribes just the form of reflection Rawls imagines that each citizen will perform, consisting of the self-conscious interrogation of the norms of one's social and political system in light of formal religious doctrine.*¹³¹

¹³⁰ Tariq Ramadan, "The Way of Islam" *op. cit.*, p. 71.

¹³¹ Andrew March, "Islamic Foundations for a Social Contract in Non-Muslim Liberal Democracies", *American Political Science Review*, 101, n. 2, p. 236.

Moreover, the numerous Qur'anic commandments to act in accordance with justice create a positive obligation for Muslim to stand for social reform and the creation of just societies, completely in line with the spirit of the promotion of human rights.¹³² The Holy Qur'an, in fact, abounds with references to justice:

*We sent aforetime our messengers with Clear Signs and sent down with them the Book and the Balance of Right and Wrong, that men may stand forth in justice [...].*¹³³

*O ye who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both.*¹³⁴

*Say: "My Lord hath commanded justice; and that ye set your whole selves (to Him) at every time and place of prayer, and call upon Him, making your devotion sincere as in His sight: such as He created you in the beginning, so shall ye return".*¹³⁵

¹³² Chandra Muzaffar, "Islam, Justice, and Politics", in Mehran Kamrava (ed.), *The New Voices of Islam op. cit.*, p. 213.

¹³³ The Holy Qur'an, 57:25.

¹³⁴ The Holy Qur'an, 4:135.

¹³⁵ The Holy Qur'an, 7:29.

*Allah commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition.*¹³⁶

The call for the promotion of justice at every level of society is thus frequent in the Holy Book and justice is an integral part of Muslim faith with a high priority in the order of Islamic moral and spiritual values.¹³⁷

6.3 The Criterion of Reciprocity

The overlapping consensus approach can help us in avoiding two solutions that I personally consider less reasonable: on the first side, the imposition of Western standards on members of cultures that do not share them and, on the other one, the sanctification of local culture without a critical evaluation of their contents. In fact, the criterion of reciprocity, that characterizes Rawlsian model of the overlapping consensus, compels us to assume that in offering fair terms of

¹³⁶ The Holy Qur'an, 16:90.

¹³⁷ Muhammad Hashim Kamali, "The Limits of Power in an Islamic State", *Islamic Studies Quarterly Journal*, vol. 28, n. 4, p. 329.

cooperation, we must reasonably think that those to whom such terms are offered might also reasonably accept them.¹³⁸

For this reasons citizens are characterized in Rawls *Political Liberalism* as reasonable, in other words, they view

*one another as free and equal in a system of social cooperation over generations, they are prepared to offer one another fair terms of cooperation [...] and they agree to act on those terms, even at the cost of their own interests in particular situations, provided that others also accept those terms.*¹³⁹

The criterion of reciprocity specifies the nature of the political relation as one of civic friendship. That is why

*if we argue that the religious liberty of some citizens is to be denied, we must give them reasons they can not only understand [...] but reasons we might reasonably expect that they as free and equal might reasonably also accept.*¹⁴⁰

¹³⁸ John Rawls, "Introduction to the Paperback Edition" *op. cit.* p. xlii.

¹³⁹ Ibidem.

¹⁴⁰ Ivi, p. li.

And this last assumption can be worthy both in a single society and in a global context.

When matter related to human rights are at stake, a global citizen can be bound to accept the results of an overlapping consensus mainly because of the criterion of reciprocity. This criterion, in fact, grants that the proposals into question are put forward offering reasons we believe may reasonably be accepted by other citizens. The application of human rights standard completely fits this case.

Moreover, in the context we are dealing with, the importance of the criterion of reciprocity rests on the fact that it can be conceived as a common normative principle shared by all major cultural traditions. The common precept of treating other people as you wish to be treated by them is, in fact, no more than a principle of reciprocity.

In this framework, universal human rights are those which a cultural tradition would claim for its own members therefore concede to members of other traditions, applying the principle of reciprocity to all human beings rather than just among the members of a particular group.¹⁴¹ On the other

¹⁴¹ Abdullahi Ahmed An-Na'im, "Shari'a and Basic Human Rights Concerns" in Charles Kurzman, *Liberal Islam op. cit.*, 1998, pp. 224-225.

side, this approach would avoid an imperialistic imposition of some kind of human rights standards, operated by a culture on another.

We all have views about the ends of life, about what constitutes a good life, which we and others ought to strive for, but we also have a commitment to deal fairly and equally with each other, regardless of how we conceive our ends. Ronald Dworkin calls this latter “procedural commitment”, while commitments regarding the ends of life are “substantive”.¹⁴² Given the heterogeneity of a global context, we can only endorse procedural commitments, such as the criterion of reciprocity, in order to reach agreement on issues regarding the entire humanity. Human rights application is such an issue.

The overlapping consensus approach has the merit to shift the focus of human rights advocacy to a more “people-centered” approach that is less dependent on the ambiguities and contingencies of inter-governmental relations. Moreover, it can help us in convincing “others” that the West’s interest in human rights is not just a product of short-term geo-political or geo-economic interests. A philosophical foundation of human rights is constantly oscillating between a perspective that is too internal and a perspective that is too external to the local culture and institutional

¹⁴² Ronald Dworkin, “Liberalism” in Stuart Hampshire (ed.), *Public and Private Morality*, Cambridge University Press, 1978.

tradition. The overlapping consensus is able to find an equilibrium between these two perspectives and is able to reach reconciliation between justification - moral and universal - and legitimation - empirical consensus - on human rights.

6.4 Religious Contributions to the Overlapping Consensus

In Rawlsian approach religions are considered comprehensive doctrines that can contribute to politics by providing a fuller and more complete view of the concept of the person, the basis of human rights, the concept of human freedom and so on.¹⁴³

In this framework, 1.5 billion Muslims in the world can definitely contribute as individuals to a dialogical solution of conflicts such as the one between Islam and human rights. Furthermore, the contribute of every religion is precious to such a model.

¹⁴³ David Rasmussen, "Islam & Democracy" paper discussed in the conference "Building Democracy: a Mediterranean Project" held in Venice on June 2006, p. 8.

As pointed out by Irshad Manji, in her typical colorful way:

Michael Moore, America's most snide and vociferous proponent of people power, learned justice at the knee of Catholicism [...]. According to Jimmy Carter, Israel's Menachim Begin and Egypt's Anwar Sadat clasped hands thanks in no small measure to their respective Jewish and Muslim values. [...] Gandhi fashioned his earthshaking concept of nonviolent resistance, or satyagraha, from Hinduism and Jainism. Come to think of it, I've never heard a committed secular humanist denounce the Dalai Lama for espousing religion [...]!

The Dalai Lama, Martin Luther King Jr., Desmond Tutu, Malcom X – they can be forgiven for “having religion” because of what they've done with religion.¹⁴⁴

The importance of comprehensive doctrines in public reasoning is clear even in Rawls's work. In his *Political Liberalism*, Rawls stated that in some specific cases, such as for example in not-completely well ordered societies or in societies not ordered at all, citizens can support political values explicitly founded in their comprehensive doctrines. Rawls firstly admitted this possibility only in cases in which this attitude reinforce the ideal of public reason and he cited the cases of abolitionism and the civil

¹⁴⁴ Irshad Manji, *The Trouble*, *op. cit.* pp. 211-212.

rights movement. In the Introduction to the Paperback Edition of his *Political Liberalism*, he revised what previously stated in chapter VI: 8, introducing the so called “wide view” according to which reasonable comprehensive doctrines

*may be introduced in public reasons at any time, provided that in due course public reasons [...] are presented sufficient to support whatever the comprehensive doctrines are introduced to support.*¹⁴⁵

¹⁴⁵ John Rawls, “Introduction to the Paperback Edition”, *op. cit.* pp.xlix,l.

PART THREE

The Western Burden

Chapter 7

The Fourth Power

Of course, the possibility to justify human rights standards from an Islamic point of view cannot be realized without creating the necessary conditions for debate to transform traditional interpretations of *shari'a*.¹⁴⁶

As pointed out by Irshad Manji in her *The Trouble with Islam Today*, as far as Muslims are routinely taught that the Qur'an is the final manifesto of God's will and therefore perfect, not to be questioned or analyzed but simply believed, Muslim capacity to think risk to be suffocated. Therefore, when abuse occurs under the aegis of Islam, a minority of Muslims know how to argue, reassess or reform.¹⁴⁷

¹⁴⁶ See An-Na'im project on *The Future of Shari'a op. cit.*, <http://sharia.law.emory.edu/fr/universality>.

¹⁴⁷ Irshad Manji, *The Trouble op. cit.* p. 31.

Nonliberal interpretation of Islamic heritage are, in fact, so deeply rooted that Muslims have lost the ability to debate and learn.¹⁴⁸

*Since, till now religion is in the hearts and minds of the masses it plays the role of political ideology. But once people are educated, once they know that political ideology is based on a blueprint to defend public welfare then the return to religion will be minimized.*¹⁴⁹

The first human right to promote is, therefore, the one that allow us to ask questions aloud. That is why is so important to promote the wave or reformism I mentioned in previous chapters.

Actually, Islamic movements against modernity and laicism are well organized, have schools, media access and, above all, funds. On the contrary, liberal Islam is fragmentary, persecuted by Islamic regimes and not supported by the West.¹⁵⁰

The burden of sustaining a new moral course of Islam, stressing the Qur'anic message of tolerance and respect for the others, of course falls

¹⁴⁸ Hassan Hanafi, "The Historical Roots of the Impasse with Regard to Freedom and Democracy in Our Zeitgeist", *The Arab Future*, 5, Jan 1979, pp. 130-139.

¹⁴⁹ Hassan Hanafi, "The problem is not Islam. It's politics" *op. cit.*

¹⁵⁰ Mohammed Talbi, "La shari'a ha ancora un futuro.." *op. cit.*, p. 7.

on the shoulders of contemporary Muslim interpreters of the tradition, but I am persuaded that many things can be done by the West to improve dialogue and contribute to an Islamic way to democracy, both in our western democracies and in the Muslim world. Of course, initiatives such as the one of US Postal Service that in October 2002 reissued a first-class stamp to commemorate Eid, Muslim biggest festivity, can improve dialogue and integration, but we need more.

Before ideas such as the one of universality of human rights or the one of democracy can have legs in the *dar al-Islam*, people living in this context need to be exposed to a competition of ideas.¹⁵¹ That is why information is fundamental to avoid a clash of civilizations: to publish liberal Muslim books and papers, to contribute to Islamic studies and research on democracy, to provide scholarships in Political and Social Studies for Muslim students in western universities, can contribute to let new voices of Islam heard and avoid prejudices both in the West and in the Islamic world.

¹⁵¹ Irshad Manji, *The Trouble*, *op. cit.* p. 171.

Pierre Akel, Lebanese founders of the popular web site *Middle East Transparent*, in an interview given to Michael Young in February 2006, maintained that

*Arab culture has been decimated during the last 50 years. Arab newspapers are mainly under Saudi control. The book market is practically dead. Some of the best authors pay to have their books published in the order of 3,000 copies for a market of 150 million. This is ridiculous. Even when people write, they face censorship at every level other than their own conscious or unconscious censorship. Meanwhile, professional journalism is rare.*¹⁵²

The World Wide Web can be a powerful instrument to face this situation. Muslim reformers are more and more exploiting this instrument to let their voice heard. Of course it is not so easy to get access to the web: in many Muslim countries web sites and even email are in fact constantly controlled by the state. In June 2004, a man was imprisoned in Syria for circulating files downloaded from a forbidden web site, managed by some

¹⁵²Michael Young, "No Red Lines. A Reason interview with Middle East Transparent's Pierre Akel", February 9, 2006, <http://www.reason.com/news/show/34167.html>.

refugees, and in December 2005 a Libyan writer was assassinated and his fingers cut for writing articles on an opposition Web site.¹⁵³

Even if internet is a historical opportunity for Muslim reformers, they cannot compete with Al-Jazeera. They do not have the financial means to spread their message through a television channel. According to Pierre Akel:

*hundreds of Arab millionaires are liberals. Only, they cannot stand up to their regimes. Arab capitalism is mostly state capitalism. If you are in opposition, you are not awarded contracts by states. So, for the near future, we do not expect much help from these quarters.*¹⁵⁴

Help from the West is crucial to face this situation, moreover if we consider the drama that many Muslim scholars are experiencing in their countries. They dedicate their studies to the liberal interpretation of the Qur'an and the promotion of democracy, at the risk of their same lives and, in my opinion, the international community has to be conscious of the danger those scholars experience and react to protect them.

¹⁵³ Valentina Colombo, *Basta*, *op. cit.* p. XXII

¹⁵⁴ Michael Young, "No Red Lines" *op. cit.*

In his speech released on April 23rd 2006, the same Osama Bin Laden urged the killing of heretics and free Muslim intellectuals. Bin Laden, addressing the issue of the Danish cartoons, warned that anyone mocking the Prophet Muhammad or making fun of Islam should be killed, most of all liberal Arab intellectuals such as Ahmad Al Baghdadi, Turki Al-Hamad, Hassan Al Turabi, Gamal Al Banna, Mohammad Said Al Eshmawi, Wafa Sultan, Lafif Al Akhdar and many others. He cited the precedent of Ka'b ibn Al-Ashraf whom the Prophet had killed for writing poems against him, as a model for proper conduct in such cases.

The situation for liberal thinkers is therefore particularly serious.

Great spirits - said Albert Einstein - have always found violent opposition from mediocre minds. The latter cannot understand it when a man does not thoughtlessly submit to hereditary prejudices but honestly and courageously uses his intelligence.

This is true not only in their own countries, but even in the “Enlightened West”. This assertion is particularly clear if we consider that part of Bin Laden’s speech with the list of liberal Arab intellectuals and the incitement to kill them was not discussed by either the media in the West or the Middle East.

Yvonne Yazbeck Haddad, professor of the History of Islam at Georgetown University, underlines that reforming voices of Islam

*have been generally ignored by western scholars and member of the media who appear to prefer to highlight the sensationalism of extremism discourse that capture the attention of western audiences.*¹⁵⁵

This is a great sin of the West that, in this way, feed the clash of civilizations through lack of knowledge. It is not only some Muslim world that look at the West with contempt: due to the widespread ignorance and to the resulting prejudices, people in the West tend to consider Islam as monolithic and to mix things indiscriminately. As a result, Muslims are considered indistinctly dangerous and potential terrorists.

When confusion is widespread the dominant note is suspicion. Terms of reference are rarely defined, nuances barely acknowledged, areas of research sketched out in the most desultory fashion. Far too often journalists or public intellectuals present their findings in research projects, articles, television or radio broadcasts with the assertion that they have taken pains to

¹⁵⁵ Yvonne Yazbeck Haddad, *Islamists and the Challenge of Pluralism*, Center for Contemporary Arab Studies and Center for Muslim-Christian Understanding, Georgetown University, Occasional Papers, 1995, p.4.

*distinguish between radicals and conservatives or average Muslims. But when we examine their offerings more closely, we note a striking lack of clarity and an atmosphere of incomprehension that can only generate suspicion and fear.*¹⁵⁶

This attitude is particularly dangerous because, as I already pointed out, ignorance feeds resentment and pushes us toward a clash of civilizations rather than to dialogue and mutual understanding. In this framework, the western burden is to fill the lack of knowledge publishing the “new voices of Islam” as Mehran Kamrava defined them in his book of 2006. Reformist Muslim intellectuals deserve a wider hearing in the West if we want to avoid Huntington’s forecast.

¹⁵⁶ Tariq Ramadan, “Islam Today: The Need to Explore Its Complexities”, *Nieman Reports Magazine*, Summer 2007, vol. 61, n. 2 available at www.tariqramadan.com/spip.php?article1167

Chapter eight

The International Responsibility to Promote Change

On a higher level, international organizations have to promote policies of inclusion of those Islamic states demonstrating an opening attitude towards democracy, in order to reward their efforts and further motivate them. While embargos and economic measures not always work for promoting a democratic change in Islamic regimes, e.g. Saddam's regime in Iraq, the perspective of economic benefits tends to produce better results, such as in the case of Turkey to enter EU.

8.1 The Case of Turkey

Turkey is in fact experiencing a radical modernization in religious matters, which is mainly linked to the intent of entering the European Union in order to experience the economic benefits that come along with this opportunity. Here, in fact, the promise to comply with the EU has speeded

up the process of democracy, the respect for human rights and has helped to avoid military coups.¹⁵⁷

In February 2008 the Turkish Department of Religious Affairs commissioned a team of theologians at Ankara University, to carry out a document that represents a revolutionary reinterpretation of Islam.¹⁵⁸ This document aims, in fact, at a revision of the *ahadith*: the collection of thousands of sayings of Prophet Muhammad.

The *ahadith* are among the main guides for Muslims in interpreting the Qur'an and the source of the majority of *shari'a*. Nevertheless, Turkish government maintains that the *ahadith* have an often negative influence on a society that is in a hurry to modernize.

Moreover, in Turkish government's view, the *ahadith* are responsible for obscuring the original values of Islam. According to the same Turkish government, in fact, Islamic tradition has been gradually manipulated by conservative interpreters, seeking to use the religion for various forms of social control. Even some sayings accepted as being genuinely spoken by Muhammad have been altered and reinterpreted. Successive

¹⁵⁷ Amara Lakhous, "A blueprint for the Middle East", ResetDOC, 25 Jun 2008, <http://www.resetdoc.org/EN/Lakhous-Turkey.php>.

¹⁵⁸ See Robert Pigott 's article "Turkey in radical revision of Islamic texts" published on BBC News (26 February 2008), <http://news.bbc.co.uk/1/hi/world/europe/7264903.stm>

generations have manipulated the text, attributing their political aims to the Prophet Muhammad himself.

Professor Mehmet Gormez, a senior official in the Department of Religious Affairs and an expert on the *ahadith*, gives a telling example:

*There are some messages that ban women from traveling for three days or more without their husband's permission and they are genuine. [...] But this isn't a religious ban. It came about because in the Prophet's time it simply wasn't safe for a woman to travel alone like that. But as time has passed, people have made permanent what was only supposed to be a temporary ban for safety reasons.*¹⁵⁹

Turkish intent is, thus, to sweep away this cultural baggage and return to a form of Islam truly in accordance with its original values and those of the Prophet.

As part of its aggressive program of renewal, Turkey has recently given theological training to 450 women, and appointed them as senior imams called "vaizes". They have the task of explaining the original spirit of Islam

¹⁵⁹ *Ibidem.*

to remote communities in Turkey's vast interior, in order to clarify that Islam does not justify violence on women in any case.

The argument behind Turkish program is the following one: readings and interpretations of Islam are always influenced by specific cultures and social environments, therefore, there is a need for a process of deconstruction to distinguish the religious from the cultural. This is crucial to affirm, for example, that forced marriage, crimes of honor or female genital mutilation have nothing to do with Islam but have frequently been justified by religion as a way of confirming cultural practices.¹⁶⁰

According to Fadi Hakura, an expert on Turkey from Chatham House in London, Turkey is doing nothing less than recreating Islam, changing it from a religion whose rules must be obeyed, to one designed to serve the needs of people in a modern secular democracy.

Until now, Turkish officials have been reticent about the revision of Islam, aware of the controversy it is likely to cause among traditionalist Muslims. In fact, many scholars, *ulema* as well as thinkers or ordinary Muslims, oppose reformism because, in their opinion it represents a danger as far as faithfulness to the Islamic tradition is concerned. According to Tariq Ramadan, there are three kinds of reasons for these scholars to oppose

¹⁶⁰ Tariq Ramadan, "No faithfulness without evolution" *op. cit.*

reformism. For some, in fact, reforming Islam stands for changing Islam, altering it in order to adapt it to modern times, and it is not acceptable to a believing conscience. The second kind of reason sees in reform an alien approach, imported from the Christian tradition, while the third one is based on the assumption that Islam's teachings are universal and timeless, therefore, they can be implemented in all places and times without any need of reform.¹⁶¹ Those – goes on Tariq Ramadan – raise serious questions and require precise answers:

the laudable and clearly stated intention of protecting Islam from deviation and betrayal cannot, however, express nor impose itself through refusing any critical approach as to the nature of the necessary faithfulness to the universal message of Islam. While refusing alienation – such as, for instance, thinking about oneself through the categories of the Christian tradition – some people come to promote even deeper alienation, when they identify as “foreign” what nevertheless pertains to the Islamic tradition itself: such self-ignorance, nurtured by fear of changing, of losing oneself or more generally by “fear of the other”, is one

¹⁶¹ Tariq Ramadan, *Radical Reform* op. cit., www.theamericanmuslim.org/tam.php/features/articles/radical_reform_ethics_and_liberation_two_excerpts_from_tariq_ramadans_forth/

*of the major dangers that threaten the contemporary Muslim conscience.*¹⁶²

Islam, as each culture, has a specific conception of the world which is shaped by the historical experience of a specific people. The conception of the world, accepted and shared by a collective body, remains unchanged until it fits the needs and the requests of this collective body in a fruitful way. When a people, in its historical development, go beyond the limits of its culture, we witness the demand for new ideas that usually comes to look at other cultures to find out original cues.¹⁶³ Change is necessary and even traditions are not sacred and undeniable: they are a human product, created by historical conditions of a society. Therefore, they are susceptible to change.¹⁶⁴

This is true even for Islam, in fact, as maintained by Tariq Ramadan,

to be faithful to the message of the Qur'an in no way means to confine oneself to a very restrictive and lazy reading of the two sources and the related scholarly commentaries of the great ulema of the past; to the contrary, faithfulness demands that one exerts all intellectual effort to provide solutions that are relevant

¹⁶² *Ibidem.*

¹⁶³ Mohammad Khatami, *Religione, libertà e democrazia op. cit.* pp. 111-112.

¹⁶⁴ *Ivi*, p. 33.

*to the social and political reality, and that is the true expression of our individual and collective intension to be genuine Muslims.*¹⁶⁵

Anyhow, not only it is nonsense to oppose change, but it is also risky: our efforts to preserve a culture as it is can produce a clean and deep fracture between it and its members, unsatisfied with its ability to fulfill their needs. The risk is thus to obtain the exact opposite situation of what we were fighting for: the abandonment of the culture we were looking to preserve, operated by its same members. On the contrary, a gradual and progressive change could allow this culture to survive, adapting to new emerging needs of its members. Therefore

*against literalist readings and culture-based interpretation, we must move ahead with the task of reform. We must clearly state that Muslims cannot remain faithful to the substance of the texts unless their interpretation of them is able to evolve. Muslims today must understand and act upon the principle that any religious tradition that remains static betrays itself: without evolving, neither faith nor tradition can survive.*¹⁶⁶

¹⁶⁵ Tariq Ramadan, "Ijtihad and Maslaha: the Foundation of Governance" *op. cit.*, p. 3.

¹⁶⁶ Tariq Ramadan, "No faithfulness without evolution" *op. cit.*

Turkey is a clear example of how this reform can be performed in order to let Islam fit new needs of a contemporary society. Of course the results of Turkish effort have yet to be evaluated, but the strength of the critical approach is that it will further broaden the potential field of critical reading and contextualization.¹⁶⁷

Such a best practice is what we, the western, have to encourage. Most of all considering that, in recent years, Arabs look at Turkey with growing interest: Arab newspapers such as *Al Hayat* and *Al Quds Al Arabi* give a lot of coverage to Turkish news and *Al Jazeera* and *Al Arabiya* have full time correspondents based in Ankara. Arabs seem to look more and more at Turkey as a laboratory for possible answers to problems such as the national path to democracy, the separation of the military from politics, the rejection of violence as a means of forcefully establishing relations and the definition of the role of religion in the public sphere.

Unfortunately, the West does not often support such experiments. On the contrary, as Samuel Huntington pointed out in his *The Clash of Civilizations*, as western leaders become aware of the fact that democratic processes in non-western countries not always produce governments friendly to the West, they try to influence elections and, in

¹⁶⁷ Tariq Ramadan, "No faithfulness without evolution" *op. cit.*

the meantime, loose interest in promoting democracy in those countries.¹⁶⁸

¹⁶⁸ Samuel Huntington, *Lo scontro delle civiltà*, Garzanti, Milano 2003, p. 289.

Chapter nine

Women's Empowerment

9.1 The State of the Art

A reasoning on Islam and human rights would not be complete without mentioning the problem of women's condition in the Islamic context. As I already pointed out, the principles of *shari'a* are basically consistent with most human rights norms, but it is undeniable that women's rights in many Muslim countries and communities are often violated in the name of religious interpretations that support patriarchy. In fact, many Muslim conservatives refuse to recognize women as full, equal human beings. Therefore, in many Islamic societies,

women's lives are just confined to homes where they are expected to obey their husbands and bring up children, with no permission for participation in public life. At every stage in their life, they are denied free choice and fundamental right of autonomy. They are forbidden to acquire an education. They are

*prevented from getting a job. They are thwarted from expressing their potential as members of the human community [...].*¹⁶⁹

I will not analyze in details women's condition in the Islamic context, even because it is pretty different from country to country: I just want to lay emphasis on the fact that an improvement of women's economical and cultural condition in the *dar al-Islam* could contribute to the wage of reformism I hope for.

Let me cite the UN *Arab Human Development Report*, released in July 2002 and compiled by a group of distinguished Arab intellectuals led by the Egyptian statistician Nader Fergany. The Report blames Middle Eastern governments on neglecting the energies of half their populations, i.e. women. According to the Report, in fact, women's empowerment is one of the three main deficits of these Middle Eastern governments, together with knowledge and freedom.

What is interesting to remark, in my opinion, is the strong connection between these three deficits and between the possible antidotes to them. Helping women achieve financial independence in bulk, in fact, would support their attempt to become literate. Likewise, helping women access

¹⁶⁹ See Women Living Under Muslim Law, *Declaration of Statements, Muslim Thinkers' Plea to Rulers*, WLUML, Dossier 19, p. 153, <http://wluml.org/english/pubs/pdf/dossier19/D-19.pdf>.

education would support their desire of empowerment and political participation, i.e. freedom. In both cases the West can contribute in a decisive way, for example through scholarships in western university and micro-lending finance programs.

9.2 Illiteracy

According to the UN *Arab Human Development Report*, half the women in the Arab world are illiterate and in all but four Arab countries (Bahrain, Jordan, Qatar and the Palestinian territories) less than 80 per cent of girls go to secondary school.

Uneducated girls - as pointed out by Mishkat al-Moumin, former Iraqi Minister of the Environment and lecturer of human rights in University of Baghdad - grow up to be unprepared mothers, unequipped to deal with modern problems such as drugs, crime and religious extremism. Therefore, from a social point of view, illiteracy affects the same role women have within their households and communities, bereaving them of decision-making authority in issues concerning children, education and finances.

Moreover, from an economical point of view, women illiteracy negatively affects the economy of their countries. It is not my aim to deep this issue in my essay, but Unesco statistics undoubtedly demonstrate the strong link between illiteracy and economic development: per capita income in countries with a literacy rate less than 55 percent averages about \$600, on the contrary, in countries with a rate above 96 percent is \$12,600.¹⁷⁰

Coming back to the religious aspect of women's illiteracy, to deny their right to access education is a clear violation of the first precept of the Qur'an. The first word of the sacred text is, in fact, "Read". And this rule applies to all Muslims, not only to men.¹⁷¹

The same Prophet emphasized the importance of knowledge. The following sayings are, in fact, attributed to him:

To obtain knowledge travel into China if necessary.

You must not ask me about vice, but ask about virtue; Know ye!

The worst of men is a bad learned man, and a good learned man is the best.

¹⁷⁰ See <http://www.sil.org/literacy/LitFacts.htm>.

¹⁷¹ Benazir Bhutto, *Riconciliazione op. cit.*, pp. 32-33.

To spend more time in learning is better than spending more time praying; the support of religion is abstinence. It is better to teach knowledge one hour in the night than to pray all night.

As Benazir Bhutto pointed out in her last book *Reconciliation*, knowledge and freedom of thought were given by God indistinctly to all human beings in order to be used. In this respect, Muslim children are always taught the following history:

The Noble Prophet loved his grandsons very much. He used to lengthen his Sujuds in prayer for their sake. One day Husain was in the mosque. When the time for prayer arrived the Prophet started to perform it. When he went for the Sujud, Husain climbed his neck. He prolonged the Sujud, until the congregation thought that this was a new matter. They thought that it was Allah Ta'ala's order that the Sujud should be prolonged. When he finished the prayer the people inquired him about the long Sujud. The Noble Prophet said: "My son had climbed my neck. I felt that he should satisfy himself. I got up from the prostration when he was satisfied".¹⁷²

¹⁷² See Benazir Bhutto, *Riconciliazione op. cit.*, p. 85 and also http://www.muis.gov.sg/websites/rservices/oom_files/K740.doc.

This history shows that joining Islam does not mean divert our attention from all other topics such as study or learn to read at least.

9.3 Women's Economical Conditions

Concerning economical empowerment of women, I would like to underline a widespread opinion among economists. Many scholars in fact sustain that feminine labour is a decisive factor for fastening economic growth of a country. Actually, according to them, not only feminine labour grants higher incomes to families, but leads these same families to go and see the market to fulfill those needs previously met by women's domestic labour. This is a key element for the development of a modern economy of services, for creating new vacancies and to contribute to a higher standard of living for the entire community.¹⁷³

Since the '80s, the Bangladeshi economist Muhammad Yunus, founder of Grameen Bank, and Nobel Laureate for Peace in 2006, has been confirming that the Islamic world can produce female entrepreneurs by giving them access to minimal start-up funds.

¹⁷³ See Maurizio Ferrera, *Il fattore D.*, Strade Blu – Mondadori, 2008.

In October 2007, the total borrowers of Grameen Bank were 7,34 million, and 97 per cent of those were women. Since its foundation, the bank has distributed 6,55 billion dollars in loans and the exceptional element to remark is that the loan recovery rate of Grameen is around ninety eight per cent. The average loan is around 309 dollars and the higher ever distributed was of 20.000 dollars and was used to buy a truck.

The results achieved by microfinance are worldwide recognized. Let's follow Irshad Manji in wondering what would be possible to achieve if

*the United States, the European Union, Canada, Australia, Japan and other rich allies took a sliver of their national security budgets and pooled them into a program of micro-enterprise loan for women throughout the Muslim world.*¹⁷⁴

Surely, it would allow many more women to access micro-lending programs and promote their economical empowerment in their same society.

Of course it would not be simple not only to convince western governments to promote such programs, but even Muslim countries to accept them, not perceiving them as a paternalistic actions.

¹⁷⁴ Irshad Manji, *The Trouble op. cit.* p. 162.

Maybe, the crucial argument that can be used to convince Muslim governments to accept this kind of programs can be the following one: the improvement of women's economic conditions may have a positive impact on the whole society in which they live. To allow women having an opportunity to own their businesses, in fact, not only reduce unemployment rate by employing themselves as the business owner, but also provides more job vacancies for many other people, not only women.

As unemployment rate decrease followed by increase in earnings, crime rate, particularly those crimes conducted by the poor would drop, benefiting the society as a whole. Continual increase in personal expenditure of the poor would allow access for better health and reduce illiteracy and increase education rate.

Last but not least, to allow women having opportunity to own their businesses produces taxable income for government.

This last point can explain the growing interest of Indonesian, Algerian, Pakistani and Egyptian governments in Hernando De Soto studies. This Peruvian economist, known for his work on the informal economy and on the importance of property rights, is in effect working on the actual possibility to revive "dead capital" in moribund economies. Actually, in

The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else,¹⁷⁵ De Soto claims that if "dead capital" were legalized, it would elevate the poor out of poverty, producing more contributors for governmental taxes income. I will not deal directly with this last topic in my essay, but I think it something worthy to investigate in if we really want to promote a wage of reformism in the Islamic world.

¹⁷⁵ Hernando De Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, Basic Book, 2003.

CONCLUSIONS

Throughout, I have been concerned with a vital question in the contemporary world, namely: are human rights compatible with Islam? And if so, how? I have started my argumentation bringing out the myth of a homogeneous Muslim world. Islam, in fact, is not a unique, monolithic entity and there is not such a thing as a uniform Muslim world, nor a sole *shari'a* applied everywhere.

There are three main elements that contribute to these differences in the Islamic context. Firstly, Islam has spread, over centuries, in different regions of the world absorbing local traditions and practices. Secondly, the Qur'an and the *ahadith* have been interpreted by different schools of thought. Third, political power has manipulated religion, emphasizing one aspect or interpretation over another according to circumstantial needs.¹⁷⁶

¹⁷⁶ Marie-Aimée Helie-Lucas, "What Is Your Tribe?" in Courtney W. Howland (ed.), *Religious Fundamentalisms and the Human Rights of Women*, Palgrave, 2001, pp. 23-24.

As a result, the *dar al-Islam* is extremely compound and it is not possible to identify a unique, shared Islamic position on human rights. On the contrary, in the same Islamic context we can find both scholars maintaining the perfect accordance between Islamic principles and human rights, and authors completely against this assertion, with a wide spectrum of intermediate positions between these two.

Those opposing a possible reconciliation between Islam and human rights mainly found their thesis on relativist claims, based on the parameter of dominant conceptions, or maintain that the same Islam implies the refusal of western standards. Both approaches fail to represent the significant variety of Islamic world that encompasses even liberal positions on issues such as democracy, women's condition, human rights and so on.

Islam has in fact witnessed, over centuries, many attempts by moderate intellectuals to reform the *shari'a* through a liberal interpretation of basic concepts of the same Islam. Notions such as the one of *ijtihad* (creative personal intellectual grappling with specific texts), *maslaha* (the public interest) or *istihsan* (the use of personal preference for particular judgments in Islamic law over other possibilities) present, in fact, a significant degree of flexibility for proposing new readings of the texts,

finding new answers or elaborate innovative models of social and even economic organization.¹⁷⁷ Tools are thus available to promote the spirit of inquiry and the desire for knowledge in order to promote freedom of thought and rational thinking in the Islamic context.

Given that it is possible to interpret the Qur'an and many *ahadith* in order to be consistent with and supportive to liberal claims such as freedom of thought and rational thinking, I identified a model to reach a cross-cultural background agreement on the application of human rights standards that encompasses Islamic culture. This model is inspired to the one elaborated by John Rawls in his *Political Liberalism*: i.e. the overlapping consensus.

Overlapping consensus is the area of agreement, shared by all reasonable comprehensive doctrines, which mirrors the agreement reached in the original position. To reach this agreement, Rawls distinguished the public realm, in which the absolute moral standard of liberal justice is universally applicable and supported, because this standard has been agreed upon in the original position; and the private realm, in which the liberal idea of freedom of conscience, i.e. the respect for value pluralism, is preserved.

¹⁷⁷ Tariq Ramadan, "Ijtihad and Maslaha" *op. cit.*, p. 4.

I adopted this model in order to present human rights as part of a "theory of the right" which might be supported, thanks to the overlapping consensus, by all reasonable individuals in the global world, even under conditions of reasonable pluralism. My aim, in fact, is not to prove that the overlapping consensus would eventually produce a reasonable political conception of justice supporting human rights. On the contrary, following Rawls, my intent is

*to present a freestanding liberal political conception that does not oppose comprehensive doctrines on their own ground and does not preclude the possibility of an overlapping consensus for the right reasons.*¹⁷⁸

The adoption of such an approach, allow avoiding a sort of syncretism between Islam and western standards on human rights. They, in fact, are equal worthy, but not homologous and, in order to reach an overlapping consensus, must remain distinct and keep their original values. Indeed, we do not have to look for a compromise between Islam and human rights: on the contrary, the overlapping consensus allows a justification of human rights "from below", in the same Islamic context through, Islamic values.

¹⁷⁸ Ivi, pp. xlvi, xlvi.

On the other side, the overlapping consensus can be fruitful to avoid a relativist approach that would not allow us to evaluate the actual situation and face the challenge of a possible clash of civilizations. Thus, the overlapping consensus produces a sort of reconjunction of the ideal validity, which is normative and decontextualized, and the social validity, which is connected to factual criteria.

Other authors, such as Tariq Ramadan or Andrew March, already adopted the overlapping consensus in order to deal with the relation between Islam and the West.¹⁷⁹ The main difference with my attempt is that they keep the original set up of Rawlsian model in which the overlapping consensus occurs in a more or less just constitutional regime of a nation state: their interest is in fact mainly focused on “Islam in the West”. On the contrary, in my essay, I deal with “Islam and the West”: my horizon is therefore wider and embraces more than a single institutional framework or a single society. The aim of my work is, in fact, to provide a justification for the application of human rights standards that can be acceptable, at a global level, both from a western point of view, and from an Islamic point of view. In this case, Rawlsian model, as presented in

¹⁷⁹ See Tariq Ramadan, *To be a European Muslim*, Islamic Foundation, Leicester 1999; Andrew March, “Islamic Foundations for a Social Contract in Non-Muslim Liberal Democracies”, *American Political Science Review*, 101, n. 2; Andrew March, “Liberal Citizenship and the Search for Overlapping Consensus: The Case of Muslim Minorities”, *Philosophy and Public Affairs*, 34, n. 4.

Political Liberalism, seems to be less effective. Here, in fact, there is no such thing as a common institutional framework to uphold.

To overcome this difficulty and extend the model to a wider horizon, I found my argument on two assumptions. First of all I consider human rights not only as a set of moral imperatives, but as legal requisites, freestanding and not derived from any sectarian conception of the good. Second, I take into account the actual circumstances of living in a global society, which provide individuals with the motivation for caring about the “others”, their problems and their point of view on global issue such as those concerning environment or human rights.

These assumptions allow me to justify human rights through a “pluralistic integration from below” *à la Maffettone*, that is to say, their capacity to become the heritage of individual national cultures. Of course, to implement such a thesis, I do not take into account Islam as a religion, but Islam in its legal application to the everyday life of Muslims. This is a crucial point because, Islam intended as monotheist religion, holder of the “Truth”, would be incompatible with the pluralistic doctrine that founds the same concept of human rights. Islam must be considered as one among other reasonable comprehensive doctrines that contribute to the overlapping consensus. And the results of this overlapping consensus are

binding for each global citizen, no matter if Muslim, Christian or atheist, because of the criterion of reciprocity: a common normative principle shared by all major religions and cultural traditions.

Of course the reasoning I support in this essay is vulnerable to a certain skepticism and series of criticisms. One might, in fact, say that I listed many positions, among Muslim thinkers, compatible with my aim of reconciling Islam and human rights, which might not enjoy authority or authenticity for Muslims. In this respect, I would like to point out that as a “conjecturer” - in the Rawlsian sense explained in chapter 5.1 - my main task is to be sincere and not manipulative in reasoning, and to keep a strong commitment to plausibility. On the contrary, I cannot express judgments about the authenticity or veracity of one Islamic school of interpretation over another. Anyway the authors I cited in order to plead my case are well known Muslim scholars of undisputed weight. Some of them are certainly controversial figures,¹⁸⁰ but all of them are worldwide recognized as prominent Muslim thinkers.

Another point which is open to criticism is the political conception of individual autonomy I assume in my reasoning. I, in fact, always look at individuals, citizens of a global world, to highlight their capacity to reach

¹⁸⁰ I refer for example to Tariq Ramadan, grandson of Hassan al Banna, founder of the Muslim Brotherhood in Egypt, whose works are sometime accused to be falsely reformist.

an agreement on human rights thanks to the overlapping consensus model. This assumption can pose a problem from an Islamic point of view because the *umma* is often considered more important than its single members. Reasons of time and space prevent me from deepening this issue. Anyway, I think that this critics can be overcome highlighting what I already said for globalization. After 9/11, in fact, we all understood that good global citizenship has huge benefits for domestic security, even for the security of the same *umma*, considered as the worldwide Muslim community. The actual circumstances of living in a global society, thus, provide Muslims with the motivation for accepting a political conception that is not in conflict with their comprehensive views.

In reality, the possible criticism I consider most insidious is the following one. One might in fact asks on what base Muslims may regard non-Muslims as political equals or as object of solidarity in secular matters.¹⁸¹ Of course the criterion of reciprocity can provide a valuable contribute to this loyalty, but it is undeniable that juridical sources frequently express aversion to Muslims helping non-Muslims.¹⁸²

¹⁸¹ Andrew March, "Islamic Foundations for a Social Contract.." *op. cit.*, p. 242.

¹⁸² See Sayyid Qutb, *In the Shade of the Qur'an*, The Islamic Foundation, Leicester 2001, 2: 62-63.

Maybe, a possible aid can come from the words of al-Nawawi, one of the most prominent legal authorities of Sunni Islam, who maintained that

*if Muslim is able to manifest his religion in one of the unbeliever's countries, this country become a part of the Abode of Islam.*¹⁸³

In this framework, if we consider a global world in which - through the protection and implementation of human rights based on a common background agreement - all believers, Muslims included, enjoy the freedom of worship and practice, therefore, we can assume that the entire world is, from an Islamic point of view, the Abode of Islam. Maybe, under such conditions a Muslim would extend the solidarity typical of his *umma* to the entire humanity, living in the Abode of Islam, most of all considering the strong commitment to justice Muslims share due to the Qur'anic prescriptions quoted in chapter 6.2.

Thought I am aware that there are some aspects of my reasoning susceptible of criticisms, I am persuaded that my essay at least contribute to demonstrate that the clash of civilizations is not unavoidable. Tensions between cultures, in fact, can be used in order to promote confrontation, to exchange ideas and solutions. Therefore, our aim should be to

¹⁸³ Abu Zakariyya' al-Nawawi, *al-Majmu' Sharh al-Muhadhdhab*, Dar al-Fikr, Beirut 2000, 21: 5-7.

promote the constructive, nonviolent and necessary for growth, tension which Martin Luther King Jr. mentioned in his *Letter from Birmingham Jail*, reacting to Birmingham liberals who wanted him to stop fomenting needless tension in their town.

*Just as Socrates felt that it was necessary to create a tension in the mind so that individuals could rise from the bondage of myths and half truths to the unfettered realm of creative analysis and objective appraisal, so must we see the need for nonviolent gadflies to create the kind of tension in society that will help men rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood.*¹⁸⁴

Islam, like any religious tradition, can be used to support democracy, human rights and respect among different communities, or oppression, authoritarianism, and violence, depending on the choices and actions of his members. How Muslims choose will depend on how democratic principles are depicted by local actors within the community, as well as by how other religious and cultural traditions model these values. There is no inherent or inevitable clash of civilizations: all depends on the choices we all make, everywhere, Muslims and non-Muslims alike, that is why we,

¹⁸⁴ Martin Luther King Jr, *Letter from Birmingham Jail*, April 16 1963, <http://www.mlkonline.net/jail.html>.

western, are as responsible of these choices as Muslims are. In any case, no people has the monopole of morality and virtue or of depravation, on the contrary, each of us, can contribute with her specific culture, religion and philosophy, to watch the world theater critically and find solution to avoid the danger of conflicts based on a presumed clash of civilizations.

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GLOSSARY

Premise

Arabic words are created from three-letter "roots" which convey a basic idea. For example, k-t-b conveys the idea of writing. Addition of other letters before, between, and after the root letters produces many associated words: not only "write" but also "book", "office", "library", and "author".

Glossary

Ahkam: Islamic commandments derived and understood from religious jurisprudence resources.

Ahl ul-Kitāb: "People of the Book". Muhammad's designation for Jews and Christians, and sometimes Zoroastrians and Hindus. Because their religions featured scriptures and some aspect of divine revelation, they were not required to convert. However, they were required to pay a special tax (the *jizya*) for the privilege.

Allāh: "God".

‘Ālim: (plural *ulema*) one who knows. A scholar, in any field of knowledge.

‘Aql: it refers to natural human knowledge in Islamic theology, or intellect in Islamic philosophy. In jurisprudence, it is associated with using reason as a source for *shari'a*.

Arkan al-Islam: "pillars of Islam". The five primary duties of every Muslim: profession of faith (*shahāda*), ritual prayer (*salat*), fasting during Ramadan (*sawm*), pilgrimage to Mecca (*hajj*) and charity (*zakat*). Fulfillment of these duties brings rewards on earth and in the afterlife.

Barelwis: revivalist sect founded in northern India in the nineteenth century.

Dar al-Harb: “house of war”. It refers to areas outside Muslim rule at war with Muslim states.

Dar al-Islam: “land of Islam”.

Dar al-Kufr: “domain of disbelief”.

Fatwā: legal opinion of an ‘ālim binding on him and on those who follow his *taqlīd*.

Fiqh: jurisprudence built around the *shari'a* by custom (*urf*). Literally means "deep understanding" and refers to understanding the Islamic laws.

Fiṭrah: innate disposition towards virtue, knowledge, and beauty.
Muslims believe every child is born with *fiṭrah*.

Firqa: a unit among the believers.

Hadd: (plural: ḥudūd) literally “limit” or “boundary”. Usually referred to limits placed by Allāh on man; penalties of the Islamic law (*shari’a*) for particular crimes described in the Qur'an - intoxication, theft, rebellion, adultery and fornication, false accusation of adultery, and apostasy.

Hadīth: (plural: ahādīth) literally "speech"; recorded saying or tradition of the Prophet Muhammad validated by *isnād*.

Hajj: pilgrimage to Mecca required of every able Muslim at least once during his or her life. One of the Five Pillars of Islam.

Hijra: The Prophet's flight to Medina in 622 AD, marking the beginning of the Muslim calendar.

Hanafi: one of the Sunnis schools of thought.

Hudan: “guidance”.

Ijtihād: the possibility of finding a new solution to a juridical problem through independent reasoning. Liberal movements within Islam generally argue that any Muslim can perform *ijtihād*, given that Islam has no generally accepted clerical hierarchy or bureaucratic organization. The opposite of *ijtihad* is *taqlid*, Arabic for "imitation".

Imām: literally “leader”; e.g. a man who leads a community or leads the prayer.

Islam: "submission to God". The Arabic root word for Islam means submission, obedience, peace, and purity.

Isnād: chain of transmitters of any given *hadīth*.

Istihsan: is an Arabic term for juristic "preference". Muslim scholars may use it to express their preference for particular judgments in Islamic law over other possibilities. It is one of the principles of legal thought underlying personal interpretation or *ijtihād*.

Istislah: “to seek the best public interest”. It is a source of Islamic Law.

Jihad: "striving". Holy war; the defense of Islam against its enemies. Sufism focuses on the "greater" *jihad* against sin in oneself.

Kafir: "rejecter" or "ingrate." The term usually refers to a person who does not recognize Allah or the prophethood of Muhammad.

Khalif: "deputy, successor". It refers to the successor of the Prophet Muhammad, the ruler of an Islamic theocratic monarchy

Khutbah: sermon delivered on Fridays and special occasions.

Kitāb: “book”. The Qur'an is often referred to as "Al-Kitāb" (The Book).

Kufr: “ungratefulness” or disbelief in God and denial of the truth.

Madh'hab: (pl. *Madhahib*) school of religious jurisprudence, school of thought.

Mafsada: “harm”. It is used in opposition with *maslaha* (benefit).

Malaki: one of the Sunnis schools of thought.

Maslaha: “benefit” or “public interest”. Is a concept in traditional Islamic Law, invoked to prohibit or permit something on the basis of whether or not it serves the public's benefit or welfare. The concept is related to that of *istislah*. While the meaning of *maslaha* is “public interest”, the meaning of *istislah* is “to seek the best public interest”.

Nahda: "awakening" or "renaissance". It usually refers to a cultural and intellectual renaissance that began in the late 19th century and early 20th century in Egypt, then later moving to Lebanon and other Arabic-speaking countries. It is often regarded as the Egyptian counterpart of the European Enlightenment era, and a period of intellectual modernization and reform.

Naql: “transmitted” religious sources, revelation.

Nubuwwa: “prophethood”.

Qibla: "direction". Direction of the Ka'ba in Mecca, towards which all prayer must face.

Qur'ān: "recitation". The sacred text of Islam, revealed to Muhammad over a 20-year period by the Angel Gabriel.

Rasul: “messenger”.

Salâfiyya: the Arabic word derives from the terms "*al-salaf al-salih*," which mean "the venerable ancestors" or "the venerable predecessors". The dominant tradition in *salafiyya* has to do with

"getting back to the roots" of Islam and restoring traditional beliefs and practices. Sometimes, this effort is moderate and can even incorporate modernist influences, as with the case of al-Afghani (a *salafiyyan* reformer from the 1800's who tried to reconcile modernism and Islam).

Salat: "prayer". Ritual prayer performed five times per day facing the direction *qibla* of Mecca. One of the Five Pillars of Islam.

Sawm: "fasting". Religious fasting, especially during the month of Ramadan, which is one of the Five Pillars of Islam.

Shahāda: "testimony" or "witness". The profession of faith that "There is no god but God and Muhammad is the prophet of God", which is the only requirement for joining the Muslim community. As one of the Five Pillars of Islam, it must be spoken aloud with full understanding and faith at least once in one's lifetime. It is also included in the call to prayer, most ritual prayers, and is recited at death.

Sharī'a: "the path to a watering hole". The eternal ethical code and moral code based on the Qur'an and *sunnah*; basis of *fiqh*.

Shi'ism: or Shia Islam is the second largest sect of Islam, after Sunnism. In contrast with Sunnis, Shi'is believe that Muhammad divinely ordained his cousin and son-in-law Ali, in accordance with the command of God, to be the next caliph, making Ali and his direct descendants Muhammad's successors. Shi'a Islam is divided into three branches. The largest and best known are the Twelver. Other smaller branches include the Ismaili and Zaidi, who dispute the Twelver lineage of Imams and beliefs.

Shūrā: “consultation”.

Sirah: life or biography of the Prophet Muhammad.

Sunnah: "Tradition". The "path" or "example" of the Prophet Muhammad, i.e. what the Prophet did or said or agreed to during his life. The Prophet is in fact considered by Muslims to be the best human moral example, the best man to follow.

Sunnism: Sunnism, or Sunni Islam, is the largest sect of Islam (around 85% of Muslim population). The word Sunni comes from “*sunnah*” and Sunnis are considered “people of the example (of Muhammad) and the community” because, in the dispute over succession to Muhammad, hold that Abu Bakr was the rightful successor and that the method of choosing or electing leaders (*shura*) endorsed by the Qur'an is the consensus of the *umma* (the Muslim community). The four major Sunni schools of law are: Hanafi, Malaki, Shafi'i and Hanbali. Sunni Muslims generally consider these Schools all equally valid.

Sūrah: a chapter of the Qur'an.

Taqīd: “imitation”. To blindly follow a person whose following is not based on proof and does not rely upon knowledge.

Tawhīd: monotheism; affirmation of the Oneness of Allah. Muslims regard *tawhīd* as the first part of the Pillar of Islam, the second part is accepting Muhammad as *rasul* (messenger).

‘Ulamā’ (or ulema): (singular alim) the leaders of Islamic society, including teachers, Imams and judges.

Ummah (or umma): the global community of all Muslim believers.

'Urf: custom of a given society, leading to change in the *fiqh*.

Usul: (singular *asl*) principles, origins.

Usul al-Fiqh: the study of the origins and practice of Islamic jurisprudence (*fiqh*).

Zakat: almsgiving (one of the Five Pillars of Islam).